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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of:) Hearing Examiner File
)
WALLINGFORD COMMUNITY COUNCIL,) W-17-006 through W-17-014
ET AL.,)
) CITY OF SEATTLE’S MOTION FOR
Of the adequacy of the FEIS issued by the) RECONSIDERATION RE: STATEMENT
Director, Office of Planning and Community) OF APPEAL PERIOD
Development.)
_____)

On November 21, the Examiner issued his decision in the above-captioned appeal (“Decision”). The City does not seek reconsideration of the substance of the Decision but seeks a correction of a statement in the Decision describing the process for subsequent appeals. Specifically, the City respectfully requests that the Examiner clarify and correct the statement on page 37 of the Decision regarding the deadline for seeking judicial review, as further described below. While the Decision correctly observes that it is ultimately the responsibility of any appealing party to determine the process for further appeal, the correction or deletion of the ensuing sentences would avoid any premature judicial appeals that might otherwise result.

1 Following the Examiner's signature, the Decision states as follows:

2 Concerning Further Review

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

7 The decision of the Hearing Examiner in this case is the final
8 decision for the City of Seattle. In accordance with RCW
9 36.70C.040, a request for judicial review of the decision must be
10 commenced within twenty-one (21) days of the date the decision is
11 issued unless a motion for reconsideration is filed, in which case a
12 request for judicial review of the decision must be commenced
13 within twenty-one (21) days of the date the order on the motion for
14 reconsideration is issued.

15 Decision, pp. 36-37. As the first quoted paragraph makes clear, it is ultimately any appealing
16 party's responsibility to research the appropriate process and timing for an appeal, and the
17 Examiner's guidance on this score is not binding. Moreover, in many other types of cases, the
18 second quoted paragraph provides appropriate guidance for judicial appeals of Examiner
19 decisions.

20 However, the Decision in this case is the result of an administrative appeal of the
21 adequacy of an EIS, which occurred in advance of the City's action on the proposal. The
22 administrative appeal process before the Examiner in this situation is an exception to the general
23 rule that a SEPA appeal must be coupled with an appeal of the underlying governmental action.¹
The word "action" in this context means "substantive agency action including any accompanying

¹ See RCW 43.21C.075(2)(a); RCW 43.21C.075(3) (requiring that, if an agency has a procedure for appeals of agency environmental determinations made under this chapter, such procedure shall consolidate an appeal of such determinations "with a hearing or appeal on the underlying governmental action by providing for a single simultaneous hearing before one hearing officer or body to consider the agency decision or recommendation on a proposal and any environmental determinations made under this chapter, with the exception of... An appeal of a procedural determination made by an agency on a non-project action...")

1 procedural determinations” and “does not mean a procedural determination by itself made under
2 this chapter.” RCW 43.21C.075(8). Importantly, SEPA does not allow subsequent judicial
3 review of an administrative SEPA decision separate from an appeal of an underlying action.²
4 The Examiner has not made (and could not make) a substantive decision on the proposal.
5 Rather, such a substantive decision would be made by the City Council at a future date. In this
6 situation, judicial review of the Decision is premature, and it is not the case that judicial review
7 of the Decision must be sought within 21 days of the date of the Decision. A judicial appeal of
8 the Decision at this point would be a prohibited “orphan” SEPA appeal.

9 Accordingly, in this situation, the City respectfully requests that the Examiner reconsider
10 and clarify the Decision either by removing the second paragraph in the block quote above, or by
11 replacing that paragraph with language such as “Any appeal shall be in accordance with RCW
12 43.21C.075 and other applicable law.” Such clarification would be in the interests of all parties,
13 as it would avoid the possibility of Appellants feeling compelled, because of the Decision’s
14 current wording, to file a premature and unnecessary lawsuit that would be a waste of resources
15 for all sides. The City appreciates the Examiner’s work on this case and consideration of this
16 motion.

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19 //

22 ² SEPA provides that “[j]udicial review under this chapter shall without exception be of the governmental action
23 together with its accompanying environmental determinations.” RCW 43.21C.075(6)(c). Courts have recognized that
RCW 43.21C.075 precludes judicial review of SEPA compliance before an agency has taken final action on a
proposal. *State ex rel. Friend & Rikalo Contractor v. Grays Harbor County*, 122 Wash. 2d 244, 250-51 (1993); *Int’l
Longshore and Warehouse Union, Local 19 v. City of Seattle*, 176 Wash. App. 512, 519-20 (2013).

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DATED this 28th day of November 2018.

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1 **CERTIFICATE OF SERVICE**

2 I certify that on this date, I electronically filed a copy of Respondent City of Seattle’s
3 Motion for Reconsideration re: Statement of Appeal Period with the Seattle Hearing Examiner
4 using its e-filing system.

5 I also certify that on this date, a copy of the same document was sent via e-mail to the
6 following parties:

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12 *Office of Planning and Community Development*

13 Dated this 28th day of November 2018, at Seattle, Washington.

14
15 *s/Alicia Reise*
ALICIA REISE, Legal Assistant