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BEFORE THE HEARING EXAMINER  
FOR THE CITY OF SEATTLE

In the Matter of the Appeal of:  
  
JACK NIKFARD  
  
From a Department of Construction and  
Inspections decision.

No. MUP 17-019  
  
SDCI Reference: 3018686  
  
APPLICANT MARTIN SELIG REAL  
ESTATE’S OPPOSITION TO MOTIONS TO  
INTERVENE

**I. INTRODUCTION**

Applicant Martin Selig Real Estate (“Applicant”) respectfully requests that the Hearing Examiner deny the two separate Motions to Intervene (“Motions”), the first motion filed by Brian Estes and Eric Drummond Hay, and the second motion filed by Richard Aramburu (collectively, “Proposed Intervenors”) in this appeal.

**II. STATEMENT OF FACTS**

On April 13, 2017, the City of Seattle issued a Master Use Permit (“MUP”) for a project located at 3<sup>rd</sup> Avenue and Lenora Street in the Belltown neighborhood in Seattle (“Project”). Appellant Jack Nikfard timely appealed the MUP decision on April 26, 2017. Proposed Intervenors did not seek to intervene in the appeal until May 16, 2017, and May 19, 2017, respectively.

1 **III. STATEMENT OF THE ISSUE**

2 Should the Hearing Examiner deny the Motions to Intervene because the Proposed  
3 Intervenors do not satisfy the Hearing Examiner Rule of Procedure Rule 3.09 standards to allow  
4 intervention?  
5

6 **IV. EVIDENCE RELIED UPON**

7 This Motion relies upon the pleadings and papers on file in this matter.

8 **V. ARGUMENT**

9 The Hearing Examiner Rules of Procedure (“HER” or “Rules”) on intervention state:

- 10 (a) Intervention is not a substitute means of appealing a decision for those who could  
11 have appealed but failed to do so.
- 12 (b) A person, organization or other entity who has not filed an appeal may request by  
13 motion to participate in the appeal. The request must state how the person or  
14 entity making it is affected by or interested in the matter appealed, and must  
15 demonstrate a substantial interest that is not otherwise adequately represented.  
16 Except as provided in HER 3.09(d) below, a written request for intervention must  
17 be filed with the Hearing Examiner and served on all parties to the appeal no later  
18 than 10 business days prior to the scheduled hearing date.
- 19 (c) In determining the merits of a request for intervention, the Hearing  
20 Examiner shall consider whether intervention will unduly delay the hearing  
21 process, expand the issues beyond those stated in the appeal, or prejudice the  
22 rights of the parties. If intervention is granted, the Hearing Examiner may limit its  
23 nature and scope.
- 24 (d) The Hearing Examiner may allow a substantially interested person, organization,  
25 or other entity who has not filed an appeal to intervene for the sole purpose of  
26 preserving the right to appeal. Such intervention may be permitted at any time up  
27 to the start of the hearing.

28 HER 3.09.

Proposed Intervenors have failed to satisfy HER 3.09 for intervention in this appeal for  
three reasons. Accordingly, Applicant respectfully requests that the Hearing Examiner deny the  
Motions.

1 The Motions are misconceived for several reasons. First, in order for Proposed  
2 Intervenor to attempt to establish standing, they must demonstrate that they have a substantial  
3 interest in the appeal. The foundational element of Proposed Intervenor’s purported “interest”—  
4 that the increase in the width of the building permitted by the departure will create view and  
5 aesthetic impacts, light impacts, and will increase shadows on public places, are not issues in this  
6 Appeal. *See, e.g., Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 837 (9th Cir. 1996)  
7 (denying motion to intervene under Fed. R. Civ. P. 24(a)(2) because even though “a prospective  
8 intervenor’s interest need only be protected under some law, the interest must relate to the  
9 litigation in which it seeks to intervene.”) (internal citation omitted). This Appeal relates solely  
10 to the “magnitude of the departure” from tower width requirements and the process in which it  
11 was approved. Whether the “magnitude” of the departure creates view, aesthetic, or shadow  
12 impacts<sup>1</sup> is not a criterion the Examiner will be applying to resolve the appeal, if the Examiner  
13 has jurisdiction to entertain the appeal at all.<sup>2</sup> Such concerns should have been raised in a  
14 separate appeal, which Proposed Intervenor failed to do. Proposed Intervenor cannot now  
15 attempt to raise these issues under the auspices that they are somehow related to a claim  
16 questioning the magnitude of a Design Review Departure.  
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20 Second, Proposed Intervenor’s interests are adequately represented by another party.  
21 Proposed Intervenor seek to intervene to argue that the departure granted is larger than the tower  
22 width permitted by the Code.<sup>3</sup> This is the exact argument Appellant intends to pursue. Indeed,  
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24 <sup>1</sup> Many of the issues raised, such as concerns regarding a private view or shadows on public spaces that are not listed  
25 as protected open space in the City’s State Environmental Policy Act (“SEPA”) policies, are likely not issues to  
26 which the Hearing Examiner has jurisdiction if the Proposed Intervenor would have timely appealed.

<sup>2</sup> The Hearing Examiner does not have jurisdiction to hear Appellant’s claims in this Appeal, and Applicant  
27 accordingly intends to file a motion to dismiss the Appeal by May 30, 2017.

<sup>3</sup> The other elements in which Proposed Intervenor propose to bring into the appeal are outside the scope of the  
28 appeal and cannot be heard. HER 3.09(c); HER 3.01(d) (requiring that specific objections to the decision be noted  
in the appeal).

1 Proposed Intervenors do not explain how their arguments regarding those issues within the  
2 Hearing Examiner's jurisdiction will differ from the Appellant's arguments challenging the  
3 departure. *See, e.g., Spokane Cnty. v. State*, 136 Wn.2d 644, 650, 966 P.2d 305, 308 (1998)  
4 (denying a union's motion to intervene even though the union may be affected by the outcome of  
5 the case because its interest is not direct and the union presented no argument that is different  
6 from the arguments advanced by the Public Employment Relations Commission). Proposed  
7 Intervenor Aramburu attempts to distinguish himself from the Appellant by virtue of the fact that  
8 Mr. Aramburu is a resident of the area, and the Appellant owns a business in the area. Based on  
9 the limited issues in this appeal, this distinction is of no moment. Concerns regarding views,  
10 light, and shadows are not at issue in this appeal and a residential perspective accordingly does  
11 not differ from the perspective of the Appellant. There are no issues on appeal in which  
12 residential concerns are not fully represented by a business owner.

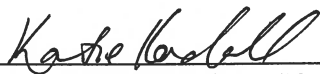
15 Finally, as noted above, Proposed Intervenors expand the issues well beyond the limited  
16 scope of the appeal, in contravention to HER 3.09(c). To the extent the Hearing Examiner has  
17 jurisdiction over Appellant's claims, it is related solely to the magnitude of the departure granted  
18 by the Design Review Board. Concerns regarding views from private residences, light to  
19 buildings, and shadows on privately-owned public spaces were not raised by Appellant.  
20 Prospective Intervenors' motions should accordingly be denied.

## 22 VI. CONCLUSION

23 Proposed Intervenors do not meet the intervention criteria set forth in HER 3.09 in this  
24 Appeal. For these reasons, Applicant respectfully requests that the Hearing Examiner deny the  
25 Motions to Intervene.  
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1 Respectfully submitted this 26<sup>th</sup> day of May, 2017.

2 MCCULLOUGH HILL LEARY, P.S.

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4 By:   
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6 Katie Kendall, WSBA #48164  
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