



City of Seattle

Office of Hearing Examiner

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September 11, 2019

Seattle City Council
600 Fourth Ave.
Seattle, WA, 98104

RE: CB 119600

Dear Council Members:

The Council has before it today Council Bill 119600. I have provided some comments on the draft legislation to Lish Whitson with Central Staff, and Council Member Lisa Herbold has requested some additional input concerning comments received from hearing examiner Ted Hunter.

These comments are directed at the aspects of CB 119600 that effect timelines for the Office of Hearing Examiner. Much of CB 119600 is directed at incorporating E2SHB 1923 into the Seattle City Code which will allow the City to exempt specified planning activities from SEPA appeals. Council has received ample input from staff and the public concerning these aspects of CB 119600.

The following address CB 119600's proposed amendments to establish a time limit of 120 days for hearing examiner review of a SEPA appeal. The Office of Hearing Examiner ("OHE") will work within any timelines established by Council. However, I believe the proposed timeline is a blunt tool to address Council desires to ensure efficiency in the SEPA appeal process. Under most circumstances 120 days is too much time, and for those cases that take longer it is my experience that it is all parties needing more time to complete the hearing process, and not just appellants, because such cases simply need more time.

It appears that Council's desire for improved timeliness of the SEPA appeal process stems in part from the anomaly of the OHE's 2018 caseload. In 2018 the OHE continued to experience a historic caseload high that started in 2016; we processed several complex multi-party SEPA appeals including the conclusion of the most recent phase of the Burke-Gilman EIS litigation, the MHA appeal which included 29 neighborhood appellants, and appeals of the Fort Lawton DNS; and simultaneously experienced a turnover in the role of Hearing Examiner and other key staff roles in the OHE. It is unlikely we will see a similar strain put on OHE resources in the

foreseeable future, and in some respects even if the amendments contemplated in CB 119600 were in place there would not have been a change in the case schedule.

The MHA litigation involved timeline challenges raised by all parties. My attempts to hold a hearing in February of 2018 were challenged by all of the parties. For example, the appellants all believed we needed additional time to prepare for hearing, and in the end the City requested several additional months to respond to discovery requests from appellants. All parties, including the City, had schedule conflicts for their representatives and witnesses that delayed the conclusion of the hearing.

Case W-18-002 has been much discussed as an example of SEPA appeal delays, and some have made much of a delay of the case schedule by appellant Elizabeth Campbell to accommodate a vacation. In truth, that case was delayed most significantly because it originally required four days to complete, and the hearing schedule could not accommodate four days because of the MHA hearing schedule and other already scheduled hearings.¹ The MHA hearing schedule delayed W-18-002 by as much as three months, because it displaced most of the hearing schedule for June, July and August. In trying to schedule a September hearing date for W-18-002 the City attorney indicated he had a two week vacation conflict, and when we looked to the week of September 24th for a hearing date, Ms. Campbell indicated she would be on vacation through the 24th so we accommodated her by starting the hearing on September 25th.

I believe Mr. Hunter's comment is correct when he states "it would be far better to place these timelines in rules of the hearing examiner and not in an ordinance." Which brings me to a pet-project I have initiated, and hope to make significant progress on this month. On my appointment as Hearing Examiner, I knew that the Hearing Examiner Rules of Practice and Procedure were in need of significant updating. In these rules for example, we can provide more specific guidance concerning discovery and motions practice deadlines that have substantially added to the timelines for cases. Through the rules update, we will also be looking at other means of creating greater efficiency for all participants in the hearing process.

In addition to updating the hearing examiner rules, to create greater efficiency in our hearing schedule I ended our contract city services in order to allow the deputy hearing examiner and I to focus our full attention on the Seattle caseload.

Lastly, it is my hope to increase opportunities for resolution of SEPA appeals and other cases by implementing a more robust mediation program through the OHE. Mediation gives the parties an opportunity to resolve conflicts outside the appeal system. The King County Interlocal Conflict Resolution Group, has already indicated an increase in case referrals to their office since I have assumed leadership of the OHE, and we hope to explore additional opportunities that we can discuss with Council later this year.

¹ Mr. Hunter's comments to Council indicate that with SEPA appeal hearings "rarely have we had hearings that last longer than a day." Many, if not all, of Mr. Hunter's clients for contract hearing examiner services are with much smaller jurisdictions than the City of Seattle, and they simply do not have the population and subject matter complexity that is experienced in this city. In private practice I personally participated in SEPA hearing before Mr. Hunter that took longer. What he says is generally true of many cases, but for example have no application to an appeal involving a citywide up-zone in the largest city in the state by 29 neighborhood groups.

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Finally, the OHE submits an annual report to Council in the first quarter of the year, this is a time when I meet with available Council members to discuss the report. I strongly encourage you to take the time to meet with me when my office reaches out to you to schedule a meeting. Discussing the report is helpful to understand current conditions in the OHE, but equally important those meetings are essentially the only opportunity for me to hear directly from you about the priorities you have for the OHE (the remainder of the year we generally have no contact to preserve the independence of the OHE).

Thank you for time and attention to these comments. We at the OHE look forward to continue working in service to the Council and the City of Seattle.

Ryan P. Vancil
Hearing Examiner

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