

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

In the Matter of Appeal of

**NAOMI E. RUDEN**

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

Hearing Examiner File

**MUP 20-026**

Department Reference  
3035728-LU

**DECISION**

**I. FINDINGS OF FACT**

**1. Background.** The Project is a 125-unit, eight-story apartment building with retail, at 1323 E. Union Street, in Seattle's First Hill/Capitol Hill Urban Center. The site is zoned Multi-Family Midrise, and currently developed with a multifamily residential structure built in 1909, which will remain, and a surface parking lot. The Project was subject to Design Review, Ch. 23.41 SMC, and State Environmental Policy Act, Ch. 43.21C RCW ("SEPA") review. Under SEPA, the Department issued a Determination of Non-Significance, and Ms. Ruden appealed.

**2. Hearing Proceedings.**

**2.1 Pre-Hearing Deadlines and Motion.** At a pre-hearing conference, filing deadlines were established, including deadlines for motions, and witness and exhibit lists.<sup>1</sup> The Applicant moved for partial dismissal, largely based on jurisdiction. The Appellant agreed the Examiner lacked jurisdiction over federal law, and certain other issues. The Examiner granted the motion, leaving two issues for adjudication, Issue 2.7, Bullet 4 (SEPA/Public Views) and Issue 2.14 (SEPA/Construction Staging Area/Noise Impacts).

**2.2 Hearing.** The hearing was held remotely on January 26, 2021. Mr. Cummings, Department Planner, 700 5<sup>th</sup> Ave., Ste. 2000, Seattle, WA 98104, represented the Department. Ms. Clawson of McCullough Hill Leary, PS, 701 5th Avenue, Suite 6600, Seattle, WA 98104, represented the Applicant, Atelier Jones, LLC. Ms. Ruden, 1321 E. Union Street, Apt. #104, Seattle, WA 98122, appeared pro se.

**2.3 Witnesses.** The Appellant's witness was Ms. Ruden. The Applicant called two witnesses, Mr. Silva, Director of Pre-Construction, Swinerton Builders; and, A.P. Hurd, Skip Stone. The Department's witness was Mr. Cummings, Department Land Use Planner.

**2.4 Exhibits.** The Examiner admitted Exhibits 1-17, as listed on the Clerk's final Exhibit List. The Applicant objected to the admission of Exhibits 7 and 11 based on relevance. Exhibit 7 includes federal Department of Housing and Urban Development records, and Exhibit 11 includes King County Cultural Resource Procedures. The Applicant objected based on relevance as the Examiner previously dismissed the federal issues and King County review procedures do not apply. However, the Examiner allowed the exhibits with the understanding that they would be appropriately weighed.

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<sup>1</sup> Prehearing Order (December 18, 2020).

**3. Site Visit.** The Examiner visited the site on the afternoon of February 8, 2021. The visit provides context, not evidence.

**4. SEPA Review.** The Department completed SEPA review by issuing a DNS with the MUP, with one SEPA Condition. “Provide a Construction Management Plan that has been approved by SDOT. The submittal information and review process for Construction Management Plans are described on the SDOT website at: Construction Use in the Right of Way.”<sup>2</sup> With SEPA, the question the Department considers is whether a project presents probable, significant adverse environmental impacts which cannot be mitigated below significance through regulations and/or added mitigation. If such impacts cannot be mitigated, an EIS is prepared; if they can be, a DNS may issue. The City’s SEPA policies, SMC 25.05.675, provide the framework for evaluating probable significance, and excepting certain circumstances, “[w]here City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation....”<sup>3</sup>

**5. SEPA/Public Views – Issue 2.7, Bullet 4.** The Appeal raised this Issue: “The new building will block all public views of the Helen V entrance from E. Union St. and 14<sup>th</sup> Ave. This creates substantial safety issues for the Helen V residents, as well as will block significant historical features of the Helen V Building once determined as a Landmark.”

The Helen V building, which Ms. Ruden resides in, is not a designated City of Seattle Landmark, and the Examiner lacks jurisdiction over federal regulatory compliance and federal funding (HUD or Housing of Urban Development) issues. There is a City process for landmark designation, but Ms. Ruden has not submitted a nomination request. If the building were a designated historic landmark, then the City would have assessed whether the designation changed its analysis. Regardless, the Project, including during its construction, will not touch the Helen V, and public views of historic structures are not impacted.<sup>4</sup> Regarding safety issues, the Project does not interfere or obstruct Helen V access or egress, so with the finished Project, probable significant impacts are unlikely. Construction impacts on access are addressed below.

**6. SEPA/Construction Staging Area/Noise Impacts – Issue 2.14.** The Appeal raised this issue: “Location of Construction Staging Area will be extremely noisy and disruptive for 1321 E Union Street residents. It should be moved further north on 14<sup>th</sup>, or to E. Union St. Construction Staging should not be done directly outside the bedroom windows of Helen V tenants.” At the hearing, Ms. Ruden testified about her concerns on construction noise and continued access to her adjacent apartment building.

The Department required that the Applicant prepare a Construction Management Plan. The Plan is a regulatory tool for ensuring access for surrounding properties and noise are properly managed during construction. The Plan must include “contact information in the event of complaints about construction noise, and measures to reduce or prevent noise impacts.”<sup>5</sup> This is coupled with Seattle Noise Ordinance restrictions on construction hours and permissible sound levels (SMC 25.08.425).

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<sup>2</sup> Exhibit 1 (Decision), p. 33.

<sup>3</sup> SMC 25.05.665(D).

<sup>4</sup> Testimony, Mr. Cummings, who holds a Masters in Community Planning.

<sup>5</sup> Exhibit 1 (Decision), p. 30.

Mr. Silva, qualified as an expert for managing project construction, detailed Plan components, and outlined how Helen V access would be protected throughout the construction process. He substantiated this continued access by describing drawings from the draft Construction Management Plan (Exhibit 15). The Department concluded that with the code requirements and Construction Management Plan, additional mitigation measures were unnecessary under SMC 25.05.675(B). Given the evidence submitted, including hearing testimony detailing code requirements and how the Draft Plan will be finalized and implemented, the Department's conclusion was reasonable.

## II. CONCLUSIONS OF LAW

1. **Jurisdiction and Review Standard.** The Hearing Examiner has jurisdiction over appeals of Type II Master Use Permit decisions.<sup>6</sup> The Director's Decision is given "substantial weight."<sup>7</sup> The decision is thus reviewed for clear error, meaning that to reverse, the Examiner must be left with the definite and firm conviction the Director erred.<sup>8</sup> There must be "facts or evidence ... demonstrating" significant adversity.<sup>9</sup>

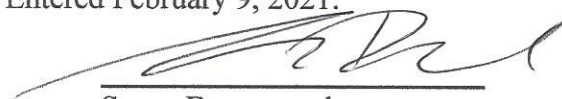
2. **SEPA.** The Project was properly evaluated under SEPA. Construction access impacts are addressed through the required Construction Management Plan, which also addresses construction noise, an issue the City's noise regulations govern. The Applicant indicated there would be coordination with surrounding properties, including the Helen V residents during construction to minimize construction issues. The Helen V is not a designated City landmark, and the Project will not touch it during construction or upon building completion. Ms. Ruden identified a wide range of guidelines and requirements in her testimony, and her concerns are reasonable ones, but she did not meet her burden of proof to present actual evidence substantiating the allegation of probable and significant noise, access, or public view impacts to Helen V residents. However, clarifying that the Applicant and Department will coordinate with residents during construction, consistent with Application representations at the hearing, is appropriate.

## DECISION

The Department's Decision is upheld, and the appeals denied, with the understanding the Department and Applicant will coordinate as appropriate with Helen V residents through Construction Management Plan review and implementation.

Absent a timely appeal, this decision is final.<sup>10</sup>

Entered February 9, 2021.



Susan Drummond  
Hearing Examiner Pro Tempore

<sup>6</sup> SMC 23.76.004(B); SMC 23.76.004, Table A; SMC 23.76.006.

<sup>7</sup> SMC 23.76.022(C)(7); RCW 43.21C.090.

<sup>8</sup> *Moss v. City of Bellingham*, 109 Wn. App. 6, 13-14, 31 P.3d 703 (2001).

<sup>9</sup> *Id.* at 23-24.

<sup>10</sup> Ch. 36.70C RCW (21-day appeal period to superior court); SMC 23.76.022(C)(12).

### **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.