BEFORE THE HEARING EXAMINER OF THE CITY OF SEATTLE

SEATTLE WATERFRONT LID ASSESSMENT HEARING	Case Nos.: 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 **CITY OF SEATTLE'S OPPOSITION TO ACT THEATRE'S MOTION TO REQUIRE COMPLIANCE**

I. INTRODUCTION

Objector in Case No. CWF-442 (ACT Theatre) has moved to require compliance with Resolution 31979. The City of Seattle ("City") respectfully requests that the Hearing Examiner deny the Motion.

II. COUNTERSTATEMENT OF FACTS

By Resolution 31979, the Seattle City Council ("City Council") remanded certain properties in the Waterfront LID Assessment to ABS Valuation (the "City's Appraiser") for further analysis consistent with the Hearing Examiner's Recommendation dated September 8, 2020. The City Council directed the City Appraiser to submit its further analysis to the

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Hearing Examiner—not the parties—by November 30, 2020. The City Council also returned jurisdiction to the Hearing Examiner to proceed regarding the remanded properties.

Objector ACT Theatre filed a written objection to its assessment, but did not otherwise participate in the initial Waterfront LID Assessment hearing. Objector's property is among those remanded by City Council.

Contrary to Objector's characterization, Mot. at 1, the City's counsel did not "request" to delay the submission of the City's Appraiser's further analysis. The Hearing Examiner's office emailed the City's counsel and all other representatives of record on the remanded cases on Thursday, November 19, 2020 to schedule a prehearing conference. In response to that email, the City's counsel sought clarification of whether, in light of the Hearing Examiner's scheduling of a prehearing conference after the November 30 submission date, the City should hold off on submitting materials until after the prehearing conference. In response, the Hearing Examiner's Legal Assistant responded, "Yes, please hold off on any submissions until after the prehearing conference. The remand hearing date, pleading submission dates, and other procedural matters will be established at the prehearing conference." In accordance with that reasonable instruction, the City informed its outside appraiser (ABS Valuation) of the anticipated timeline and is awaiting finalization of ABS Valuation's remand analysis.

III. ARGUMENT

Objector's Motion is without merit for several reasons. First, the City did not engage in an impermissible *ex parte* communication with the Hearing Examiner. The City's communication to the Hearing Examiner's office was in response to an email from the Hearing Examiner's Legal Assistant regarding the scheduling of next steps in the hearing. Throughout this lengthy proceeding, which Objector has not participated in until recently, objectors and counsel for objectors and the City have communicated with the Hearing Examiner's office without copying all 400 plus objectors to address procedural questions such as filing deadlines,

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use of exhibits, etc. Nor was the communication between the City and the Hearing Examiner's office akin to the request Objector emailed on December 3, which asked for a substantive ruling from the Hearing Examiner. The two communications are simply not comparable.

Second, there is no obligation in the City Council's resolution to provide materials to the parties, let alone in advance of the prehearing conference set by the Hearing Examiner. Resolution 31979 directs that the materials be submitted to the Hearing Examiner and is silent regarding distribution to the parties. Moreover, pursuant to the resolution, the Hearing Examiner has jurisdiction over the remand proceedings and it is within his discretion to establish a schedule for the proceedings on remand, including the party's submissions. Objector's claim of prejudice due to the delay of the release of the analysis misunderstands the nature of the initial proceedings and the remand hearing. In the initial hearing, objectors presented substantial amounts of evidence and arguments as to why their assessments should be adjusted. The City understands that the remand proceeding will not be an opportunity for parties to relitigate their positions or conduct discovery, but rather an opportunity to comment on and respond to the further analysis provided by the City's Appraiser. Given the limited number of objectors on remand and the Hearing Examiner's existing knowledge of the properties and issues involved on remand, there is no reason to believe that the Hearing Examiner cannot complete his review, hearing, and issue his final report by the deadline set by City Council.

Third, the City is aware of no obligation in this contested proceeding to provide the City's remand analysis piecemeal or otherwise in advance of the process the Hearing Examiner will lay out. Nor does it have an obligation to keep objectors apprised of progress on same, just as objectors will be under no obligation to share with the City any progress reports or early completed segments of whatever they choose to submit in response to the City's materials.

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IV. CONCLUSION

The Hearing Examiner has discretion over the remand proceedings and appropriately directed the City to withhold submission of the revised analysis until the Hearing Examiner holds a prehearing conference. The City respectfully requests that the Hearing Examiner deny Objector's Motion.

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