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8 BEFORE THE HEARING EXAMINER
9 FOR THE CITY OF SEATTLE

10 In the Matter of the Appeal of:

11 EPIC, et al.,

12 From a Department of Construction and
13 Inspections decision.

No. MUP-17-001

DCI Reference:
3020845

14 APPLICANT’S AND KING COUNTY’S
15 REPLY ON MOTION FOR
RECONSIDERATION

16 The Examiner should disregard the response on motion for reconsideration submitted by
17 the Seattle Department of Construction and Inspections (“SDCI”). The SDCI filing references
18 no facts or analysis relevant to resolution of EPIC’s motion.

19 SDCI’s filing fails to establish that reconsideration is warranted under the required
20 standard set forth in Hearing Examiner Rules of Process and Procedure (“HER”) 3.20. SDCI
21 cites HER 3.20(a)(1). However, HER 3.20(a)(1) only allows reconsideration if there is
22 “irregularity in the proceedings by which the moving party was prevented from having a fair
23 hearing.” SDCI’s response alleges no irregularity, instead merely referencing the number of
24 issues raised in the motion to dismiss and the fact that there was no hearing on the motion.
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26 Neither of those two innocuous procedural events supports reconsideration.
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28 APPLICANT’S AND KING COUNTY’S
REPLY ON MOTIONFOR RECONSIDERATION

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1 The HER does not limit the number of issues that may be raised in a motion. In this case,
2 the number of issues raised in the motion to dismiss resulted directly from Appellant EPIC's
3 attempt to raise numerous issues outside the scope of the Hearing Examiner's jurisdiction. The
4 number of issues presented to the Examiner for dismissal does not excuse EPIC's failure to
5 adequately address them the first time around.
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7 Neither does the lack of oral argument provide a basis to reconsider. The HER does not
8 require a hearing on a motion to dismiss. HER 2.16(c), 3.02. There was no irregularity here.
9 Appellant EPIC was given a full opportunity to respond to the motion, and did so. Indeed, EPIC
10 presented the same arguments in its response to the motion as it does now in its motion for
11 reconsideration. EPIC does not meet the standards for reconsideration set forth in HER 3.20.
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13 Although SDCI appears to express an opinion about the Council's intent, that opinion is
14 not entitled to deference. Deference is not due an agency's interpretation of an unambiguous
15 ordinance because "[o]rdinances with plain meanings are not subject to construction. Only
16 ambiguous ordinances may be construed." *Sleasman v. City of Lacey*, 159 Wn.2d 639, 646, 151
17 P.3d 990 (2007). Here, as the Examiner properly determined, Seattle Municipal Code ("Code"
18 or "SMC") 23.76.006.C is unambiguous. The statutory language speaks for itself and no
19 deference is due to SDCI's opinion about legislative intent. Likewise, an "administrative
20 determination will not be accorded deference if the agency's interpretation conflicts with the
21 relevant statute." *Budget Rent a Car Licensing*, 144 Wn.2d 889, 901 31 P.3d 1174 (2001); *see*
22 *also Cowiche Canyon Conservancy v. Bosley*, 118 WN.2d 801, 815, 828 P.2d 549 (1992). Here,
23 the modification to development standards for a Youth Services Center ("Modification") is not
24 subject to appeal to the Examiner under the plain language of SMC 23.76.006.C.
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1 Further, even if the Code language were ambiguous, which it is not, an agency
2 interpretation is not accorded deference unless it was adopted as a “matter of agency policy.”
3 *Sleasman, supra*, 159 Wn.2d 646. SDCI bears the burden to show “its interpretation was a
4 matter of preexisting policy.” *Id.* at 647. Here, the Applicant Patrick Donnelly (“Applicant”)
5 and King County moved to dismiss on multiple grounds, including that the Modification is not
6 subject to administrative appeal under SMC 23.76.006.C. On February 3, 2017, SDCI joined in
7 this portion of the motion. SDCI’s Motion to Dismiss, p. 1. On February 17, SDCI also joined
8 in the Applicant and County’s reply on this issue. SDCI’s Reply on Motion to Dismiss. To the
9 extent that SDCI is now taking a different view of the Code, its new opinion is not an agency
10 interpretation entitled to deference.
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13 Accordingly, the Applicant and the County request that the Hearing Examiner deny the
14 motion for reconsideration.

15 DATED this 24th day of March, 2017.

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