

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeals of
SAVE MADISON VALLEY

Hearing Examiner File:
**MUP 18-020 (DR, W)
& S-18-011**

from Approval of a land use application
and a land use interpretation
by the Director, Department of
Construction and Inspections

**ORDER ON MOTION
FOR CLARIFICATION**

The Applicant, the Velmeir Companies (“Applicant”), sought an order on clarification requesting that the Hearing Examiner (“Examiner”), order the Appellant, Save Madison Valley (“Appellant” or “SMV”), to clarify a number of issues in the appeal statement as identified in its motion. The Appellant filed a detailed response. The Applicant filed a reply. Although it did not file an initial motion, the Department of Construction and Inspections filed a reply in support of the Applicant’s motion.

SMC 25.05.680 B.2 requires that an appeal of a Determination of Nonsignificance (“DNS”) "set forth in a clear and concise manner the alleged errors in the decision." SMC 23.76.022.C.3.a requires appeals of Type II Master Use Permit Decisions to include “specific objections to the Director’s decision and the relief sought.” Hearing Examiner Rule (“HER”) 3.01 (d)(3) is similar, requiring that an appeal include "appellant's specific objections to the decision or action being appealed.”

The general legal standard is also similar. Washington state is a notice pleading state, meaning that an appeal must state the issues with sufficient clarity to provide notice of the claim asserted. “Complaints that fail to give the opposing party fair notice of the claim asserted are insufficient.” *Pacific Northwest Shooting Park Ass'n. v. City of Sequim*, 158 Wn.2d 342, 352, 144 P.3d 276 (2006) *citing Dewey v. Tacoma Sch. Dist.*, 95 Wn. App. 18, 26, 974 P.2d 847 (1999).

The Applicant raises very detailed objections. As both parties have done, the Examiner will proceed through the objections and rule on each.

SMV Appeal, p. 1:21-2:4:

Applicant’s Objection: The Applicant requests the Appellant identify and clarify eight different points in the Introduction.

Examiner’s Ruling: Since it is not an issue raised as part of a claim in the appeal, the Applicant’s motion is DENIED on this issue.

SMV Appeal, p. 3:15-22:

Applicant's Objection: The Applicant requests the Appellant identify and clarify five different point in the section of the Appeal Statement describing Appellant's interest in the decision.

Examiner's Ruling: This section provides a basic statement of standing. If the Applicant determines the need to challenge Appellant's standing, the statement will come into issue in the appeal. Otherwise, since it is not an issue raised in the appeal, the Applicant's motion is DENIED on this issue.

SMV Appeal 1(a), p. 4:4-9; 1(b), p. 4:10-17, and 1(c) 4:17-21.

Applicant's Objection: The Applicant makes a number of objections about the lack of specificity in three statements that describe alleged defects with the environmental checklist and the DNS. Appeals of a DNS must "set forth in a clear and concise manner the alleged errors in the decision."

Examiner's Ruling:

1. Appeal Issues 1(a) and 1(b)

Appeal issue 1(a) and 1(b) suffer from a similar lack of specificity. Each appeal issue statement includes the same laundry list of fifteen different alleged significant adverse environmental impacts and makes a conclusory statement regarding the inadequacy of the environmental checklist (Issue 1(a)) and in the DNS conclusion (Issue 1(b)). The Applicant's motion on these issues is GRANTED and the Appellant is directed to provide a more specific objection stating how both the DNS and Environmental Checklist are inadequate.

2. Appeal Issue 1(c)

Issue 1(c) alleges that the Director erred in concluding that the Design Review Process resulted in sufficient review and mitigation of the "height, bulk, and scale impacts," and further alleging that those impacts will in turn cause significant "adverse aesthetic and land use impacts." Again, this statement does not provide a specific statement of the nature of the error; it is a conclusory statement that does not provide enough detail to reasonably apprise the parties of the nature of the claim asserted. The Applicant's motion on this issue is GRANTED and the Appellant is directed to identify the policies which provide a more specific objection to the analysis of height, bulk and scale of the proposal and how it will cause specific "adverse aesthetic and land use impacts."

SMV Appeal 2 (b), p. 5:13-17

Applicant's Objection: The Applicant requests that the Appellant clarify how the proposal is alleged to be inconsistent with the design guidelines identified in the complaint.

Examiner's Ruling: The Appellant cited the overall design concepts which are quite vague in nature. Below each concept are more specific policies that better define how a proposal

might meet the overall architectural concept. The Examiner GRANTS the Applicant's motion on this issue and directs the Appellant to identify the policies which the Appellant believes are inconsistent with the proposal.

SMV Appeal 2(d) 5:22-25; 3(a)

Applicant's Objection: The Applicant requests that the Appellant clarify any ways in which the Design Review process did not allow for meaningful public participation.

Examiner's Ruling: The Appellant's statement specifically provides information on why the Appellant believes that the "meaningful public participation" requirement was violated. In addition, the Appellant referenced comment letters submitted by SMV or its representatives as providing more information. Applicant's motion is DENIED on this issue.

SMV Appeal 3(a) p. 6:9-15

Applicant's Objection: The Applicant requests that the Appellant clarify what steep slope off-site that it alleges will be impacted by the project and what adverse impact is alleged to result on the steep slope area that is not in the project site.

Examiner's Ruling: The Appellant's statement is vague on this point. The Applicant's motion on this issue is GRANTED and directs the Appellant to identify the areas off-site to which the Appellant refers and describe the alleged adverse impacts to that area.

SMV Appeal 3(c) 7:14-19

Applicant's Objection: The Applicant requests that the Appellant clarify what is meant by reference to "the spirit and intent" of the SMC 23.86.006.A.2.

Examiner's Ruling: The Appellant's statement is sufficiently detailed to apprise the other parties of the substance of the claim asserted. Applicant's motion is DENIED on this issue.

SMV Signature Line, p. 8:17-23.

This issue has been resolved on the record by Appellant.

In summary, Applicant's Motion for Clarification is GRANTED with respect to Appellant's Issues 1(a), 1(b), 1(c), 2 (b), and 3(a). The Applicant's motion with respect to clarification of the introduction, the standing paragraph, and Issues 2(d) and 3(c) is DENIED. Appellant is ORDERED to submit its clarifications by October 12, 2018.

Entered this 20th day of September, 2018.



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**BEFORE THE HEARING EXAMINER
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 Clarification** to each person listed below, or on the attached mailing list, in the matters of **Save Madison Valley**. Hearing Examiner Files: **MUP-18-020 (DR, W) & S-18-011** in the manner indicated.

Party	Method of Service
Appellant Legal Counsel Claudia Newman newman@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: September 28, 2018



Alayna Johnson
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