

**FINDINGS AND DECISION  
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE**

In the Matter of the Appeal of

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

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

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

Department Reference:  
3030888-LU

**Introduction**

The Director (“Director”) of the Department of Construction and Inspections (“Department”) issued a Decision approving a transitional encampment (“Decision”), and the Appellants exercised their right to appeal the Decision.

The appeal hearing was held on October 23, 2018, before the Hearing Examiner. The Appellants, Safe and Affordable Seattle and Elizabeth Campbell (“Appellants”), were represented by Elizabeth Campbell; and the Director was represented by William Mills, Land Use Planner Supervisor.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code (“SMC” or “Code”) unless otherwise indicated. After considering the evidence in the record, the Hearing Examiner enters the following findings of fact, conclusions and decision on the appeal.

**Findings of Fact**

**Site and Vicinity**

1. The subject site is addressed as 1601 15<sup>th</sup> Avenue West (“Property”). The site is leased by the City of Seattle from the Port of Seattle. The premises for the proposal will encompass approximately 18,000 square feet.
2. The site currently includes an area of approximately 11,300 square feet dedicated to a 60-person encampment.

**Proposal**

3. The proposal is to establish an interim use transitional encampment for use by up to 80 people. The proposal includes provisions for tiny houses, tent spaces, portable toilets, a kitchen, related accessory facilities for up to 6 months, and parking for 4-6 vehicles.
4. All proposed structures will be temporary.

## Director's Review and Decision

5. The Director issued the Decision granting the proposed subdivision on July 5, 2018. The Director's analysis included identifying the temporary use criteria from SMC 23.42.040, and concluded that the criteria had been met. In addition, the Decision includes the Director's analysis under the State Environmental Policy Act ("SEPA"), and threshold determination that there would be no significant impacts ("DNS").

## Appeal

6. The Appellants filed a timely appeal of the Director's Decision. After a decision on a motion to dismiss the appeal filed by the Department, four of six of the Appellants' issues were dismissed and a portion of one of the remaining two was also dismissed. The following appeal issues remained:
  - a. "The [SEPA] Checklist failed to identify and analyze the environmental effects of the air, noise, and transportation directly adjacent to the project, and their effects on the existing and would-be residents at the project. It identifies environmental elements such as "air" and "noise" and links those to effects that could be potentially generated as a consequence of the project, while ignoring a far larger issue associated with the project – the impacts on the project's residents from the air, noise, and transportation generated by thousands of motor vehicles driving within 30' of the project site daily. This intentional omission of such a fact and its impacts is so material that it means that the residents of the encampment will receive no mitigation – in reality – protection from the harmful effects of living in such a situation. Given that the Director is well aware of the matter of current and ongoing impacts from the adjacent transportation corridor upon the residents of the encampment, his decision which allows for no mitigation for any condition is all the more cynical in its disregard for human safety;" (Notice of Appeal at 4) and
  - b. Notice of Appeal issue three remained to the degree it challenged the proposal's cumulative impacts.
7. The Appellants presented testimony from Elizabeth Campbell, and no expert or other fact witnesses. Ms. Campbell's testimony concerned: the alleged absence of noise issues disclosed in the SEPA checklist; traffic impacts and the failure to adequately disclose these in the SEPA checklist; concern about disclosing the accurate applicant; cumulative impacts of the proposal; garden sheds located on the Property; and concern about the permits being applied to the proposal. In large part Ms. Campbell seemed to be reading from the Appellants' Notice of Appeal. No evidence aside from Ms. Campbell's personal experience and opinion was offered.
8. Mr. Mills testified on behalf of the City. His testimony highlighted the Decision and the criteria for approval. He also indicated that, all proposed structures are to be temporary, that the encampment proposal meets the Code, the proposal includes the



generation of minimal traffic trips, and annotations to the SEPA checklist reflect additional information. Mr. Mills' testimony highlighted the presumption that City regulations for noise and transportation will mitigate for such impacts; that noise levels in the area currently meet Code therefore Code compliance requirement is adequate; and all areas in Seattle are currently in compliance with air monitoring.

#### Applicable Law

9. SMC 23.42.040 controls permitting concerning intermittent, temporary, and interim uses. SMC 23.42.040.A.1 provides:

A Master Use Permit for a time period of up to one year may be authorized for any use that occurs no more than two days per week and does not involve the erection of a permanent structure, provided that:

- a. The use is not materially detrimental to the public welfare; and
- b. The use does not result in substantial injury to the property in the vicinity; and
- c. The use is be consistent with the spirit and purpose of the Land Use Code.

SMC 23.42.040 further provides "[a] Master Use Permit for a time period of up to six months may be authorized for any use that does not involve the erection of any permanent structure and that meets the requirements of subsections 23.42.040.A.1.a-23.42.040.A.1.c." SMC 23.42.040.C.

10. SMC 23.42.056 allows transitional encampments as an interim use.
11. The SEPA policy on land use states "[i]t is the City's policy to ensure that proposed uses in development projects are reasonably compatible with surrounding uses and are consistent with any applicable, adopted City land use regulations [and] the goals and policies set forth in Section B of the land use element of the Seattle Comprehensive Plan regarding Land Use Categories...." Subject to the overview policy, the decision maker may condition or deny a project to mitigate land use impacts or achieve consistency with applicable land-use regulations or the goals and policies of Section B of the Comprehensive Plan. SMC 25.05.675.J.
12. The SEPA policy on transportation provides that "[i]t is the City's policy to minimize or prevent adverse traffic impacts which would undermine the stability, safety and/or character of a neighborhood or surrounding areas." In determining traffic mitigation, the "decisionmaker shall examine the expected peak traffic and circulation pattern of the proposed project weighed against such factors as the availability of public transit; existing vehicular and pedestrian traffic conditions; accident history; the trend in local area development; parking characteristics of the immediate area; the use of the street as determined by the Seattle Department of Transportation's Seattle Comprehensive Transportation Plan; and the availability of goods, services and recreation within

reasonable walking distance.” Mitigation measures that may be applied to projects outside of downtown include changes in access; changes in the location, number and size of curb cuts and driveways; provision of transit incentives including transit pass subsidies; bicycle parking; signage; improvements to pedestrian and vehicular traffic operations including signalization, turn channelization, right-of-way dedication, street widening, or other improvements proportionate to the impacts of the project; and transportation management plans. “For projects outside downtown which result in adverse impacts, the decisionmaker may reduce the size and/or scale of the project only if the decisionmaker determines that the traffic improvements outlined . . . above would not be adequate to effectively mitigate the adverse impacts of the project.” SMC 25.05.675.R.

13. The City’s SEPA Policy on noise provides that the City’s Noise Ordinance effectively addresses most noise impacts but that unusual impacts, such as continual or repetitive noise from a project’s operation, may be mitigated, subject to the Overview Policy. SMC 25.05.675.L.

### Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to Chapter 23.76 SMC. Appeals are considered *de novo*, and the Examiner must give substantial weight to the Director’s decisions. SMC 23.76.022 C.6 and C.7; SMC 23.88.020.G.5. The Appellant bears the burden of proving that the Decision is legally insufficient within the standards set by SEPA. To prevail in its appeal requires the Appellants to not only raise issues of concern or objections to the City’s failure to consider certain information, but also requires them to meet a high burden of evidentiary proof.
2. Appellants did not meet their evidentiary burden to demonstrate error in the Decision, and/or its supporting analysis. Appellants’ opinion expressed by its representative did not amount to sufficient evidence to meet its evidentiary burden. The record reflects that the issues concerning noise, air quality, traffic and other items were adequately considered by the Department as part of the Decision. In addition, some of the issues raised at the hearing by the Appellants had been dismissed as part of the Order on the pre-hearing motion (e.g. accuracy of the applicant, and questions about the project permits).
3. On review of the entire record, the Decision was not shown to be made in error, and it should therefore be affirmed.

### Decision

The appeal of the Director’s Decision approving the transitional encampment is **AFFIRMED**.

Entered this 27<sup>th</sup> day of November, 2018.

  
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Ryan Vancil

Hearing Examiner

**Concerning Further Review**

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

The decision of the Hearing Examiner in this case is the final decision for the City of Seattle. In accordance with RCW 36.70C.040, a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the decision is issued unless a motion for reconsideration is filed, in which case a request for judicial review of the decision must be commenced within twenty-one (21) days of the date the order on the motion for reconsideration is issued.

The person seeking review must arrange for and initially bear the cost of preparing a verbatim transcript of the hearing. Instructions for preparation of the transcript are available from the Office of Hearing Examiner. Please direct all mail to: PO Box 94729, Seattle, Washington 98124-4729. Office address: 700 Fifth Avenue, Suite 4000. Telephone: (206) 684-0521.



**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 **Findings and Decision** 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: November 27, 2018

  
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Bonita Roznos  
Executive Assistant