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8 BEFORE THE HEARING EXAMINER
9 FOR THE CITY OF SEATTLE

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11 In the Matter of the Appeal by

12 NAOMI E. RUDEN

13 of a Decision by the Director of the Seattle
14 Department of Construction and Inspections.
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Hearing Examiner File:
MUP-20-026

Department Reference:
Project 3035728-LU

APPLICANT’S REPLY ON MOTION
FOR PARTIAL DISMISSAL

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17 **I. INTRODUCTION**

18 The arguments made by Naomi E. Ruden (“Appellant”) in her response brief on this
19 motion are without merit. Appellant failed to respond with relevant information or clarification,
20 and her initial arguments remain unavailing. Appellant also concedes that many of her claims
21 raised in her land use appeal are not properly before the Hearing Examiner. Accordingly, the
22 applicant Ian Maples (“Applicant”) requests that the Hearing Examiner dismiss the issues that
23 are not properly before the Examiner pursuant to the City of Seattle Hearing Examiner Rules of
24 Practice and Procedure (“HER”) 3.02(a).
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28 APPLICANT’S REPLY ON MOTION FOR
PARTIAL DISMISSAL - 1

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II. ARGUMENT

A. **Appellant failed to file an interpretation of Type I decision; therefore Type I decisions are not properly before the Examiner.**

Appellant made no attempt to explain her failure to file interpretations of several Type I decisions in her response brief, and instead argues without citation to the Code that “[t]his challenge does not require an interpretation[.]” This is not the case. The Code requires that any Type I decision be challenged via an interpretation. SMC 23.76.022.A.1. Issues 2.7, 2.9, 2.11, and 2.13 must be dismissed as they involve Type I decisions. No interpretations were filed related to these claims. They are not ripe for consideration, the Code does not permit their appeal directly to the Examiner, and the Examiner must dismiss these claims.

B. **The Examiner may dismiss an appeal over which the Examiner lacks jurisdiction or that is without merit on its face.**

Pursuant to Hearing Examiner Rule (“HER”) 3.02(a), “[a]n 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.”

C. **The Examiner lacks jurisdiction over Appellant’s claims.**

1. **The Appellant concedes that the Examiner lacks jurisdiction over Appellant’s claims relating to federal statutes and regulations.**

Appellant concedes that the Hearing Examiner lacks jurisdiction over claims 2.1 and 2.2 which relate to the National Historic Preservation Act (“NHPA”) and the National Environmental Protection Act (“NEPA”), respectively. The Appellant also acknowledges that the Hearing Examiner lacks jurisdiction over claims 2.5 and 2.7 bullet two as they pertain to “HUD Basic Laws” and HUD review. The Hearing Examiner has no jurisdiction over federal

1 matters, including federal statutes and regulations. *See In the Matter of the Appeal of Four*
2 *Seasons Hotel Seattle, et al., from a decision issued by the Director, Department of Construction*
3 *and Inspections Regarding a Major Public Project Construction Variance*, Hearing Examiner
4 File Nos. HC-18-001 through HC-18-007, Orders on Motions (June 6, 2018), p. 3. The
5 Examiner therefore lacks jurisdiction to hear claims 2.1, 2.2, 2.5, and 2.7 bullet two, and the
6 Examiner should dismiss them.

8 **2. The Examiner lacks jurisdiction over Appellant's claims relating to the**
9 **Revised Code of Washington and Washington State Agency Program**
10 **Agreements.**

11 Appellant admits that the Hearing Examiner lacks jurisdiction over claim 2.4, which
12 relates to alleged discrimination due to "Removal of Existing Handicapped Accessible Parking
13 from HUD Properties in the MHA zones" and violation of Chapter 70.92 RCW, a Washington
14 state law requiring certain building provisions for aged and handicapped persons. The Hearing
15 Examiner does not have jurisdictional to hear claims relating to ADA compliance. Accordingly,
16 claim 2.4 should be dismissed due to lack of jurisdiction.

17 Appellant still contends that issue 2.6 is properly before the Hearing Examiner. This
18 claim asserts that the Project does not comply with Regulatory Agreement #20021217000384
19 and Covenant Agreement #2001100300526 created pursuant to the Low Income Housing Tax
20 Credit Program, which is administered by the Washington State Housing Finance Commission.
21 There is no provision for Hearing Examiner jurisdiction over agreements related to the Low
22 Income Tax Credit Program. Despite this, Appellant states in her response brief that "[t]hese
23 agreements directly relate to the parcel in question[.] . . . In essence, ignoring these agreements
24 allows the owners to build more expensive rental property on land that is designated for the poor
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1 and disabled.” Appellant’s response does not address the Hearing Examiner’s lack of
2 jurisdiction to hear claim 2.6. The claim should therefore be dismissed.

3 **3. The Examiner lacks jurisdiction over Appellant’s claims relating to the**
4 **Seattle Municipal Code and the Seattle Comprehensive Plan.**

5 *i. Seattle Municipal Code*

6 Appellant alleges in claim 2.4 that “MHA fails to protect the disabled from
7 discriminatory actions, and fails to preserve existing designated very low-income housing (30%
8 AMI) intended for this population.” In her response brief, Appellant provides an additional
9 sentence to augment her claim: “Appellant believes claim 2.4 regarding the MHA to be
10 discriminatory and is under the jurisdiction of the Hearing Examiner.” This does not cure the
11 jurisdictional defect. To the extent that Appellant is appealing MHA zoning enacted under
12 Ordinance No. 125791, the Examiner already heard an appeal of the SEPA determination for that
13 Ordinance; the Ordinance was also appealable to the Growth Management Hearings Board, but
14 obviously any such appeal opportunity has long since passed. Claims related to the MHA
15 ordinance are not properly before the Examiner and must be dismissed.
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18 Appellant also alleges violations of the Seattle Fire Code in claims 2.7 and 2.8 of her
19 appeal form. Appellant argues that these claims are properly before the Hearing Examiner
20 because they “are related to the inadequacy of the Administrative Design Review with
21 Departures . . . that is being contested in this Appeal.” However, as stated in the Applicant’s
22 Motion for Partial Dismissal, the Hearing Examiner has only the authority granted by statute and
23 ordinance. *HJS Development, Inc. v. Pierce County*, 148 Wn.2d 451, 471, 61 P.3d 1141 (2003);
24 SMC 3.02.115; SMC 3.02.120; HER 2.03. The Seattle Fire Code is located within the Seattle
25 Building Code, and compliance with the Building Code is confirmed through construction
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1 permits and other approvals unrelated to this MUP decision. Such building permits have not yet
2 been issued, and in any event such permits are not appealable to the Hearing Examiner. As a
3 result, the Examiner must dismiss claims related to the Seattle Fire Code.

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5 *ii. Seattle Comprehensive Plan*

6 Appellant initially alleged in her land use appeal form that the Project fails to meet the
7 policies set forth in the Seattle Comprehensive Plan, but offered no argument in her response
8 that would give the Hearing Examiner jurisdiction to address this claim. Instead, under the
9 Seattle Comprehensive Plan section of her response, Appellant states that the “Helen V Property
10 was subject to a legislative rezone.” This assertion is factually incorrect: the Project does not
11 involve a rezone, and her land use appeal is solely challenging the MUP decision for the Project.
12 The Examiner should dismiss claims related to alleged noncompliance with the Seattle
13 Comprehensive Plan, as they are not properly before the Examiner.

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15 **D. The Hearing Examiner should dismiss claims that are not stated with specificity.**

16 Appellant asserts two claims regarding Design Review that lack the specificity necessary
17 to meet the HER 3.01(d)(5) standard, which requires that an appeal include “[a] brief statement
18 of the appellant’s issues on appeal, noting appellant’s *specific objections* to the decision or action
19 being appealed.” Claims 2.7 and 2.15 remain ambiguous, as Appellant’s response brief fails to
20 provide the clarification and specificity necessary to understand the nature of these issues.
21 Instead, Appellant generally disagrees about the classification of these claims as ambiguous:
22 “The Appellant disagrees that lot nonconformity, height nonconformity, blocking exit egress of
23 the Helen V, and blocking views to the Helen V are ambiguous in any way, and are in fact quite
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specific.” Further, Appellant argues that “[t]hese are issues that concern the public regarding health, safety, and welfare that are involved in this proposed Project.”

In addition, lot nonconformity, height nonconformity, blocking exit egress, and blocking views are not issues covered by the Design Review process. As a result, allegations that the Design Review decision was in error related to these issues cannot stand before the Examiner; the Design Review process does not touch on these issues and the Examiner therefore has no jurisdiction to hear them.

Appellant’s supplemental explanation is insufficient to meet the HER 3.01(d)(5) specificity standard. The Hearing Examiner should therefore dismiss claims 2.7 and 2.15 under HER 3.01(d)(5) due to the lack of specificity.

III. CONCLUSION

For these reasons, Applicant requests that the Hearing Examiner dismiss Appellant’s appeal in part. We renew our request that the Examiner clarify in its ruling what issues are still present in the appeal, so that all parties may properly prepare for the hearing. If all claims requested to be dismissed by this motion are dismissed, we believe only the following issues remain:

- Issue 2.7, Bullet 4: SEPA—public views
- Issue 2.14: SEPA—construction impacts

1 DATED this 6th day of January, 2021.

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