

**BEFORE THE HEARING EXAMNER  
FOR THE CITY OF SEATTLE**

Appeal by:

**NAOMI E. RUDEN,**

of a Decision of the Director of the  
Seattle Department of Construction and Inspections

Hearing Examiner File

**MUP-20-026**

Department Reference  
3035728-LU

**ORDER ON APPLICANT'S  
MOTION FOR PARTIAL  
DISMISSAL**

The Applicant moved for partial dismissal for lack of jurisdiction and inadequately articulated issues. The Appellant agreed in part, and the Applicant replied, requesting dismissal of all but two issues. The Examiner may dismiss based on lack of jurisdiction or merit.<sup>1</sup> The Examiner finds:

**Issue 2.1, Project Consistency with Federal Laws, National Historic Preservation Act, and the National Environmental Policy Act – Dismissed.** The parties agree the Hearing Examiner lacks jurisdiction over these federal statutes.

**Issue 2.2, Project Consistency with National Register of Historic Places regulations, 36 CFR 60.14 - Dismissed.** The parties agree the Hearing Examiner lacks jurisdiction over these federal regulations.

**Issue 2.3 SEPA/MHA (Mandatory Housing Affordability) Legislation Inadequately Protects Historic Resources - Dismissed.** This issue challenges Ch. 23.58C SMC. This is adopted legislation for which the appeal period has passed, thus depriving the Examiner of jurisdiction.

**Issue 2.4 – Handicapped Parking and Legislative Challenges - Dismissed.** Issue four is a single paragraph, comprising three issues.

- **Removal of Existing Handicapped Accessible Parking from HUD Properties in the MHA Zones and Ch. 70.92 RCW Compliance.** The parties agree this is not subject to Hearing Examiner jurisdiction.
- **MHA Zoning Defects.** This is a challenge to legislation earlier adopted by the City Council,<sup>2</sup> and on which the appeal period has passed. The Appellant does not address the appeal period, but instead restates its objections to City Ordinance No. 125791 and SMC 23.54.015, arguing they are discriminatory and are an unfair practice under SMC 14.06.200. As the appeal period has passed, the Examiner lacks jurisdiction.

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<sup>1</sup> HER 3.02. Upon challenge, the party claiming jurisdiction exists bears the burden of proof. *Oversource Servs. Mgmt., LLC v. Nooksack Bus. Corp.*, 172 Wn. App. 799, 806-807 (2013), aff'd 181 Wn.2d 272 (2014).

<sup>2</sup> See e.g., Appellant's Response Brief, p. 7 ("The development regulations are inadequate in protecting the disabled from such discriminatory effect.").

- **Seattle Comprehensive Plan LU 2.7 (“Review future legislative rezones....” and Seattle Comprehensive Plan LU 2.8 (“Evaluate new land use regulations....” ).** These Plan policies outline considerations for legislative rezones and regulatory amendments, not project review. These considerations are irrelevant to an appeal of a specific project. This is not an issue the Examiner can entertain.

**Issue 2.5, HUD Basic Laws, Elimination of Parking Challenged as Discriminatory under Rehabilitation Act, Section 504 - Dismissed.** The parties agree that the Hearing Examiner does not have jurisdiction over “HUD Basic Laws.”

**Issue 2.6, Failure to Comply with Regulatory Agreement #20021217000384 and Covenant Agreement #2001100300526 Created per the Low Income Housing Tax Credit Program, and Administered by the WA Stated Housing Finance Commission - Dismissed.** The Examiner lacks jurisdiction over Agreement and Covenant implementation. Rather than addressing this jurisdictional defect, the Appellant simply restates its compliance argument. It is not clear how the Examiner could entertain this issue.

**Issue 2.7 – All Except Bullet 4 Dismissed.** There is an overarching lack of specificity in the appeal's list of code non-compliance concerns. The code provision and how the project fails to comply is not identified in the majority of the sub-issues. But specifically:

- **Bullet 1, Mitigation of Nonconformity Created from New Lot Boundaries.** Code compliance decisions are Type 1 decisions.<sup>3</sup> Type I decisions are challenged via interpretation.<sup>4</sup> No interpretation request was filed. This same jurisdictional defect is present for Issues 2.7, Bullet 6; 2.9; 2.11; and, 2.13. The Appellant does not directly address this code hurdle. Also, the specific nonconformity is not identified. An appeal must include the “specific objections” to the decision appealed.<sup>5</sup> In response, the Appellant simply states these issues are not ambiguous.<sup>6</sup>
- **Bullet 2, HUD Must Approve Amenity Area Changes.** The parties agree the Hearing Examiner lacks jurisdiction over HUD requirements.
- **Bullet 3, Seattle Fire Code Compliance.** Fire Code compliance occurs at the building permit stage, rather than with the land use review and decision under appeal. The Examiner lacks jurisdiction.
- **Bullet 4, Blockage of Public Views.** Jurisdiction was not contested. This issue remains before the Examiner.
- **Bullet 5, Social Distancing.** The Examiner lacks jurisdiction over COVID-19 policy choices.

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<sup>3</sup> SMC 23.76.006(B)(1).

<sup>4</sup> SMC 23.76.022(A)(1).

<sup>5</sup> HER 3.01(d)(3).

<sup>6</sup> Appellant’s Response, p. 9.

- **Bullet 6, Buildings Heights.** Determination that a project complies with development standards is a Type I decision, for which an interpretation challenge must be filed, as addressed in Bullet 1 above. The Examiner lacks jurisdiction.

**Issue 2.8 – Seattle Fire Code – Dismissed.** The Appellant only states this issue relates to Administrative Design Review, but does not explain how the Examiner has jurisdiction over Fire Code compliance. This review occurs at the building permit stage, rather than with the land use review and decision now under appeal.

**Issue 2.9 Building Width and Depth Standards, SMC 23.45.529(B)(1) – Dismissed.** This issue raises a development standards compliance issue. As detailed in Issue 2.7, Bullet 1, to raise this challenge, an interpretation challenge must be filed. The Appellant does not address the jurisdictional issue, instead simply arguing math errors were made.

**Issue 2.10 Math Errors/Floor Area Ratio - Dismissed.** Appellant argues the FAR (Floor Area Ratio) used at Helen V is mathematically inaccurate, and so Administrative Design Review was based on inadequate information. This is a development standards compliance issue which must be challenged by interpretation, as detailed in Issue 2.7, Bullet 1.

**Issue 2.11 Compliance with Solid Waste Standards, SMC 23.54.040 – Dismissed.** This is a matter of development standard compliance. As no interpretation challenge was filed, the Examiner lacks jurisdiction. Rather than addressing the jurisdictional question, the Appellant just restates the issue.

**Issue 2.12 Conflicts on Entryway Addressing/Location - Dismissed.** The decision to grant a building an address is not a Type II decision appealable to the Hearing Examiner, SMC 23.76.004, Table A.

**Issue 2.13 Compliance with Tree Preservation Code - Dismissed.** No interpretation challenge was filed. As detailed in Issue 2.7, such an issue is not properly before the Examiner.

**Issue 2.14 Construction Staging Area/Noise Impacts – Not Dismissed.** Jurisdiction was not contested. This issue remains before the Hearing Examiner.

**Issue 2.15 Design Review Alternatives – Dismissed.** The appeal states alternatives should have been sought in design review, such as keeping the line of sight open between the Helen V and E Union Street for safety and saving the views to the Helen V National Register Historic Property. The appeal states that moving the main entrance to 1323 E Union Street to E Union Street, and incorporating separate courtyards to maintain resident privacy, should have been considered.

The Examiner lacks jurisdiction over entryway locations and the Helen V is not listed on National Register of Historic Places and is not a designated City Landmark. More generally, the claim fails to articulate the Design Review objections with enough detail to understand the challenges and what requirements those challenges are based on. The issue should be dismissed.

## **ORDER**

The Applicant's Motion for Partial Dismissal is granted. All issues excepting Issue 2.7, Bullet 4 (SEPA/Public Views) and Issue 2.14 (SEPA/Construction Staging Area/Noise Impacts) are dismissed.

Entered this January 13, 2021

/s/Susan Drummond  
Susan Drummond  
Hearing Examiner Pro-Tem

**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 **Order on Applicant's Motion for Partial Dismissal** to each person listed below, or on the attached mailing list, in the matters of **NAOMI E. RUDEN**, Hearing Examiner Files: **MUP-20-026 (CU, DD, DR)** in the manner indicated.

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Dated: January 13, 2021

/s/ Galen Edlund-Cho  
Galen Edlund-Cho  
Legal Assistant