BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In re.

SEATTLE WATERFRONT LID ASSESSMENT REMAND HEARING

Hearing Examiner Files: CWF-0133, CWF-0134, CWF-0136, CWF-0168, CWF-0318, CWF-0328, CWF-0329, CWF-0353, CWF-0392, CWF-0413, CWF-0415, CWF-0417, CWF-0418, CWF-0423, CWF-0429, CWF-0436, and CWF-442.

ORDER ON MOTION

A Motion to Require Compliance with Disclosure Deadline in Resolution 31979 ("Motion") has been filed by the ACT Theatre, Objector for case number CWF-442. The Motion seeks to have the Hearing Examiner compel compliance by the City with provisions of City of Seattle City Council Resolution 31979 ("Resolution 31979"), and to rescind a "prior decision that waived the Council's November 30 deadline for submission of the city appraiser's additional analysis."

The Motion is based in part on lack of information (understandably) as to the stance of this matter with the Office of Hearing Examiner. To date, there has been no formal communication concerning Resolution 31979 with this Office. The Examiner was contacted by Central Staff in advance of consideration of the resolution concerning the hearing schedule of the Office, but no communication has been received since then. The Examiner learned that a resolution had passed, and that it included a remand to this Office, from a friend that tracks City Hall activities. Following on the heels of this information, the Examiner self-initiated the process to schedule a prehearing conference to ensure that this matter is addressed in a timely manner, and frankly, to get up to speed on the status of the resolution and other aspects of the City process. The Examiner is still not in possession of a signed copy of Resolution 31979. Regardless of whether there is a gap in any adopted City process to communicate a remand in such matters to the Examiner, or if it was due to human error, it is not the responsibility of the Examiner to pursue or track the activities of the Council concerning matters that have passed from the Examiner's jurisdiction to the Council.

At a minimum, in accordance with the directive of Resolution 31979, the City should have been preparing "to submit the further analysis concerning valuation of these properties to the Hearing Examiner no later than November 30, 2020," and this would have initiated the remand process identified by Council in the resolution. Instead, in the course of communicating with the Office of Hearing Examiner Legal Assistant about scheduling for the prehearing conference, City legal counsel asked if it should delay submission of the City appraiser's additional analysis until the prehearing conference, to which the Legal Assistant indicated they should wait until the prehearing conference. Asking the Legal Assistant how to proceed with submissions called for in Resolution 31979, relying on any response he provided as the sole directive for how to proceed, and/or any party characterizing his email response as an order or directive from the Hearing Examiner is absurd. The Legal Assistant is a capable and responsive member of the Office of Hearing

Examiner staff, but no identifiable rule or procedure provides that an email from the Legal Assistant can stand as a directive from an Examiner. The City's query to the Legal Assistant is akin to asking a court clerk if a party can waive filing deadlines imposed by statute – the clerk's response to such a question would be irrelevant to the duty imposed on the filing party.

Further, under the circumstances, the Legal Assistant's response was wholly appropriate. Under normal case procedures in this Office, no party should unilaterally forward material to the Office in advance of a case, or it would constitute an improper *ex parte* contact. Only two weeks ago, the Legal Assistant provided the same response to a different City attorney in another matter where the attorney sought to submit a record to this Office without providing a copy to the opposing party. Opposing counsel in that matter still raised the issue of improper *ex parte* contacts, and it was only due to the diligence of the Legal Assistant that no such contact occurred, because the file transfer was denied and deferred to discussion with the Examiner at the upcoming prehearing conference. Thus, the Legal Assistant's response, in this case, was simply following standard procedure for most matters in this Office. The City should not have expected the Legal Assistant to have intimate knowledge of the details of Resolution 31979, and its associated deadlines, particulary when the Examiner himself has not even received a copy. Lastly, the City made no effort in its initial query, or following the Legal Assistant's response, to ensure that the question was directed to the Examiner, or that a delay in materials transfer had been sanctioned by the Examiner. Instead, the question was embedded in an email to the Legal Assistant, the primary purpose of which was procedural communications regarding scheduling a prehearing conference.

The City Council has provided a clear indication that this matter on remand is to follow an expeditious and timely process by setting the deadlines it has in Resolution 31979. The City has failed to follow the first deadline directive identified in that resolution.

The Motion is **DENIED** with regard to rescinding a "prior decision that waived the Council's November 30 deadline for submission of the city appraiser's additional analysis," as there was no such decision.

The Motion is **GRANTED** with regard to compelling the City to comply with the deadline provisions of Resolution 31979. The City must immediately file with the Office of Hearing Examiner, and serve on all Objectors participating in this remand, all analysis completed by ABS Valuation concerning the valuation of the properties subject to this remand hearing prepared in response to Resolution 31979. If any such analysis remains incomplete, the City appraiser is directed to endeavor to make all haste to complete that analysis, and to file and serve that information as provided above. Filing with the Office of Hearing Examiner should be completed by emailing materials to hearing.examiner@seattle.gov, and service on Objectors should be by email to their respective representatives. In addition, the City should make a good faith effort to provide the Objectors copies of any background data or materials considered or utilized by the City appraiser to complete his analysis, in order to reduce or remove potential delays that may be caused by discovery, and to be responsive to any other reasonable requests for discovery made by Objectors in advance of the prehearing conference. Time is of the essence in this matter, and the City sharing materials that will be disclosed as part of this hearing process as soon as possible will help ensure that the deadlines set by the City Council are met.

The Examiner notes that attempts by the City and moving party to communicate with the Examiner by email have been a source of disruption to this process. Under the circumstances of the pandemic, and in this particular case where the e-filing system is not being utilized, filing materials with the Office of Hearing Examiner is allowed by email. However, there is no provision for communicating with the Examiner by email, or by proxy through his Legal Assistant. Communications with the Examiner must be in document form, copied to all parties, and then filed by email. Any order from the Examiner will similarly be in document form, copied to all parties, and bear the Examiner's signature.

Entered this 3rd day of December, 2020.

/s/Ryan Vancil
Ryan Vancil, Hearing Examiner