

BEFORE THE HEARING EXAMINER
City of Seattle

In the Matter of the Appeal of)	Hearing Examiner File:
)	
SAFE AND AFFORDABLE SEATTLE)	MUP-18-019
)	
from a SEPA determination and temporary use)	Department reference:
decision by the Director, Seattle Department of)	Project 3030888-LU
Construction and Inspections, to allow a)	
transitional encampment on the property)	SDCI's MOTION TO EXCLUDE AND
located at 1601 15 th Avenue W)	LIMIT TESTIMONY

Introduction

The Seattle Department of Construction and Inspections (SDCI) respectfully requests that the Examiner strike Seattle City Councilmember Sally Bagshaw from the witness and exhibit list provided by appellant in this matter. Further, SDCI requests that the Examiner limit the testimony of the other three listed witnesses and specific exhibits listed by the appellant as discussed below. HER 2.17 requires that all witness testimony and documentary exhibits be relevant and have probative value. Under HER 2.18, the Examiner may take official notice of judicially cognizable facts. To the extent that regulations or codes listed by the appellant are determined to be relevant, they do not need to be brought into the hearing as exhibits but may be considered by the Examiner.

As determined by the Examiner in the October 5, 2018 Order on Motion to Dismiss, the scope of the appeal is very narrow, including only the appellant's allegations that the SEPA checklist failed to identify and analyze environmental effects of air, noise, and transportation directly adjacent to the project, and allegations that the proposal should be analyzed for potential cumulative impacts in association with alleged past phases of the project. All witness testimony and exhibits presented at a hearing on this matter should be limited only to the issues on appeal.

Argument

SDCI objects to calling Councilmember Bagshaw as a witness because her testimony would be irrelevant and beyond the scope of the matter under appeal. The subject of "matters related to LIHI's transitional encampment/tiny house program" is not before the Examiner and cannot be relevant to an appeal focusing on a specific site and three issues: air, noise, and transportation. Further, there is nothing in the electronic records for the SDCI Project 3030888 to demonstrate that Ms. Bagshaw played any role in "matters related to the encampment at 1601 15th Avenue W." As a member of the legislative branch of Seattle city government, Ms. Bagshaw has no authority over SDCI reviews since SDCI is part of the executive branch. The appellant cites no evidence to offer a *prima facie* basis for calling Ms. Bagshaw as a witness.

Since the subject of "matters related to LIHI's transitional encampment/tiny house program" is not part of this appeal, the testimony of proposed witnesses William Mills, Sharon Lee, and

Ralph Neis must be limited only to their knowledge of the subject site and encampment, and even then, only to the subjects identified by the Examiner as within the scope of this appeal.

SDCI objects to the admission of exhibits listed by the appellant as follows. For proposed Exhibit 1, appellant lists all records in Exhibit A attached to the witness/exhibit list. Exhibit A is a printout of every document uploaded to the electronic file for Project 3030888. Mere inclusion in the electronic file list does not make all of these documents relevant to the narrow appeal before the Examiner. The appellant must list each individual document she deems relevant as a specific exhibit, rather than simply providing the SDCI electronic file summary.

Based on the summary description of each document provided in SDCI's electronic record (appellants' Exhibit A), SDCI requests that the Examiner exclude from the appeal record all documents relating to notice, as public notice is not at issue. All public comment letters, noted by their document name in the list and attributable to named individuals in the "description" column should also be excluded, unless the appellant can show that they address in some way the appeal topics of "allegations that the SEPA checklist failed to identify and analyze environmental effects of air, noise, and transportation directly adjacent to the project, or allegations that the proposal should be analyzed for potential cumulative impacts in association with alleged past phases of the project." The billing invoice document is not relevant and should be excluded. The proof of property ownership document is not relevant and should be excluded. The documents labeled "Tsubota Environmental site assessment" and Tsubota Supplemental Environmental site assessment" are discussed in the SEPA checklist and decision but should be excluded as not relevant to the narrow scope of this appeal, as they related to soils issues, which were not appealed. The temporary use application and criteria statement relate to the temporary use application, rather than SEPA. They should be excluded because the appellant did not appeal the temporary use application.

Appellant's proposed Exhibit 2, the leases between the City and Port of Seattle, are not relevant to the appeal and should be excluded.

Appellant's proposed Exhibit 3, her King County Superior Court complaint, is pure argument and is not admissible evidence or documentation. Moreover, it pertains to an entirely separate legal matter that is not within the Examiner's jurisdiction or before the Examiner. Therefore, it too should be excluded.

Similarly, appellants' proposed Exhibit 4 is a letter to the City and Port of Seattle complaining about the lease, but the lease is not relevant to the SEPA appeal in question, nor are its contents within the scope of the appeal hearing, nor does the Examiner have jurisdiction to make determinations about the lease. Exhibits 3 and 4 should be excluded.

Proposed Exhibit 5, "Report and Open letter Regarding the Relocation of Tent City V to 1605 15th W," is argument and inadmissible as evidence. Further, its contents pertain to various alleged building, health, and safety issues that are not within the scope of this appeal, and in some cases pertain to issues of state or Federal law that are beyond the scope of the hearing and the Examiner's jurisdiction. Proposed Exhibit 5 should be excluded.

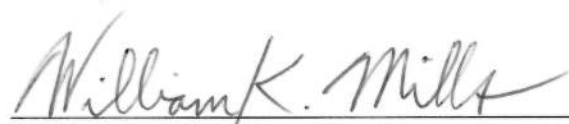
Proposed Exhibit 6, a letter to the Seattle Fire Department dated October 10, 2017, should also be excluded because it is argument only and pertains to appellants' concerns about the shelters installed for the occupants of the encampment. However, appellant is limited only to the SEPA issues listed in her appeal item 4 and any issue of "potential cumulative impacts in association with alleged past phases of the project." Compliance with Fire and Building codes is not within the scope of the appeal.

Proposed Exhibits 7 through 10 are copies of various codes and regulations that, as a whole, have no relevance to the subject appeal. Since the Examiner can take official notice of codes and regulations, they are not exhibits and should be excluded.

Conclusion

The Hearing Examiner should strike the witness and exhibits addressed in this motion and any hearing must be limited to testimony and exhibits relevant to the limited scope of appeal authorized by the Examiner in the October 5, 2018 order.

Entered this 12th day of October 2018.



William K. Mills, Land Use Planner Supervisor
Seattle Department of Construction and Inspections

cc. Elizabeth A. Campbell, appellant
Sharon Lee, for applicant Low Income Housing Institute

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeal of) Hearing Examiner File:
)
SAFE AND AFFORDABLE SEATTLE) **MUP-18-019**
)
From a SEPA determination and temporary) Department reference:
use decision by the Director, Seattle) Project 3030888-LU
Department of Construction and Inspections,)
to allow a transitional encampment on the) **Certificate of Service**
property located at 1601 15th Avenue W)

The undersigned certifies the following:

1. I am a Land Use Planner Supervisor at Seattle Department of Construction and Inspections (SDCI), representing SDCI in the above-entitled appeal proceeding; I am over the age of majority and am able to testify as to the matters stated herein;
2. On Friday, October 12, 2018, I delivered SDCI's Motion to Exclude and Limit Testimony in this matter, by e-mail only, to the following named parties, at the electronic service addresses provided on the case details page of the Hearing Examiner website:

Elizabeth Campbell,
for appellant Safe and Affordable Seattle
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Both e-mail copy and hand delivered hard copy are provided to the Office of Hearing Examiner.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 12th day of October 2018.



William K. Mills, Land Use Planner Supervisor
Seattle Department of Construction and Inspections

cc. Elizabeth Campbell, for appellant
Sharon Lee, for applicant

