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8 BEFORE THE HEARING EXAMINER
9 FOR THE CITY OF SEATTLE

10 In the Matter of the Appeals of:

11 621 APARTMENTS LLC, ROY STREET
12 COMMONS LLC, ERIC AND AMY
13 FRIEDLAND, RAISSA RENEE LYLES,
14 SEATTLE SHORT TERM RENTAL
15 ALLIANCE, SEA TO SKY RENTALS, AND
MICHELLE ACQUAVELLA

16 of the adequacy of the Determination of Non-
17 Significance (DNS) for Land Use Code and
18 Licensing Code text amendments relating to short
term rentals issued by the Director, Seattle
Department of Construction & Inspections.

Hearing Examiner Files:

W-17-002
W-17-003

APPELLANTS' MOTION FOR
SUMMARY JUDGMENT

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20 I. INTRODUCTION AND RELIEF REQUESTED

21 This appeal is about the elimination of housing. The City of Seattle ("City") proposes to
22 severely restrict short term rental of residential properties, an important housing type for a wide
23 range of people. Short term rental provides housing for patients of Seattle's world class medical
24 institutions and their families; visiting faculty and other staff at our universities; people working
25 here in a wide range of professions, including technology, health care and entertainment, either
26 on a temporary basis or relocating here; and people visiting for reasons other than vacation,
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1 including divorced parents seeing their children and grandparents helping to care for
2 grandchildren. These people need a home here in Seattle, just not for more than 30 days in a
3 row.

4 When conducting environmental review on a nonproject action such as this one, the State
5 Environmental Policy Act (“SEPA”) requires the City to describe the proposal in terms of
6 objectives rather than preferred solutions in order to encourage considering and comparing
7 alternatives. WAC 197-11-060(3). Here, the City did exactly the opposite. Instead of
8 describing the City’s objectives and alternatives to achieve them, the City Department of
9 Construction and Inspections (“SDCI”) conducted environmental review on a particular pair of
10 proposed ordinances that contain specific restrictions on short term rental. This approach
11 inhibits the consideration of alternatives that may reduce the environmental impacts of this
12 proposal, in violation of SEPA.

13 The Hearing Examiner should grant summary judgment in this matter on this basis alone
14 and should remand the Determination of Insignificance (“DNS”) to SDCI for further review
15 based on an appropriate proposal description.

16 II. STATEMENT OF FACTS

17 While the proposal before the Hearing Examiner was issued only recently, the Mayor and
18 City Council began considering limitations on short term rentals more than a year ago. The
19 City’s stated goal is to maintain the long term rental stock so that housing affordability is not
20 impacted. A committee of the City Council held two briefings on this subject in 2016. At each
21 briefing, the room was packed with short term rental owners, operators, employees, contractors
22 and tenants, who explained: (1) short term rental does not impact housing affordability; and (2)
23 the proposal would result in significant adverse impacts to Seattle property owners, tenants,
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1 business, families and the environment. Declaration of Courtney A. Kaylor in Support of
2 Appellants' Motion for Summary Judgment ("Kaylor Declaration"), Exs. A, B, C; Affordable
3 Housing, Neighborhoods & Finance Committee, June 15, 2016, public testimony;¹ Affordable
4 Housing, Neighborhoods & Finance Committee, July 20, 2016, public testimony.²

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6 At the close of the second briefing on July 20, 2016, the proposal's sponsor,
7 Councilmember Burgess, promised that "as we get toward the end of the summer, when we shift
8 into legislation writing phase, we'll be forming a working group on that including stakeholders
9 from the community, from the rental platforms and others that are interested in this . . ."

10 Affordable Housing, Neighborhoods & Finance Committee, July 20, 2016, at 49:30-49:46. This
11 working group never materialized. Instead of using a collaborative public process involving a
12 stakeholder working group, the City proceeded to develop a very specific proposal internally.

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14 SDCI then issued its DNS on this specific proposal, which consists of two separate
15 ordinances totaling 36 pages amending the Land Use Code (Seattle Municipal Code Title 23) and
16 Licensing Code (Seattle Municipal Code Title 6, Subtitle I). Kaylor Declaration, Exs. D. and E.
17 The DNS describes the proposal as: "The adoption of two companion ordinances to define and
18 add land use and licensing standards related to short-term rentals, modify the definition and land
19 use standards for bed and breakfast uses, and update and clarify related provisions." Kaylor
20 Declaration, Ex. F, p. 1 (emphasis added). Among other things, these ordinances:
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- 23 • Limit short term rentals to the operator's primary residence plus one additional
24 residence per operator. (An operator is a property owner or tenant.)
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27 ¹ The video recording of this Committee meeting is at <https://www.seattlechannel.org/mayor-and-council/city-council/2016/2017-affordable-housing-neighborhoods-and-finance-committee?videoid=x65766>.

28 ² The video recording of this Committee meeting is at <https://www.seattlechannel.org/mayor-and-council/city-council/2016/2017-affordable-housing-neighborhoods-and-finance-committee?videoid=x66570>.

- Require all existing short term rentals to come into compliance with these limits within one year, which will require the termination of many short term rentals.
- Provide limited grandfathering for units located in three of the City’s six Urban Centers, if the operator provides a business license for the short term rental use in effect on the effective date of the proposed legislation, records demonstrating collection and remittance of all taxes for the 12-month period prior to the effective date, and a registry of dates the unit was used for short term rental during the same 12-month period.

Kaylor Declaration, Ex. D, Sections 6.600.030, 6.600.070; Kaylor Declaration, Ex. E, Section 23.42.060.G.

The proposal does not discuss alternatives to accomplish the City’s stated purpose of avoiding impacts to housing affordability, such as the imposition of a tax or fee on short term rental, as was recommended by the City’s Housing Affordability and Livability Task Force. See Kaylor Declaration, Ex. G. The proposal does not discuss other methods for regulating short term rental, although others exist and have been implemented across the country, and were previously considered by Council. The proposal does not discuss the option of allowing each operator to have more short term rentals. The proposal does not discuss grandfathering all nonconforming short term rentals, as is generally the case with all other land uses in Seattle under SMC 23.42.104 (“Any nonconforming use may be continued, subject to the provisions of this section.”). The proposal does not discuss a longer time period for existing short term rentals to come into compliance, although the Council proposed a 10-year period for compliance just last year. See Kaylor Declaration, Ex. B, Modified Policy Approach – July 20, 2016/Short Term Rental Regulations – Taking the Next Step. The proposal does not discuss grandfathering for the

1 three other Urban Centers in Seattle – one of which is directly adjacent to two of the Urban
2 Centers in which grandfathering is allowed. Kaylor Declaration, Ex. H (proposal excludes First
3 Hill/Capitol Hill Urban Center from grandfathering). In short, the proposal is unnecessarily
4 narrow, and restricts rather than encourages the consideration of alternatives.

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6 This specific and narrow description of the proposal improperly curtails the scope of
7 environmental review. It limits the information generated and provided to the public and
8 decision makers through the environmental review process.

9 Appellants filed a timely appeal of the DNS to the Hearing Examiner raising a number of
10 issues. Appellants now move for summary judgment on one of the issues, whether the
11 description of the proposal violates the requirements of SEPA.
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13 **III. STATEMENT OF ISSUES**

14 The issue presented in this motion is whether the Hearing Examiner should grant
15 summary judgment in favor of Appellants because the DNS failed to describe the proposal in
16 terms of objectives rather than preferred solutions, in violation of SEPA.
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18 **IV. EVIDENCE RELIED UPON**

19 This motion relies on the pleadings and papers on file in his action and the Kaylor
20 Declaration, submitted concurrently with this motion.

21 **V. AUTHORITY**

22 **A. The Hearing Examiner should grant summary judgment when there is no genuine**
23 **issue of material fact and Appellants are entitled to judgment as a matter of law.**

24 The Hearing Examiner should grant summary judgment when there is no genuine issue of
25 material fact and the moving party is entitled to judgment as a matter of law. Civil Rule 56;
26 Hearing Examiner Rule of Practice and Procedure, Rule 1.03(c), 2.16. Here, there is no genuine
27 issue of material fact regarding the description of the proposal in the DNS. The DNS speaks for
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1 itself. In addition, Appellants are entitled to judgment as a matter of law because, on its face, the
2 proposal description does not comply with WAC 197-11-060(3)(iii). Accordingly, the Hearing
3 Examiner should grant summary judgment to Appellants.

4 **B. The DNS fails to describe the proposal in terms of objectives and to encourage**
5 **consideration of alternatives in violation of SEPA.**

6 One of the fundamental purposes of SEPA is to provide disclosure of environmental
7 impacts to the public and to decision makers so that they can be fully informed when they take
8 action. RCW 43.21C.030(2)(a), (b).

9
10 In order to accomplish this purpose, under SEPA, agencies “shall make certain that the
11 proposal that is the subject of environmental review is properly defined.” WAC 197-11-060(3).

12 (iii) Proposals should be described in ways that encourage considering and comparing
13 alternatives. Agencies are encouraged to describe public or nonproject proposals in
14 terms of objectives rather than preferred solutions. A proposal could be described, for
15 example, as "reducing flood damage and achieving better flood control by one or a
16 combination of the following means: Building a new dam; maintenance dredging; use
of shoreline and land use controls; purchase of floodprone areas; or relocation
assistance."

17 WAC 197-11-060(3)(iii) (emphasis added); *see also* WAC 197-11-784 (a proposal exists when
18 an agency “has a goal and is actively preparing to make a decision on one or more alternative
19 means of accomplishing that goal, and the environmental effects can be meaningfully
20 evaluated”; a proposal may include “other reasonable courses of action.”).

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22 With regard to nonproject actions, the Department of Ecology SEPA Handbook (“SEPA
23 Handbook”) instructs:

24 Whenever possible, the proposal should be described in terms of alternative means of
25 accomplishing an objective [WAC 197-11-060(3)(a)]. For example, a statewide plan for
26 use of chemicals to treat aquatic vegetation could be described as a plan to control
27 aquatic vegetation. This would encourage the review of various alternatives for treating
28 vegetation in addition to the use of chemicals. This might include a review of biological
or mechanical methods, or a combination of the various methods.

1 SEPA Handbook, Section 4.1.

2 This is important because “[t]he range of alternative courses of action considered by
3 decision makers shall be within the range of alternatives discussed in the relevant environmental
4 documents.” WAC 197-11-655. Accordingly, the failure to properly define a proposal in terms
5 of various means of accomplishing an objective may preclude the decision makers from
6 considering or adopting alternatives.
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8 Contrary to this requirement, here the proposal is described as specific text amendments
9 set out in the two proposed ordinances. As previously discussed, these ordinances: (1) limit
10 short term rentals to the operator’s primary residence plus one additional residence; (2) require
11 all short term rentals to comply with in one year; and (3) provides very limited grandfathering in
12 only three of the City’s six Urban Villages, among other things. The proposal is not described in
13 terms of its objectives. Alternative means of achieving the City’s goals are not identified or
14 discussed as part of the proposal description. Kaylor Declaration, Exs. D, E, F.
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16 Because the description of the proposal is so narrow, the environmental review does not
17 address potential alternatives to the proposal. Kaylor Declaration, Ex. F. As previously
18 discussed, these may include imposing a tax or fee on short term rental use; allowing an operator
19 to have more short term rentals; making changes to the grandfathering provisions; or other
20 options. The environmental review also fails to address how various options may reduce the
21 environmental impacts associated with curtailing short term rental, an important housing type in
22 the City. *Id.*
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25 In sum, the City failed to describe the proposal terms of its objectives or in a way that
26 encourages considering and comparing alternatives, in violation of WAC 197-11-060. The
27 City’s approach to environmental review improperly limited the range of options studied and the
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1 scope and quality of information provided to decision makers. This result is the exact opposite
2 of the full disclosure called for by SEPA.

3 The Hearing Examiner should grant summary judgment on this issue.

4 **VI. CONCLUSION**

5 For these reasons, the Hearing Examiner should grant summary judgment and should
6 remand the DNS to SDCI for further review based on an appropriate proposal description.
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8 DATED this 30th day of June, 2017.

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