

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

2008 DEC 22 PM 12: 21

REGIONAL HEARING  
CLERK

**In the Matter of:**

**STEVENSON COMMONS ASSOCIATES, L.P.,  
and  
GRENADIER REALTY CORPORATION,**

**Respondents.**

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) **Docket No. CAA-02-2008-1220**  
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**ORDER ON MOTION FOR EXTENSION OF TIME**

A Prehearing Order dated December 2, 2008 was issued in this proceeding, directing the parties to submit a Consent Agreement and Final Order (CAFO) if this matter is settled or Complainant to file its prehearing exchange on January 16, 2009. Further, the Order directed Respondent to file its prehearing exchange on February 6, 2009 and Complainant to file any rebuttal thereto on January 20, 2009. On December 15, 2008, Complainant submitted a Motion for an Extension of Time to File Prehearing Exchanges, requesting a 60-day extension of time for the parties to file their prehearing exchanges.

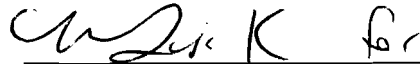
The Motion states that counsel for Respondent concurs in the request for extension. The Motion further states that on November 19, 2008, the due date for parties to indicate whether they agree to participate in Alternative Dispute Resolution (ADR) with a neutral designated by the Office of Administrative Law Judges (OALJ), Complainant e-mailed and sent a letter to the office of the undersigned conveying the parties' interest in engaging an *outside* neutral to assist in settlement of this case. Complainant states further that the parties are working with an EPA Region 2 ADR Specialist as a convener to assist the parties in hiring a mediator, and have a goal of selecting a mediator prior to the holiday break and scheduling a settlement conference for as early as possible in January 2009. Complainant asserts that it is in the interest of the parties to resolve this matter prior to incurring costs in preparing and submitting prehearing exchanges, and points out that a 60 day time period is provided for the ADR process in OALJ.

Good cause exists for granting an extension of time in that it is in the interest of the parties and judicial economy for the parties to settle this matter on mutually agreeable terms rather than to litigate this matter to a conclusion. In that a hearing has not yet been scheduled in this proceeding, a brief delay will not result in any prejudice.

A sixty day extension of time, however, is unusually lengthy, and is not granted unless there is a demonstrated need for such a long period of time, such as where time is needed to prepare and obtain approvals for a complex Supplemental Environmental Project as part of a settlement. As to the situation in which the parties are engaging in ADR, the Consolidated Rules

of Practice provide that "Dispute resolution under this paragraph (d) does not divest the Presiding Officer of jurisdiction and does not automatically stay the proceeding." 40 C.F.R. § 22.18(d)(2). Thus, postponement of the prehearing exchange is within the Presiding Judge's discretion. If the parties had agreed to ADR within OALJ, the parties would have had until about January 20, 2009 to engage in ADR, and if the case did not settle beforehand, Complainant would have been required to file its prehearing exchange about three weeks thereafter, around February 10, 2009. On one hand, the parties need some additional time to arrange for a mediator outside the EPA. On the other hand, the parties have not provided any information in the Motion as to the likelihood or complexity of settlement, and the Presiding Judge is required to ensure that proceedings are not unduly delayed. In these circumstances, an appropriate extension of time is five weeks rather than 60 days.

Accordingly, the Motion for an Extension of Time to File Prehearing Exchanges is hereby **GRANTED in part**, as follows. The parties shall file a fully executed CAFO in this matter or Complainant shall file its prehearing exchange on or before **February 20, 2009**. If a CAFO has not been filed beforehand, Respondent shall file its prehearing exchange on or before **March 12, 2009**, and Complainant shall file any rebuttal thereto on or before **March 26, 2009**.



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Susan L. Biro  
Chief Administrative Law Judge

Dated: December 18, 2008  
Washington, D.C.

In the Matter of Stevenson Commons Associates. L.P. and Grenadier Realty Corp.  
**Docket No. CAA-02-2008-1220**

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the **Order on Motion for Extension of Time**, dated December 18, 2008 was sent this day in the following manner to the addressees listed below:

Original and One Copy by Pouch Mail to:

Karen Maples  
Regional Hearing Clerk  
U.S. EPA - Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

Copy by pouch mail to:

Marie Quintin, Esquire  
Assistant Regional Counsel,  
U.S. EPA Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

Copy by regular mail to:

Daniel Riesel, Esquire  
Sive, Paget & Riesel, P.C.  
460 Park Avenue  
New York, NY 10022



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M. Lisa Knight  
Senior Staff Attorney

Dated: December 18, 2008