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BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

**ENDING THE PRISON INDUSTRIAL
COMPLEX (EPIC), ET AL**

Hearing Examiner File No.:
MUP-17-001

From a decision by the Director,
Department of Construction and
Inspections, on a Master Use Permit

DCI Project No. 3020845

**APPELLANTS' REPLY IN SUPPORT OF
MOTION TO DISMISS**

I. INTRODUCTION

Contrary to Respondent's assertions, the Hearing Examiner must dismiss Patrick Donnelly as a party to this appeal because Mr. Donnelly is not an applicant. He is an agent of King County and has no ownership interest in the property; has no interest in the project that is not derivative to King County's interests; and his interests are adequately represented by King County. Accordingly, the County is the actual applicant. Patrick Donnelly is not the applicant and has not sought to intervene. Therefore he must be dismissed.

**APPELLANTS' REPLY IN SUPPORT OF
MOTION TO DISMISS - 1**

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1 **II. ARGUMENT**

2 **A. PATRICK DONNELLY IS NOT AN APPLICANT BECAUSE HE IS AN**
3 **AGENT ACTING ON BEHALF OF KING COUNTY.**

4 Respondents contend that Patrick Donnelly is the applicant. They are incorrect. King
5 County is the "the person, organization, or other entity who files an application or otherwise
6 formally requests a permit". HER 2.02(e). Mr. Donnelly is at most King County’s agent acting
7 on its behalf.

8 The decision on appeal identifies Mr. Donnelly as King County’s agent, not the actual
9 applicant. *See Exhibit F to Lowney Declaration in Opposition to Motion to Dismiss (City of*
10 *Seattle Analysis and Decision of the Director of The Seattle Dep’t of Construction and*
11 *Inspections) (“Patrick Donnelly, for King County”).* As such, Mr. Donnelly is no more a party to
12 this matter than counsel is for Appellants. Even if Mr. Donnelly had filed the application by
13 pushing a “send” button – a supposition that is not supported by the evidence – this would not
14 make him the applicant because he would have been filing the application as an agent for the
15 County.¹ Nor would a legal messenger delivering papers be the filer of the legal document.

16 King County clearly defined Mr. Donnelly’s role in the land use process. He is
17 designated as an agent for contact purposes only, and several documents that Appellants have
18 previously referenced reinforce this point. Appellants pointed to the Statement of Financial
19 Responsibility as just one example of Mr. Donnelly being identified as an agent acting on behalf
20 of the principal; however, this is not the only instance where he is identified in this manner. Both

21 _____
22 ¹ In fact, there is no evidence in the record that indicates that Mr. Donnelly was the person who actually filed the
23 application. Presumably, the actual filing was done by some other clerk, secretary or other person. Under his own
strained reading of applicable rules, this person, not Mr. Donnelly and not King County, would be the “applicant”.

1 the MUP decision and the Hearing Examiner Case Details similarly list Mr. Donnelly as the
2 Applicant for King County. See *Lowney Declaration in Support of Motion to Strike Exhibit 1*
3 (*Statement of Financial Responsibility/Agent Authorization*) (owner King County stating that Mr.
4 Donnelly is an agent of King County on the youth jail project, and that “my agent is the applicant
5 on the project for contact purposes only and does not have a financial interest in this project.”);
6 Attachment (*Office of Hearing Examiner Case Details for HE File Number: MUP-17-001*).

7 The Statement of Financial Responsibility is relevant in this case as additional evidence
8 that Mr. Donnelly is not an applicant. The Statement of Financial Responsibility form states
9 “[a]pplicant, under this definition **does not include architects, agents** or other design
10 professionals who submit applications on behalf of a property owner.” See *Exhibit 1 (Statement*
11 *of Financial Responsibility/Agent Authorization)* (emphasis added). Furthermore, Director’s
12 Rule 5-2003 supports Appellant’s assertion that an applicant must have a financial interest in the
13 property, and the Statement of Financial Responsibility makes clear that Mr. Donnelly has no
14 such interest.

15 As its agent, any action Mr. Donnelly took in this matter is an act of the principal as a
16 matter of law. As discussed in the opening motion, Mr. Donnelly is not a real party in interest as
17 described in CR 17 because he is King County’s agent. Furthermore, other common law
18 principles, including basic agent-principal law, also demonstrate why he is not the applicant.
19 These principles are relevant regardless of whether the underlying substantive issues involve
20 landlord-tenant disputes, workers’ compensation, or land use appeals.

21 Mr. Donnelly is King County’s agent. Under black letter rules of agency, his acts are
22 King County’s acts. “An agent’s exercise of actual authority is binding on the principal.”
23

1 *Cascade Auto Glass, Inc. v. Progressive Cas. Ins. Co.*, 135 Wn. App. 760, 765, 145 P.3d 1253,
2 1256 (2006); *see also, State v. Hanson*, 59 Wn. App. 651, 661, 800 P.2d 1124, 1131 (1990)
3 (agent is not a party to a contract that he negotiates); *Davis v. Lee*, 52 Wn. 330, 100 P. 752
4 (1909)(one signing a contract as agent is not liable as principal, and can neither be sued for a
5 breach nor for specific performance); Restatement (Second) of Agency § 320 (“[u]nless
6 otherwise agreed, a person making or purporting to make a contract with another as agent for a
7 disclosed principal does not become a party to the contract.”). This is not a new or controversial
8 concept. *Smith v. Gray*, 52 Wn. 255, 100 P. 339 (1909) (the acts of an authorized agent are the
9 acts of his principal.) King County is the applicant for the MUP.

10 Respondents further state that Mr. Donnelly is the Applicant because “[t]he applicant was
11 also identified by the owner, King County, as the entity designated to receive determinations and
12 notices from the Seattle Department of Construction and Inspections (“SDCI”), as required by
13 SMC 23.76.010.A.1.” *Response to Motion to Dismiss Patrick Donnelly and Strike Related*
14 *Findings* (“Response”), p. 2. However, SMC 23.76.010.A.1 supports Appellants’ claim that Mr.
15 Donnelly is not the applicant. That section of the code provides, in relevant part, that “[a] Master
16 Use Permit **applicant shall designate a single person or entity to receive determinations and**
17 **notices from the Director.**” SMC 23.76.010.A.1 (emphasis added). King County, the “Master
18 Use Permit applicant,” designated Mr. Donnelly to receive notices and determinations from
19 SDCI. King County is the applicant as set out in SMC 23.76.010.A.1. Mr. Donnelly is not.

20
21 **B. PATRICK DONNELLY IS NOT AN APPLICANT BECAUSE HE HAS NO**
22 **OWNERSHIP INTEREST IN THE PROPERTY OR PROJECT.**
23

1 Mr. Donnelly wrongly claims that LUPA establishes him as the applicant because he
2 would be a proper party in a subsequent land use appeal. In fact, LUPA merely requires that
3 “[e]ach person identified by name and address in the local jurisdiction's written decision **as an**
4 **applicant** for the permit or approval at issue” be named as a party. RCW 36.70C.040(2)(b)
5 (emphasis added). As discussed above and in the original motion, King County is the applicant
6 for the MUP, not Mr. Donnelly.¹ Thus, LUPA is irrelevant to who is the applicant under the City
7 Code and law of agency, and LUPA would not even give him party status to a land use appeal.

8 Furthermore, the cases cited by Mr. Donnelly do him no good. Each involves a
9 “developer” that has an actual ownership interest in the property itself; not merely a non-property
10 based, interest created by contract. *See Nat'l Homeowners Ass'n v. City of Seattle*, 82 Wn. App.
11 640, 643, 919 P.2d 615 (1996) (developer had purchased property and so was a necessary party
12 to land use petition); *Veradale Valley Citizens' Planning Comm. v. Bd. of Cty. Comm'rs of*
13 *Spokane Cty.*, 22 Wn. App. 229, 232, 588 P.2d 750 (1978) (developer who owned the property
14 and had therefore “acquired a **valuable property right** as a result of a favorable zoning
15 administration decision” entitled to notice of LUPA appeal) (emphasis added). A direct interest
16 in the property itself, not merely some contractual interest is essential. *See Jones v. Town of*
17 *Hunts Point*, 166 Wn. App. 452, 454, 272 P.3d 853 (Div. I 2011) (wife who filed the appeal was
18 not a necessary party because she had no property interest in the property after quitclaiming
19 interest to husband/owner of the property and abandoning appeal).

21 ¹ As discussed below, Mr. Donnelly’s address is not included in Seattle’s decision. Mr. Donnelly has no property
22 right at issue here and does not meet the statutory definition set out at RCW 36.70C.040(2)(b). Accordingly, even
23 under his own strained interpretation of the law, Mr. Donnelly is not a necessary party to this action. In fact, as
detailed in the declarations that he filed in response to this motion, Mr. Donnelly’s interest is even more attenuated
and derivative than Howard S. Wright Construction, a non-party to this appeal. They acknowledge that Mr.
Donnelly is operating as an agent of Wright. He is therefore an agent of an agent of King County’s.

1 Unlike the developer in each of the cases he cites, neither Mr. Donnelly nor Wright
2 Construction have any ownership interest in the property at issue. At most, they hold a limited
3 contractual or financial interest, an interest that the Washington Supreme Court has ruled is not
4 sufficient to allow them to participate in this proceeding. *See Cathcart-Maltby-Clearview Cmty.*
5 *Council v. Snohomish Cty.*, 96 Wn.2d 201, 206, 634 P.2d 853, 857 (1981) (“[a] financial interest
6 in the subject matter does not by itself make one an indispensable party” to a land use action).
7 Certainly there are situations where an owner and developer work together, and the developer
8 has an ownership interest in the project. But, this is not the case here. Wright is merely a
9 design/builder – a combination of architect and construction contractor – working for the
10 applicant. While architects, building, painters and thousands of people may make money on a
11 construction project, they cannot litigate on behalf of the project when they are all working for
12 the owner of the project and that owner has full power to defend the project.

13 Neither Donnelly nor Wright Construction have sought to intervene in the case, in which
14 case they could make their argument that their interests are separate and not represented by King
15 County. But such an analysis would show them without a right to intervene, because they have
16 no interests at stake that King County will not adequately protect. *See* HER 3.09(b) (party only
17 allowed to intervene when it has interest that no existing party will adequately protect).¹

18 LUPA is not directly relevant at this stage of the proceeding, because no party has yet
19 sought judicial review. Nonetheless, even if LUPA were implicated, Mr. Donnelly is not a
20 necessary party as defined at RCW 36.70C.040(2). Under LUPA,

21
22 ¹ In his brief, Mr. Donnelly states without explication that he has interests that King County will not represent. *See*
23 Response, p. 3 Such an unsupported assertion cannot support a finding of fact that Mr. Donnelly has any interest in
this action that is not merely derivative of King County’s interests.

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Case Details for HE File Number: MUP-17-001

Case Name:	EPIC et al.	Date Received:	1/4/2017
Property Address:	1211 E Alder St	Date Filed:	1/4/2017
Mailing Address:		Filing Fee:	\$85.00
Examiner:	TANNER	Form of Payment:	credit card

Master Use Permit

Notations: SEPA

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