

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

Waterfront LID Levy Assessment
Remand Prehearing Conference [KLG-
USW_Active01.FID682720]

NO.

MOTION TO REQUIRE
COMPLIANCE WITH DISCLOSURE
DEADLINE IN RESOLUTION 31979

I. FACTS

Resolution 31979 establishes a tight timeline for this remand proceeding. The Council set a deadline of February 1, 2021 for the Examiner’s report. With that in mind, the Council also set a deadline of November 30, 2020 for submission of the new appraisal analysis from the city’s appraiser. That schedule provides just 62 days for the affected parties to review the report, obtain expert reports (if necessary), and potentially conduct discovery; for the Examiner and all parties to conduct the hearing; and for the Examiner to generate the report to the Council. Given that short timeline (exacerbated by the intervening holidays), every day counts.

In the email chain attached hereto as Exhibit A, the City attorney had ex parte communications with the hearing examiner’s office seeking to delay the date *set by the City Council* for submission of the city appraiser’s new report. Without the benefit of any input from any of the affected parties, the hearing examiner’s office provided an open-ended extension.

II. REQUEST FOR RELIEF

ACT Theater requests that the Examiner revisit the decision to waive the Council's deadline of November 30 for the submission of the city appraiser's new analysis. The city should be ordered to provide the new analysis immediately. If only portions are currently complete, those portions should be produced immediately and the remaining analysis should be provided as soon as possible.

The delay in the city's compliance with the Council's deadline (the delay to date and any additional delay) should not prejudice the taxpayers when a scheduling order is prepared. That is, the taxpayers should be assured of an adequate time to review and respond to the new analysis. If deadlines for subsequent steps must be shortened because of the city's delay, it is the city's deadlines for future steps that should be shortened, not the taxpayers' deadlines.

III. ARGUMENT

The earlier decision should be rescinded on procedural and substantive grounds. Procedurally, the city attorney should not have made its request to the Examiner's office *ex parte*. The requested delay is highly consequential, prejudicing the ability of the taxpayers to participate in these proceedings.

The city's request to the Examiner's office with no notice to other parties is highly irregular, violates the Examiner's rules that bars *ex parte* contact (changing a disclosure deadline is not the type of "procedural" matter exempt from the rule), and violates the Rules of Professional Responsibility. For these reasons alone, the Examiner should rescind the permission that lets the city ignore the submission deadline established by the City Council in its resolution.

Ironically, when ACT Theater posed this request to the Examiner via an email this morning, the Examiner's office responded:

1 The Hearing Examiner will review this request if it is submitted
2 today in motion format. Email communications to the Hearing
3 Examiner are not accepted procedure.

4 Yet, when the city requested that the Examiner waive the Council's November 30 deadline,
5 that request was made by email and the Examiner granted *that* request by email. Worse, not only
6 was the exchange by email, the city's email request was not copied to other parties. In contrast, the
7 email request this morning from ACT Theater was copied to other parties, including the city. Yet
8 the city's ex parte email request was approved by the Examiner's office, while ACT Theater's was
9 rejected. The flawed process by which the city sought and obtained a waiver of the November 30
10 deadline is sufficient grounds to rescind that ruling.

11 Waiving or postponing the deadline for submitting the report should be rescinded on
12 substantive grounds, too. First, it is doubtful that the Examiner has the authority to modify a
13 deadline set by the City Council. Second, as noted above, the delay is causing significant prejudice
14 to the other parties. Every day that goes by without disclosure of the report is another day that our
15 ability to represent our clients' interests is compromised. Third, there is absolutely no need for the
16 extension—other than to prejudice the other parties' ability to prepare. The City did not say it
17 needed more time to complete the report, yet the Examiner granted the waiver anyway.

18 Late yesterday, the city's attorney advised the undersigned that some portions of the
19 analysis are not yet complete—despite the deadline set by the City Council. Portions of the report
20 may be complete. The city's attorney has not responded yet to a request to clarify whether all or
21 just some parts of the analysis are not yet complete. Nor has the city responded with information
22 as to the expected time when the analysis will be complete.
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26


IV. CONCLUSION

The Examiner should rescind its prior decision that waived the Council's November 30 deadline for submission of the city appraiser's additional analysis. If the analysis is not yet complete, all portions that are complete should be submitted immediately and the remaining portions should be submitted as soon as possible.

Dated this 3rd day of December, 2020.

Respectfully submitted,

BRICKLIN & NEWMAN, LLP

By: 
David A. Bricklin, WSBA No. 7583
Attorney for ACT Theatre

Peggy Cahill

From: Edlund-Cho, Galen <Galen.Edlund-Cho@seattle.gov>
Sent: Tuesday, November 24, 2020 11:14 AM
To: Filipini, Mark; Thompson, Gabrielle E.; Lee, Engel; Khaleghi, Kristina
Subject: RE: Waterfront LID Levy Assessment Remand Prehearing Conference [KLG-USW_Active01.FID682720]

External Sender:

Good morning, Mr. Filipini.

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.

Sincerely,



Galen Edlund-Cho
Legal Assistant

City of Seattle [Office of Hearing Examiner](#)
700 Fifth Avenue, Suite 4000, Seattle, WA 98104
Direct: 206.615.1718 | Fax: 206.684.0536 | Galen.Edlund-Cho@seattle.gov

From: Filipini, Mark <mark.filipini@klgates.com>
Sent: Tuesday, November 24, 2020 10:48 AM
To: Edlund-Cho, Galen <Galen.Edlund-Cho@seattle.gov>; Thompson, Gabrielle E. <Gabrielle.Thompson@klgates.com>; Lee, Engel <Engel.Lee@seattle.gov>; Khaleghi, Kristina <Kristina.Khaleghi@seattle.gov>
Subject: RE: Waterfront LID Levy Assessment Remand Prehearing Conference [KLG-USW_Active01.FID682720]

CAUTION: External Email

Hi Mr. Edlund-Cho,

Assuming the prehearing conference is set for December 1 or 2, should the City hold off on submitting any materials to the Hearing Examiner until after same? We note that Section 1 of City Council Resolution 31979 directs the City's Appraiser to submit further analysis concerning valuation of the remanded properties by November 30.

Thank you,
Mark



Mark S. Filipini
Partner
K&L Gates LLP
925 Fourth Avenue
Suite 2900

Seattle, Washington 98103
Phone: 206-370-8111
Fax: 206-370-6060
mark.filipini@klgates.com
www.klgates.com

From: Edlund-Cho, Galen <Galen.Edlund-Cho@seattle.gov>
Sent: Friday, November 20, 2020 4:12 PM
To: Filipini, Mark <mark.filipini@klgates.com>; Thompson, Gabrielle E. <Gabrielle.Thompson@klgates.com>; Lee, Engel <Engel.Lee@seattle.gov>; Khaleghi, Kristina <Kristina.Khaleghi@seattle.gov>
Subject: RE: Waterfront LID Levy Assessment Remand Prehearing Conference [KLG-USW_Active01.FID682720]

Good afternoon, Mr. Filipini.

Thank you for providing the City's availability below. All parties have responded, so I will forward all availabilities to the Examiner later this evening.

Sincerely,



Galen Edlund-Cho
Legal Assistant
City of Seattle [Office of Hearing Examiner](#)
700 Fifth Avenue, Suite 4000, Seattle, WA 98104
Direct: 206.615.1718 | Fax: 206.684.0536 | Galen.Edlund-Cho@seattle.gov

From: Filipini, Mark <mark.filipini@klgates.com>
Sent: Friday, November 20, 2020 4:10 PM
To: Edlund-Cho, Galen <Galen.Edlund-Cho@seattle.gov>; Thompson, Gabrielle E. <Gabrielle.Thompson@klgates.com>; Lee, Engel <Engel.Lee@seattle.gov>; Khaleghi, Kristina <Kristina.Khaleghi@seattle.gov>
Subject: RE: Waterfront LID Levy Assessment Remand Prehearing Conference [KLG-USW_Active01.FID682720]

CAUTION: External Email

Hello Mr. Edlund-Cho,

The City is available on December 1 from 12:30 to 3:30 p.m. and on December 2 from 9 a.m. to 11 a.m. and from noon to 4 p.m. We are not available on the morning of December 3.

Thanks,
Mark



Mark S. Filipini

Partner
K&L Gates LLP
925 Fourth Avenue
Suite 2900
Seattle, Washington 98103
Phone: 206-370-8111
Fax: 206-370-6060
mark.filipini@klgates.com
www.klgates.com

From: Edlund-Cho, Galen <Galen.Edlund-Cho@seattle.gov>
Sent: Thursday, November 19, 2020 10:51 AM
To: Filipini, Mark <mark.filipini@klgates.com>; Thompson, Gabrielle E. <Gabrielle.Thompson@klgates.com>; Lee, Engel <Engel.Lee@seattle.gov>; Khaleghi, Kristina <Kristina.Khaleghi@seattle.gov>
Subject: FW: Waterfront LID Levy Assessment Remand Prehearing Conference

Good morning,

The Hearing Examiner would like to schedule a prehearing conference regarding the remanded objections below.

Please reply with your availability with respect to all dates and times listed below.

Sincerely,



Galen Edlund-Cho
Legal Assistant

City of Seattle [Office of Hearing Examiner](#)
700 Fifth Avenue, Suite 4000, Seattle, WA 98104
Direct: 206.615.1718 | Fax: 206.684.0536 | Galen.Edlund-Cho@seattle.gov

From: Edlund-Cho, Galen
Sent: Wednesday, November 18, 2020 11:14 AM
To: Todd Reuter <todd.reuter@foster.com>; Mahon, Robert (Perkins Coie) <RMahon@perkinscoie.com>; Lin, Megan (BEL) <MLin@perkinscoie.com>; Lutz, Jerry (BEL) <jlutz@perkinscoie.com>; Stillwell, Jacob (SEA) <jstillwell@perkinscoie.com>; Nichols, Clark R. (BEL) <Cnichols@perkinscoie.com>; Kymberly.Evanson@pacificallawgroup.com; lovady@hornerlawgroup.com; becky.witmer@acttheatre.org
Subject: Waterfront LID Levy Assessment Remand Prehearing Conference

Good morning,

The Seattle City Council, pursuant to Resolution 31979
[<http://seattle.legistar.com/LegislationDetail.aspx?ID=4688619&GUID=97BEE1E2-C698-4610-B4F1-E058CFD95D3D&Options=ID%7cText%7c&Search=>] has remanded the following Waterfront LID cases for further review: 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.

The Hearing Examiner is requiring that the parties attend a prehearing conference to schedule these remanded matters. The Hearing Examiner is making an initial request to check availability for certain dates. If the parties are not able to identify a mutually agreeable date based on these dates, then the Hearing Examiner will set a date for the prehearing conference, which all parties will be required to attend regardless of scheduling conflicts. Available dates and times for the prehearing conference are (please indicate your availability for all times, and not just your preferred time):

Tuesday, December 1, 2020, anytime between 11 am and 4 pm;
Wednesday, December 2, 2020, anytime between 9 am and 4 pm; or,
Thursday, December 3, 2020, anytime between 9 am and 11 am.

Sincerely,



Galen Edlund-Cho
Legal Assistant

City of Seattle [Office of Hearing Examiner](#)
700 Fifth Avenue, Suite 4000, Seattle, WA 98104
Direct: 206.615.1718 | Fax: 206.684.0536 | Galen.Edlund-Cho@seattle.gov

This electronic message contains information from the law firm of K&L Gates LLP. The contents may be privileged and confidential and are intended for the use of the intended addressee(s) only. If you are not an intended addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this e-mail in error, please contact me at mark.filipini@klgates.com.

This electronic message contains information from the law firm of K&L Gates LLP. The contents may be privileged and confidential and are intended for the use of the intended addressee(s) only. If you are not an intended addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this e-mail in error, please contact me at mark.filipini@klgates.com.