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BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In Re: Appeal by

ESCALA OWNERS ASSOCIATION

of Decisions Re Land Use Application
for 1933 5th Avenue, Project 3019699

NOTICE OF APPEAL

I. INTRODUCTION

Appellant Escala Owners Association supports increased density and increased residential development downtown. Any assertion otherwise misunderstands the Escala’s intent and reasons for filing this appeal. Escala is not filing this appeal to challenge the general concept of building a tower on the project site. Escala is filing this appeal because SDCI has ignored specific significant adverse impacts that will occur as a result of this project and has violated the most basic legal procedural requirements set forth by SEPA for an environmental impact statement. Escala will show that, as a matter of law, SDCI failed to follow proper process and failed to adequately disclose, analyze, and mitigate the specific and real impacts that this proposal will have on the public and on the residents of Escala.

This appeal follows in the wake of Escala’s earlier appeal of the Analysis and Decision of the Director of the Seattle Department of Construction and Inspections dated October 26, 2017 and the Final Recommendation of the Downtown Design Review Board from the December 20, 2016 meeting. That appeal resulted in a ruling by the Hearing Examiner on June 12, 2018 requiring the Department of Construction and Inspection to re-assess the health related impacts resulting from the project’s blocking natural light from reaching Escala residences.

On April 23, 2020, the department issued a revised MUP decision. The revised MUP decision relied, in part, on a second addendum to the Downtown Height and Density EIS. Notice of that second addendum was published on November 18, 2019. This appeal seeks review of the revised MUP

1 decision and the department's continued failure to prepare an environmental impact statement before
2 making the MUP decision.

3 Because of uncertainty regarding the availability of an administrative appeal, appellant will also be
4 filing a superior court appeal challenging these and earlier related decisions. We will ask the court
to stay that appeal until the examiner's jurisdiction over this appeal is determined.

5 II. APPELLANT INFORMATION

6 1. Appellant:

7 Name: Escala Owners Association, c/o John Sosnowy
8 Address: 1920-4th Avenue, #2308, Seattle, WA 98101
9 Phone: (206) 409-4681
Email: john@sosnowy.com

10 In what format do you wish to receive documents from the Office of Hearing Examiner?

11 Check One: _____ U.S. Mail _____ Fax X Email Attachment

12 2. Authorized Representative:

13 Name Claudia M. Newman and David Bricklin, Bricklin & Newman, LLP
14 Address 1424 Fourth Avenue, Suite 500, Seattle, WA 98101
15 Phone:: (206) 264-8600
16 Fax: (206) 264-9300
Email: newman@bnd-law.com, bricklin@bnd-law.com, and cahill@bnd-law.com

17 In what format do you wish to receive documents from the Office of Hearing Examiner?

18 Check One: _____ U.S. Mail _____ Fax X Email Attachment

19 III. DECISION BEING APPEALED

20 1. Escala is appealing the Revised Analysis and Decision of the Director of the Seattle
21 Department of Construction and Inspections dated April 23, 2020, including the department's
22 decision not to prepare an EIS before making the revised MUP decision and the adequacy of
23 the department's substantive SEPA conditions. The applicant name stated in the Decision for
this project is Jodi Patterson O'Hare.

24 2. **Property address of decision being appealed:** 1933 5th Ave., Seattle, Washington, 98101.

25 3. **Elements of decision being appealed. Check one or more as appropriate:**

26 X Adequacy of conditions _____ Variance (Departures)

- 1 c. The addenda that were not the functional or substantive substitute for an EIS. The
2 procedures for preparing an addendum are different from those for preparing an
3 EIS. The content is different, too. The addenda are not adequate substitutes for the
4 required EIS.
- 5 d. The addenda's analyses of the health impacts are misleading and incomplete.
6 Among other things, the addenda ignore the connection between a loss of light and
7 depression; they seek to minimize impacts by focusing on light conditions when a
8 resident is facing the window, instead of facing the middle of the room; they
9 minimize impacts by suggesting actions *the residents* could or should take to
10 mitigate the impacts (SEPA's mitigation obligations fall on the applicant, not the
11 neighbors); the mitigation measures suggested for the residents are not reasonable;
12 and the addenda trivialize the impacts by suggesting that the lack of impact on
13 other downtown residents somehow makes the impact to Escala's residents less
14 significant.
- 15 e. The addendum's statement that the substantive SEPA policies in SMC 25.05.675
16 limit the scope of procedural disclosure and analysis of environmental impacts is
17 incorrect. The scope of procedural disclosure and analysis of impacts that is
18 required under SEPA is broader than and goes beyond substantive limitations in
19 SMC 25.05.675.
- 20 2. The hearing examiner's earlier decision provided a list of terms that were required to be
21 incorporated into the dock management plan for the project. Included on that list was a
22 requirement that the dock master "shall ensure that trucks parked in the Project's loading
23 dock do not block the alley and are contained within the loading dock facility." The
24 Director's April 23, 2020 Decision incorporates this requirement, but neither the
25 Applicant, nor SDCI provided evidence to demonstrate that it's possible for this project to
26 meet this condition. Because the developer cannot make the changes that will be necessary
to meet this condition after it's built (i.e. increased setback), SDCI and the applicant must
prove that it will be possible for the landowner to meet this condition before the MUP
permit is approved.

3. Relief Requested.

Appellant requests that the Hearing Examiner reverse the Director's decision and remand with instructions to prepare an environmental impact statement for the 5th and Virginia Proposal as required by law and to reconsider the MUP in light of the information in the final EIS. Appellant also requests that Examiner direct the department to demonstrate that the new dock management condition 3.c can be met and to require changes to the project as necessary to ensure that it can and will be met.

Filed on behalf of ESCALA OWNERS ASSOCIATION this 6th day of May, 2020.

By:  per e-mail authorization
John Sosnowy, on behalf of Escala Owners Assoc.

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And by: _____

David A. Bricklin
Claudia M. Newman
BRICKLIN & NEWMAN, LLP
Representative of Escala Owners Assoc.