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BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeals of)	Hearing Examiner File:
)	W-17-006 through
WALLINGFORD COMMUNITY)	W-17-014
COUNCIL, ET AL.)	
)	FRIENDS OF RAVENNA-COWEN (W-17-008)
Of Adequacy of FEIS Issued by the)	MOTION FOR CONTINUANCE TO 5/18/18
Director, Office of Planning and)	IN ORDER TO SUBMIT EVIDENCE
<u>Community Development</u>)	RE CITY'S MOTION TO DISMISS

RELIEF REQUESTED

Appellant Friends of Ravenna-Cowen respectfully requests the Hearing Examiner to grant an extension of time to Friday, May 18, 2018 so that the appellant can submit evidence which was discovered only yesterday on May 10, 2018 at the deposition of Ms. Sarah Sodt, who heads the Seattle Department of Neighborhoods Historic Preservation Program.¹

DISCUSSION, SUMMARY OF THE FACTS, AND LEGAL AUTHORITY

On April 17, 2018 the Respondent (hereafter "City") filed a motion for dismissal of certain issues raised by Friends of Ravenna-Cowen, and submitted declarations, none of which were germane to these issues. The City's motion states it was brought under CR 56 as a summary judgment. The Appellant responded on May 1, 2018, that the City's motion as to

¹ This motion and the facts stated in the motion are based on the offer of proof separately submitted and the declaration of Judith E. Bendich..

1 Friends of Ravenna-Cowen was actually a motion under CR 12(b)(6) because the City sought to
2 dismiss the issues based on the face of the pleadings, not on any other evidence. On that basis,
3 beginning at p. 13, as permitted under CR 12, Friends of Ravenna-Cowen made averments about
4 existing inventories of properties of historic significance that were in notebooks at the Historic
5 Preservation Program located at City Hall, showing that the City had undertaken a survey and
6 inventory in 1978 -1979 of 34 Seattle neighborhoods in order to identify properties and
7 structures that could be identified as potentially "Landmark" or other historic significance, but
8 the City had not considered or included any of this information in the draft MHA EIS or the final
9 MHA EIS. Friends of Ravenna-Cowen did not submit declarations in support of these
10 averments.

11 Appellant's Response, also pointed out at p.4, n.3 that CR 56(f) provides that the court
12 may "order a continuance to permit affidavits to be taken or discovery to be had or make such
13 other order as may be just."

14 In its reply, filed May 8, 2018, the City continues to assert that the City's Motion to
15 Dismiss a CR 56 motion and that judgment in its favor should be granted as a matter of law.

16 At the time the City filed its motion to dismiss, the City was still providing zip files of
17 documents in response to appellants' discovery requests, and no deposition testimony had been
18 taken by any party. All parties worked together to schedule depositions. At the City's request,
19 the deposition of Ms. Sarah Sodt was scheduled for May 10, 2018, at 9:00 am. The undersigned
20 attorney/authorized representative took Ms. Sodt's deposition. Ms. Sodt's testimony supports the
21 averments in Friends of Ravenna-Cowen's Response to the City's Motion to Dismiss regarding
22 Issues 3 and 4 that the MHA FEIS does not in the first instance adequately identify buildings of
23 historic significance, did not provide an adequate study of the impact on buildings and areas of
24

1 historic significance, and the proposed mitigation was inadequate. This deposition may also
2 support issues raised by appellant SCALE in its motion for summary judgment that was filed
3 yesterday, May 9, 2018. The Court Reporter was asked to provide an expedited copy of Ms.
4 Sodt's deposition, but could not provide it any earlier than Wednesday, May 16, 2018. This
5 motion asks for an additional two days from then to prepare and file declarations and submission
6 of relevant parts of the deposition that support the averments in the Appellant's response to the
7 City's motion to dismiss. Friends of Ravenna-Cowen's Attorney/Authorized Representative
8 asked the City's attorney for a brief continuance in order to submit evidence from the deposition
9 taken May 10. The City's attorney refused to agree to a brief continuance.

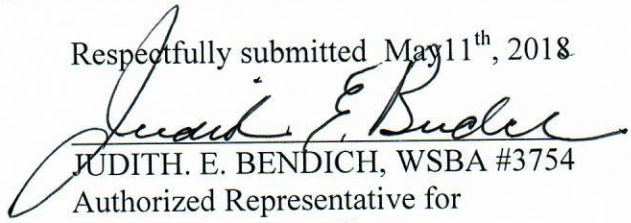
10 Friends of Ravenna-Cowen recognizes that the City would need to be given an
11 opportunity to reply. The Hearing Examiner has set a hearing on dispositive motions for May
12 31, 2018. This continuance poses no prejudice to the City because it would have ample time
13 before the hearing to submit a supplemental reply, but if the continuance was not granted and the
14 ruling were under CR 56, there could possibly be substantial irreparable prejudice to the
15 Appellant. The Appellant faces the threat of dismissal of a core issue in this appeal. It would be
16 unjust to the Appellant not to allow it to submit evidence under these circumstances since there is
17 now, as a result of this deposition, ample evidence to support its issues and ample time for the
18 City to reply. It would also be unjust as a matter of due process and fairness to the adjudicative
19 process to not grant a continuance.

21 CONCLUSION

22 For the reasons stated above, the Hearing Examiner should grant Appellant Friends of
23 Ravenna-Cowen's motion for a continuance to May 18, 2018 so that the appellant can submit
24

1 evidence in response to the City's motion to dismiss, evidence it did not have until Ms.Sodt's
2 deposition was taken on May 10, 2018.

3 Respectfully submitted May 11th, 2018

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5 JUDITH E. BENDICH, WSBA #3754
6 Authorized Representative for
7 Friends of Ravenna-Cowen

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that Friends of Ravenna-Cowen's Motion For A Continuance to 5/18/2018 to Submit Evidence, the declaration of Judith E. Bendich and subjoined and offer of proof in support was served on May 11, 2018 on all the parties' attorneys of record or on their authorized representatives of record at the email addresses listed below:

Beacon Hill Council mira.latoszek@gmail.com; Seattle Coalition for Affordability, Livability and Equity (SCALE) newman@bnd-law.com; Dave Bricklin (bricklin@bnd-law.com); cahill@bnd-law.com; telegin@bnd-law.com; Fremont NC toby@loupploup.net; Friends of North Rainier masteinhoff@gmail.com; PCD_MHAEIS MHAEIS@seattle.gov; Mitchell, Daniel B Daniel.Mitchell@seattle.gov; Alicia Riese Alicia.Riese@seattle.gov; Weber, Jeff S Jeff.Weber@seattle.gov; Geoffrey Wentlandt Geoffrey.Wentlandt@seattle.gov; Cara E. Tomlinson [<ctomlinson@vnf.com>](mailto:ctomlinson@vnf.com); Amanda Kleiss [<ack@vnf.com>](mailto:ack@vnf.com); Tadas Kisielius [<tak@vnf.com>](mailto:tak@vnf.com); "Dale N. Johnson" [<dnj@vnf.com>](mailto:dnj@vnf.com); Clara Park [<cpark@vnf.com>](mailto:cpark@vnf.com); MOCA djb124@earthlink.net; SUN booksgalore22@gmail.com; Wallingford CC lee@lraaen.com; West Seattle Junction rkoehler@cool-studio.net; West Seattle Junction Gen admin@wsjuno.org.

The motion, the declaration of Judith E. Bendich and the subjoined and offer of proof was filed with the City of Seattle Hearing Examiner by e-filing on May 11, 2018.

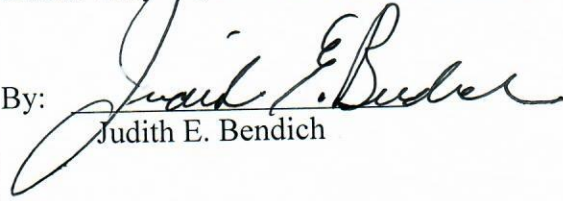
APPELLANT'S MOTION FOR A CONTINUANCE - 4

FRIENDS OF RAVENNA-COWEN
JUDITH E. BENDICH, WSBA# 3754
AUTHORIZED REPRESENTATIVE,
1754 NE 62ND ST., SEATTLE, WA 98115
206-525-5914

1 Dated: May 11, 2018 at Seattle, Washington,

2

3 By:



Judith E. Bendich

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