BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of

SUZANNE LASSER, MD, ET AL.

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

Hearing Examiner File:
MUP-16-018 (DR)

Department Reference:
3020860

ORDER ON MOTION TO DISMISS

The Department of Construction and Inspections ("Department") issued a SEPA Determination of Nonsignificance ("DNS") and design review approval for a proposal to construct a five story structure containing apartment units and street level retail uses.at 1830 East Mercer Street. Suzanne Lasser, M.D. and others appealed the Department's design review decision. Following a prehearing conference with the parties to the appeal on October 16, 2016, the Hearing Examiner issued a Prehearing Order setting the case schedule for the appeal. As discussed at the conference, and in accordance with the case schedule, the Applicant, Epic Property Management, LLC, filed a motion and supporting documents on October 18, 2016 seeking dismissal of the appeal. The Prehearing Order established a deadline of October 25, 2016 for the Appellants to file a response to the motion to dismiss. The Appellants did not file a response to the motion on that date, and the Applicant filed a "reply" on the motion requesting immediate dismissal of the appeal.

The Hearing Examiner Rules of Practice and Procedure address motions and responses to motions. Rule 3.02 states that an "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." Rule 2.16(b) provides that "[f]ailure of a party to file a timely response [to a motion] may be considered by the Hearing Examiner as evidence of the party's consent to the motion."

After the Applicant requested immediate dismissal of the appeal, the Appellants' representative sent an e-mail message to the Office of Hearing Examiner apologizing for not responding to the motion to dismiss by the October 25, 2016 deadline. The message states that the Appellants are proceeding without an attorney and are not familiar with hearing procedures and the requirement to respond to a motion to dismiss. However, the Hearing Examiner's website includes resources available to the Appellants, including the *Hearing Examiner Rules of Practice and Procedure*, and the *Public Guide to Appeals and Hearings Before the Hearing* Examine, which explains various aspects of the hearing process. In addition, the Hearing Examiner's administrative staff are always available to answer a party's procedural questions. Although the appeal must be dismissed for the Appellants' failure to file a response to the motion to dismiss, the Examiner briefly addresses the merits of the appeal in light of the grounds for dismissal raised in the motion.

The Applicant's motion seeks dismissal of the appeal on two grounds: that it is without merit on its face; and that it fails to state a claim that is within the Examiner's jurisdiction. It is clear from the

original appeal, and the Appellants' clarification of issues filed on October 10, 2016, that the Appellants disagree with the design review decision on the proposed development. However, the appeal does not challenge that decision as failing to properly apply applicable design guidelines, or on any of the bases listed in SMC 23.41.014.F: "1) Reflects inconsistent application of the design review guidelines; or 2) Exceeds the authority of the Design Review Board; or 3) conflicts with SEPA conditions or other regulatory requirements applicable to the site; or 4) Conflicts with the requirements of state or federal law." Consequently, the Appellants' design review issues have no possibility of success and are thus without merit on their face. The remaining issues raised by the Appellants are not within the Examiner's jurisdiction in a design review appeal. These include claims concerning design review board procedures, records disclosure, accessibility/ADA, the potential for reduction in property values, and various issues concerning the application of some Code development standards and Building and Fire Code standards to the proposal.

The motion to dismiss is **GRANTED**, and the appeal is **DISMISSED**. The hearing on the appeal scheduled for November 28, 2016 is **CANCELLED**.

Entered this 27th day of October, 2016.

Sue A. Tanner, Hearing Examiner
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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 Motion to Dismiss** to each person listed below, or on the attached mailing list, in the matter of **Suzanne Lasser et al.** Hearing Examiner File: **MUP-16-018 (DR)** in the manner indicated.

Party	Method of Service
Suzanne Lasser MD et al. c/o Suzanne Lasser MD 533 18th Ave E Seattle, WA 98112 suzlasser@hotmail.com	☐ U.S. First Class Mail, postage prepaid ☐ Inter-office Mail ☒ E-mail ☐ Fax ☐ Hand Delivery ☐ Legal Messenger
Kevin Tabari c/o Clayton Graham claytongraham@dwt.com Donna Spaudling donnaspaulding@dwt.com	☐ U.S. First Class Mail, postage prepaid ☐ Inter-office Mail ☒ E-mail ☐ Fax ☐ Hand Delivery ☐ Legal Messenger
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Dated: October 27, 2016

TK

Tiffany Ku
Legal Assistant