

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeal of

ESCALA OWNERS ASSOCIATION

of a decision, and adequacy of the FEIS
and Addendum issued by the Director,
Department of Construction and Inspections

Hearing Examiner Files:
MUP-17-035 (DR, W)

Department Reference:
3019699

**ORDER ON MOTION
FOR RECONSIDERATION**

The Hearing Examiner issued Findings and Decision in this matter on May 2, 2018. The Applicant, Jodi-Paterson-O'Hare ("Applicant") and the City of Seattle ("City") have timely submitted a Joint Motion for Reconsideration ("Motion").

The Hearing Examiner Rules of Practice and Procedure ("HE Rule") provide the following with regard to motions for reconsideration:

- (a) The Hearing Examiner may grant a party's motion for reconsideration of a Hearing Examiner decision if one or more of the following is shown:
 - (1) Irregularity in the proceedings by which the moving party was prevented from having a fair hearing;
 - (2) Newly discovered evidence of a material nature which could not, with reasonable diligence, have been produced at hearing;
 - (3) Error in the computation of the amount of damages or other monetary element of the decision;
 - (4) Clear mistake as to a material fact.

HE Rule 3.20.

The Motion requests that the decision be reconsidered on the basis of a clear mistake as to material fact in Conclusion 16 to the Findings and Decision.

The conclusion at issue states:

In advance of issuing the DS, the Director made a threshold determination which was required to be "based upon information reasonably sufficient to evaluate the environmental impact of a proposal." SMC 25.05.335. At the time of the threshold determination, the Department lacked sufficient information to evaluate the proposal's impacts as they relate to loss of light within the Escala residential units. As noted, the report from Mr. Loveland raised issues related to significant loss of light to Escala, as did his testimony, both of which were presented at an EDG meeting. Therefore, the Department was alerted to this as an issue at a phase of

review in advance of the threshold determination. The record reflects that Design Review process was included in the Director's review and consideration as part of the threshold determination. However, no analysis or request for additional information was executed relating to this potential environmental impact. Even the Applicant's witness, Mr. Meek, agreed that loss of light can have negative health impacts. But there is nothing in the documents reviewed by the responsible official, or in this record, that evaluates the impact to the loss of light as a result of the proposal. The reference to the shadow and view impact analysis in the SEPA analysis is not sufficient, as these consider different impacts.¹ Therefore, the Director did not have adequate information necessary to make a determination that there were no probable adverse significant impacts arising in this context. Without this information the Director could not have concluded that the proposal presented no new probable adverse significant impacts, and the Director's threshold determination was not based on reasonably sufficient information. The FEIS did not address this impact. This is clear error.

FN 1 A viewer may be located within a shadow or have a view removed, and still view visible light (e.g. a viewer sitting in the shade on a sunny day may see ample light, as may a viewer receiving light from a skylight in a room with no view). The absence of light is therefore distinguishable from potential loss of direct solar access, and potential loss of views.

Decision at 18.

The Applicant and City argue that Conclusion 16 is based on a clear mistake as to material fact, and that the Appellant did not raise the issue it addresses in the notice of appeal.

The Motion argues that "the Examiner remanded the MUP Decision because he found that the City did not have reasonably sufficient information about the loss of light to residential units within Escala prior to issuing a threshold determination." However, the movants are incorrect in their characterization of the issue on remand.

The Examiner did not remand on this issue due to a failure to measure or analyze loss of light. The movants are correct that loss of light was shown to be evaluated in the record. The remand is to address the failure to analyze *impacts* associated with loss of light. The only impact at issue in the hearing that was alleged to be attributed to loss of light was the impact to health, and the analysis of such impact is absent from the record despite evidence in the record of loss of light. Thus, the remand is specifically for the purpose of addressing the failure to analyze health impacts associated with loss of light.

The Perkins + Will Daylight Analysis and the Loveland assessment concerned measurements and analysis of loss of light. Mr. Loveland also identified the negative health impacts of loss of light. The record does not show any analysis of the health impacts from loss of light despite the fact that both analyses show that there will be loss of light, Mr. Loveland highlighted this issue prior to the

threshold determination, and at the hearing “[e]ven the Applicant’s witness, Mr. Meek, agreed that loss of light can have negative health impacts.”¹

Decision at 18.

The Examiner recognizes that the language in Conclusion 16 is not abundantly clear on this point, and as a result will issue an amended decision in response to the issues raised by the Motion.

Lastly, the Appellant did raise this issue in its notice of appeal as indicated in the Appellant’s response to the Motion where it identifies the following from the notice of appeal:

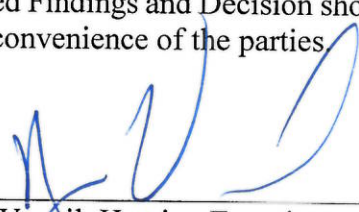
The environmental review for the 5th and Virginia Proposal was inadequate. The project will have probable significant adverse impacts related to . . . environmental and human health, . . . [and] lack of daylight, . . . Regarding . . . light issues, these elements place **a far more important role in human health . . . than the responsible official has recognized**. These impacts were not adequately disclosed, analyzed, or mitigated in the Addendum or in the FEIS. **The level of analysis and information on these subjects was inadequate and fell below meeting the burden required by SEPA. Fundamental information existed regarding impacts that SDCI failed to disclose and failed to include in its analysis.**

Notice of Appeal at 3 -4 (Issue 1.a) (emphasis supplied).

The Appellants were clearly challenging the adequacy of analysis performed by the Director in the SEPA analysis. The respondents were adequately forewarned of this issue by the notice of appeal, and had both the opportunity to, and did, present all evidence available to address it.

The Applicant and City have shown good cause to reconsider the decision in this matter, and as a result the Hearing Examiner follows this order with an Amended Findings and Decision as the final decision in this matter. A copy of the Amended Findings and Decision showing the amended portions of the Decision is attached hereto for the convenience of the parties.

Entered this 12th day of June, 2018.



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¹ This later sentence from Conclusion 16 would be rendered meaningless by the Applicant and City’s reading that that conclusion only concerned a failure to analyze loss of light.


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CITY OF SEATTLE**

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Order on Motion for Reconsideration & Amended Findings and Decision** to each person listed below, or on the attached mailing list, in the matter of **Escala Owners Association**. Hearing Examiner File: **MUP-17-035 (DR, W)** in the manner indicated.

Party	Method of Service
Appellant Legal Counsel Claudia Newman newman@bnd-law.com Peggy Cahill cahill@bnd-law.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
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Dated: June 12, 2018



Alayna Johnson
Legal Assistant