

**STATE OF ILLINOIS
DEPARTMENT OF TRANSPORTATION**

In re: The Matter of the Proposed Children's Memorial Hospital Rooftop Heliport to be located in Chicago, Illinois)
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MOTION TO ORDER DEPOSITION AND CROSS-EXAMINATION OF THE ILLINOIS DEPARTMENT OF TRANSPORTATION'S EXPERT WITNESSES

NOW COMES the Streeterville Organization of Active Residents, hereinafter referred to as "SOAR", and as their Motion to Order Deposition and Cross-Examination of the Illinois Department of Transportation's Expert Witnesses states as follows:

1. The Children's Memorial Hospital, hereinafter referred to as "CMH," has filed an Application for Consideration by the Illinois Department of Transportation, hereinafter referred to as "IDOT," for a rooftop heliport to be operated in the Streeterville neighborhood, Chicago, Cook County, Illinois.
2. Pursuant to a Written Request and Motion filed by SOAR, a public evidentiary hearing to explore the safety of CMH's Proposed Heliport was allowed by IDOT from July 22nd to July 25th, 2009.
3. Additional evidentiary materials regarding CMH's Proposed Heliport were submitted by CMH after the hearing, and were not subject to public testimony.
4. In August 2010, SOAR learned that IDOT had commissioned a new study to be performed regarding CMH's Proposed Heliport, and that IDOT had contracted with Dr. Joseph Horn, Ph.D. and Continuum Dynamics, Inc. to perform the study.
5. In a correspondence dated August 27th, 2010, SOAR provided to IDOT the initial concerns of SOAR's experts, Dr. Thomas Corke, Ph.D. and Dr. Patrick Veillette, Ph.D., regarding

the contracted IDOT studies, and invited Dr. Horn and Continuum Dynamics, Inc. to communicate directly with Doctors Corke and Veillette regarding those concerns.

6. IDOT did not respond to the concerns expressed by SOAR's experts, nor did it act on SOAR's invitation to have Dr. Horn and Continuum Dynamics communicate directly with SOAR's experts.

7. On May 9th, 2011, IDOT informed SOAR that a public hearing would be held on June 23rd and June 24th, 2011.

8. In preparation for that hearing, it is necessary for SOAR to question IDOT's experts regarding the following aspects of the study, none of which is clear from the face of the report:

- a. The bases for the design of the study and its various phases;
- b. The experts' thought processes in reaching their conclusions;
- c. The validation procedures performed in the course of the study;
- d. The experts' background and experiences in performing similar studies.

This list is by no means exhaustive, and is only intended to demonstrate the important questions that SOAR should have the opportunity to present to IDOT's experts prior to any public hearing.

9. Administrative hearings are "governed by the fundamental principles and requirements of due process of law." *Abrahamson v. Ill. Dep't of Professional Regulation*, 153 Ill.2d 76, 92 (1992). As part of due process, "[p]arties and administration proceedings should use pre-hearing discovery as parties in trials use pretrial discovery, that is, to aid in preparing a case and eliminating surprise so that the outcome can rest on truth rather than on the maneuvers of counsel. The need for discovery at the administrative level is the same." *Smith v. Dep't of*

Registration and Educ. of the State of Ill., 170 Ill.App.3d 40 (1st Dist. 1988), citing *Wegmann v. Dep't of Registration and Educ.*, 61 Ill.App.3d 352 (1st Dist. 1978).

10. In this case, SOAR has had no opportunity to question or communicate with IDOT's experts and it was not invited to attend any on-site visits at the heliport by IDOT's experts. Holding a hearing without providing SOAR with an opportunity "to prepar[e] a case and eliminat[e] surprise so that the outcome can rest on truth rather than on the maneuvers of counsel" would violate SOAR's right to due process before an administrative body. *Smith*, 170 Ill.App.3d at 45. Therefore, IDOT should be required by order to make its experts available for deposition prior to any hearing.

11. "A fair hearing before an administrative agency includes the opportunity to be heard, the right to cross-examine adverse witnesses, and impartiality in ruling upon the evidence." *Williams v. Bd. of Trust. of Morton Grove Firefighters' Pension Fund*, 398 Ill.App.3d 680, 692 (1st Dist. 2010), citing *Abrahamson*, 153 Ill. 2d at 92. Accordingly, "[a]ll parties [must] have an opportunity to cross-examine witnesses and to offer evidence in rebuttal." *Seul's, Inc. v. Liquor Control Comm'n*, 240 Ill.App.3d 828 (1st Dist. 1992).

12. SOAR has not been granted any opportunity to question IDOT's expert witnesses in the instant case. To further deny SOAR the right to cross-examine IDOT's witnesses during a public hearing would clearly be in violation of SOAR's due process-based "right to cross-examine adverse witnesses" before an administrative body. *Williams*, 398 Ill. App. 3d at 692. For that reason, the Court should issue an order requiring IDOT to produce its witnesses at public hearing for cross-examination by SOAR.

WHEREFORE, the Streeterville Organization of Active Residents respectfully requests that Administrative Law Judge Neville order IDOT to make its experts available for pre-hearing deposition and cross-examination at public hearing.

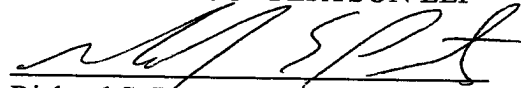
Dated: May 31, 2011

Respectfully submitted,

Streeterville Organization of Active Residents

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BY:



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