

**BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE**

In the Matter of the Appeal of

**AQUARIAN FOUNDATION, INC,**

from a decision by the Director, Seattle  
Department of Construction and Inspections

Hearing Examiner Files:  
**MUP-23-011**

Department Reference  
3038146-LU

**ORDER ON MOTION FOR  
PARTIAL DISMISSAL**

**1. Motion.** The Seattle Department of Construction and Inspections (“Department”) issued a land use approval for two multi-family residential buildings with retail and parking to Applicant Jodi Patterson O’Hare. Aquarian Foundation, Inc. appealed. The Applicant moved for partial dismissal, which the Department supported, and Aquarian opposed. The issues are identified as:

- Objections 1 through 10;<sup>1</sup>
- Errors 1 through 13;<sup>2</sup> and,
- Requests for Relief 1 through 5.<sup>3</sup>

The Applicant requested dismissal of objections, errors, and relief requests raising issues the Examiner cannot adjudicate as they are not based on Seattle Municipal Code inconsistencies.

**2. Code Requirements for Hearing Appeal.** Aquarian contended the dismissal request was based on concerns that the appeal was not filed in good faith, lacks merit, and that Aquarian lacks standing. These were not the Applicant’s contentions. The Applicant requested that any issues not based on code inconsistencies be dismissed. That is because the Examiner lacks authority to entertain issues unrelated to code compliance.

The Hearing Examiner shall entertain issues cited in the appeal that relate to compliance with the procedures for Type II decisions as required in this Chapter 23.76, compliance with substantive criteria, ... and any requests for an interpretation included in the appeal or consolidated appeal pursuant to Section 23.88.020.C.3.<sup>4</sup>

The appeal may have raised issues in good faith, but the Examiner can only address them if they are based on code inconsistencies identified in the appeal.<sup>5</sup>

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<sup>1</sup> Notice of Appeal, p. 4.

<sup>2</sup> Notice of Appeal, pp. 4-7.

<sup>3</sup> Notice of Appeal, p. 8.

<sup>4</sup> SMC 23.76.022(C)(6).

<sup>5</sup> SMC 23.76.022(C)(3)(a) and (C)(6); HER 5.01(d)(3).

**3. Property Rights.** The superior courts have original jurisdiction over title disputes. “The superior court shall have original jurisdiction in all cases at law which involve the title or possession of real property....”<sup>6</sup> These types of property disputes are (in varying degrees) within Objections 2-4 and 9; Errors 2-4, and Request for Relief 5. To the extent the appeal raises property issues which must be heard in superior court, the Examiner cannot adjudicate them, so they should be dismissed.<sup>7</sup> However, to the extent property related issues are also based on allegations of inconsistencies with the Design Guidelines they remain.

**4. Traffic and Parking Impacts.** The appeal asserts project construction and operation will disrupt surrounding street parking and interfere with Aquarian’s driveway and garage access. These claims are within Objection 6, Error 12, and Requests for Relief 3 and 4. The Examiner can address transportation related concerns if they are centered on a code inconsistency. Aquarian did not identify code inconsistencies with respect to traffic and parking, so these types of claims should be dismissed.

**5. Challenges to the Seattle Municipal Code.** The Examiner lacks authority to adjudicate challenges to legislative enactments. Error 13 challenges the zoning code’s height limit. Portions of Error 12 and Request for Relief 3 challenge parking sufficiency but does not tie that claim to a code requirement. Even if the project removes or disrupts street parking, the Examiner can only address this concern if it is tied to a code consistency issue. The Examiner cannot adjudicate whether the code itself is insufficient.

**6. Design Claim Limitations.** Aquarian raises design issues in Objections 5, 7, and 10; Errors 5-11, and Requests for Relief 1 and 2. While the Applicant disputes these claims, it does not dispute the Examiner may entertain them if claims are limited to identified standards. The appeal identifies these guidelines:

- CS1-4-e (Tree Canopy), Objection 10, Error 9
- CS2-D-5 (Respect for Adjacent Sites), Error 11
- CS3-A (Emphasizing Positive Neighborhood Attributes), Objections 5 and 7, Error 8
- PL3-B (Residential Edges), Error 7<sup>8</sup>

The appeal hearing is properly limited to the issues raised. While the Examiner is not at this juncture limiting appeal arguments to only the guidelines the appeal specifically lists, there are design claims the Examiner cannot adjudicate. There is no guideline addressing shadows, air space, and air flow on adjacent properties, so these issues cannot be adjudicated. To the extent claims are raised on a guideline providing for privacy for “residential units” it is inapplicable (CS2-D-5) as Aquarian is a church rather than a

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<sup>6</sup> Wash. Const., Art. 4, § 6; Ch. 7.28 RCW; *Tiller v. Lackey*, 6 Wn. App. 2d 470, 482 (2018).

<sup>7</sup> If a legitimate title dispute is present, there are situations where a land use permit can only be approved once the issue is resolved. *See e.g., Halverson v. City of Bellevue*, 41 Wn. App. 457, 460–61 (1985). That type of situation has not been substantiated here.

<sup>8</sup> The appeal references are to the Department’s decision.

residential use. Also, to the extent the issue raises concerns about sunlight access (CS1-1-b), this relates to the project itself rather than adjacent properties.<sup>9</sup>

## 7. Additional Claims.

The appeal asserts the project has negative effects on adjoining properties (Objection 1) but does not, in that section, explain how this is inconsistent with code provisions the Examiner has jurisdiction over. Objection 1 should be dismissed as a discrete issue, though it may be used as argument, if tied to an issue which alleges guideline inconsistency.

SMC 22.170.200 is part of the grading code. These requirements will be addressed in future permitting but are not part of the master use permit approved here, so are not within the Examiner's scope of review. Error 1 asserts the "very real and imminent hazards" from the demolition and excavation. However, these construction-related hazards do not raise land use or design review issues so are not within Examiner purview.

Objection 8 asserts a lack of sufficient setbacks, citing SMC 23.86.012 and SMC 22.170.200. Challenges to projects for violating individual development standards (SMC 23.86.012, methods for measuring setbacks), are Type I decision subject to administrative review only through a land use interpretation.<sup>10</sup> As one was not first sought, the code does not afford the Examiner authority over this concern.

## ORDER

The motion is **GRANTED** in part and **DENIED** in part. The below identified objections, errors, and relief requests are dismissed or limited as follows:

- Objections 1-3, 6, 8, and 9 are dismissed;
- Errors 12 and 13 are dismissed;
- Request for Relief 3, 4, and 5 are dismissed;
- Errors 1-4 are dismissed to the extent not based on standards and/or requirements the Examiner has jurisdiction over; and,
- Objections 4, 5, 7, and 10, Errors 5-11, and Requests for Relief 1 and 2 are dismissed to the extent they are based on privacy, sunlight, and air flow, with all remaining issues limited to design guideline consistency concerns the Notice of Appeal raises.

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<sup>9</sup> Though exempt from SEPA, even the SEPA policies limit project-specific consideration of these issues. SMC 25.05.675(Q)(1)(d).

<sup>10</sup> SMC 23.76.022(A)(1).

Entered December 4, 2023.

A handwritten signature in black ink, appearing to read 'SD', is written over a horizontal line.

Susan Drummond  
Deputy Hearing Examiner

**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that on the date below I sent true and correct copies of the attached **ORDER ON MOTION FOR PARTIAL DISMISSAL** to each person below in **Aquarian Foundation, Inc.**, Hearing Examiner File **MUP-23-011** in the manner indicated.

Party	Method of Service
<b>Appellant and Authorized Representative</b>  Reverend Jann Werner Aquarian Foundation, Inc info@aquarianfoundation.com	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
<b>Applicant Legal Counsel</b> McCullough Hill PLLC  Jessica Clawson <a href="mailto:jessica@mhseattle.com">jessica@mhseattle.com</a>  David P. Carpman <a href="mailto:dcarpman@mhseattle.com">dcarpman@mhseattle.com</a>  Isaac A. Patterson <a href="mailto:ipatterson@mhseattle.com">ipatterson@mhseattle.com</a>	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger
<b>Department</b>  David Sachs SDCI david.sachs@seattle.gov	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger

Dated: December 4, 2023

/s/ Angela Oberhansly  
Angela Oberhansly  
Legal Assistant