

**BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE**

In the Matter of the Appeals of

**SAFE AND AFFORDABLE SEATTLE, ET AL.**

from a decision issued by the Director,  
Department of Construction and Inspections

Hearing Examiner Files:  
**MUP-18-019 (TU, W)**

Department Reference:  
3030888-LU

**ORDER ON MOTION  
TO DISMISS**

The Department of Construction and Inspections (“Department”) issued a decision July 5, 2018 approving a temporary use permit for an interim use transitional encampment and associated State Environmental Policy Act (“SEPA”) Determination of Non-significance (“DNS”) (“Decision”). The Appellants, Safe and Affordable Seattle, et. al. (“Appellants”), appealed the Decision. The Department filed a motion to dismiss portions of the appeal. The Appellant filed a response to the motion, and the Department filed a reply to the response. Along with its reply the City filed a Motion to Determine Service which was later withdrawn. The Hearing Examiner has reviewed the file in this matter including the motion documents, with the exception of the Motion to Determine Service which was withdrawn and has not been considered along with responsive briefing by the Appellants.

Hearing Examiner Rule (“HER”) 3.02(a) reads as follows:

An appeal may be dismissed without a hearing if the Hearing Examiner determines that it fails to state a claim for which the Hearing Examiner has jurisdiction to grant relief or is without merit on its face, frivolous or brought merely to secure delay.

The Department contends that five of the six issues raised in the Appellants’ Notice of Appeal are without merit or are outside the Hearing Examiner’s jurisdiction.

The first issue raised in the Notice of Appeal argues that “a legally necessary and key agency partner has not participated in the SEPA checklist preparation and analysis of this project, the Port of Seattle.” As argued by the City, the Port’s ownership of the subject property does not create the requirement that the Port be involved in the SEPA process as alleged by the Appellants. This issue raises concerns outside the scope of an appeal of the Decision, and should be dismissed.

The second issue in the Notice of Appeal raises concerns that the City’s SEPA checklist contained “intentional and substantial misstatements of facts,” and is “predicated on a lack of candor and omissions.” The Notice of Appeal does not identify any specific errors in the checklist. HER 3.01.d requires that “An appeal must be in writing and contain the following: . . . A brief statement of the appellant's issues on appeal, noting appellant's **specific objections to the decision** or action being appealed.” (emphasis added). Appellants’ second issue fails to state specific objections concerning the errors it alleges in the checklist, and should therefore be dismissed.

Appellants' third issue indicates that there is essentially a historical and ongoing violation of SEPA due to a failure to apply environmental review at earlier stages of the development of the site. The issue alleges that the checklist and SEPA analysis for this proposal is "not just required to account for only those portions of the project that they are now claiming as an expansion, but for the entire project that has been created before this time." This issue should be dismissed in part, and sustained in part. To the degree this issue attempts to challenge past actions for failure to include SEPA analysis this issue should be dismissed. The Appellants cannot include issues concerning compliance of past actions with SEPA in this challenge when the opportunity to challenge those actions has passed. However, to the degree that the Appellants allege that the current proposal should be analyzed for potential cumulative impacts in association with past phases of the project, this issue should be sustained and allowed at hearing.

The City does not challenge the admissibility of the fourth issue raised in the Notice of Appeal.

The fifth issue raised by the Notice of Appeal indicates the proposal does not comply with land use, building or fire code requirements. While raised in the context of an error in the SEPA checklist, this issue is imbedded in, and cannot be addressed, except as a challenge to the proposal's compliance with the portions of the Code listed. The sections of Code listed are not appealable part of a Type II decision appealable to the Hearing Examiner, because they are not identified as such in SMC 23.76.006.C1 and C.2.a-n. Further, the Appellants fail to list any specific sections of the codes that they raise as an issue. Appellants' issue five should be dismissed.

The Appellants' sixth issue essentially challenges the City's land use permit system, and the Director's use or alleged manipulation of that system. While this may be of concern to the Appellants, this is not an appealable issue concerning the Decision, and issue six should be dismissed.

Concerning Appellants' Notice of Appeal issues one, two, five and six the City's motion is **GRANTED** and those issues are **DISMISSED**. In addition, Notice of Appeal issue three is **DISMISSED** in part in accordance with the above analysis. Notice of Appeal issue three remains to the degree it challenges the proposal's cumulative impacts, and issue four also remains as it was not challenged by the City's motion.

Due to the reduced scope of the appeal, the duration of the hearing set for this matter will also be reduced. The hearing date of October 22, 2018 is cancelled, and the hearing shall convene on Tuesday October 23, 2018 at 9 am.

Entered this 5<sup>th</sup> day of October, 2018.

  
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Ryan Vancil, Hearing Examiner

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**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 to Dismiss** to each person listed below, or on the attached mailing list, in the matters of **Safe and Affordable Seattle, et al.**, Hearing Examiner File: **MUP-18-019 (TU, W)** in the manner indicated.

Party	Method of Service
<b>Appellant</b> Elizabeth Campbell neighborhoodwarrior@gmail.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
<b>Applicant</b> Sharon Lee sharonl@lihi.org	<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
<b>Department</b> William Mills SDCI William.mills@seattle.gov	<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

Dated: October 5, 2018

  
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Bonita Roznos,  
Executive Assistant