

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeals of:) Hearing Examiner Files:
)
) **W-17-002 and W-17-003 (consolidated)**
)
621 APARTMENTS LLCS, AND SEATTLE)
SHORT TERM RENTAL ALLIANCE, SEA)
TO SKY RENTALS AND MICHELLE)
ACQUAVELLA.) CITY OF SEATTLE'S RESPONSE TO
) APPELLANTS' MOTION FOR
from a Determination of Non-Significance for) SUMMARY JUDGMENT
Land Use Code and Licensing Code Text)
Amendments Related to Short Term Rentals.)

I. INTRODUCTION

Respondent City of Seattle ("City") respectfully moves the Hearing Examiner to deny the Appellants' Motion for Summary Judgment because SEPA does not require consideration of alternatives when a DNS has been issued. Further, contrary to Appellants' claims, the City appropriately described the non-project proposal and its objectives in the DNS. For these reasons, the Hearing Examiner should deny Appellants' Motion for Summary Judgment.

II. EVIDENCE RELIED UPON

This motion relies on the Declaration of Christina Ghan and supporting papers, and papers on file with the Examiner for this action.

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1 **III. AUTHORITY**

2 Appellants' based their motion for Summary Judgment on the false claim that the City
3 failed to comply with the requirements of SEPA because the proposal description is inadequate
4 where it failed to evaluate "alternatives."¹ Appellants' claims are without merit.

5 Appellants' challenge is fundamentally based on their desire that the Seattle City Council
6 pursue different regulations than what Council is currently considering. Appellants want Council
7 to consider the economic impacts to operators over the impacts to the long-term rental housing
8 market. The scope of the proposal is a policy decision for the applicant to make, here the Seattle
9 City Council, not Appellants. Moreover, case law is clear that SDCI not need analyze alternatives
10 when issuing a Determination of Non-Significance (DNS). Appellants' desire for a different
11 legislative proposal is therefore not a viable basis to challenge a DNS under SEPA. For this
12 reason, the Examiner must deny Appellants' motion for summary judgment.

13 **a. Seattle City Council, as proposal proponent, is not required in the DNS to**
14 **propose or study "alternatives" to their current proposal.**

15 Appellants imply or state outright that the City Council should have defined the proposal
16 differently² and that the scope of the current proposal "inhibits consideration of alternatives... in
17 violation of SEPA."³ However, SEPA doesn't require alternatives to be considered when a DNS
18 is issued, as occurred here. While an environmental impact statement (EIS) must include
19 reasonable alternatives to the proposed action,⁴ under an agency's DNS, an EIS need not be
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21 ¹ Appellants' Motion for Summary Judgment, *see e.g.*, "Issue Statement."

22 ² Appellants suggest the City did not discuss "alternatives" such as the imposition of a tax or fee on these rentals, other
23 methods for regulating these rentals, allowing each operator to have more short-term rentals, discussing grandfathering
or allowing a longer period for existing short-term rentals to come into compliance. Pp. 4:14-5:8 of Appellants'
Motion for Summary Judgment.

³ P. 2, lines 4-14 of Appellants' Motion for Summary Judgment.

⁴ *Id.*; RCW 43.21C.110(1)(d); SMC 25.05.400(B) and .402A.

1 prepared, and alternatives need not be analyzed.⁵ Because the City issued a DNS for the proposal,
2 alternatives are not required to be analyzed as a matter of law.⁶ The Hearing Examiner has
3 followed this law on numerous occasions.⁷ Therefore, as a matter of law, alternatives do not
4 arise when a DNS was issued. For this reason, Appellants' motion for summary judgment should
5 be denied.

6 **b. Seattle City Council, as proposal proponent, is not required to propose a course**
7 **of action that short-term rental operators prefer and, in any event, such alleged**
8 **failure does not serve as a basis to challenge the DNS.**

9 Appellants desire for a policy proposal different than the current proposal does not serve
10 as a basis to challenge the DNS. The City elected to propose a policy schema to regulate short-
11 term rentals that is different than appellants would like; however, the scope of the Legislation
12 proposal is not appealable to the Examiner under SEPA.⁸

13 The proposal proponent, in this case, the Seattle City Council, is the one to define the policy
14 objectives of the proposal, not a limited subset of short-term rental operators or owners.⁹ And it is
15 the reviewing agency, in this case, SDCI, that makes certain the proposal is "properly defined" for
16 SEPA purposes; this determination is also not subject to administrative appeal to the Hearing
17 Examiner.¹⁰ The contours of the non-project proposal are not a SEPA issue; rather, the scope of the

18 ⁵ RCW 43.21C.030(2)(c), 43.21.031(1), and WAC 197-11-340(1).

19 ⁶ *Chuckanut Conservancy v. Washington State Dep't of Natural Resources*, 156 Wn. App. 274, at 1163, 232 P.3d 1154
20 ("Threshold determinations do not examine alternatives...."); *Murden Cove Preservation Association v. Kitsap*
21 *County*, 41 Wn. App. 515, at 525, 704 P.2d 1242 (Div. I, 1985) ("...where a declaration of nonsignificance is not
22 clearly erroneous, no consideration of alternative sites is required under RCW 43.21C.030(2)(c)(iii)); and *San Juan*
23 *County v. Department of Natural Resources*, 28 Wn. App. 796, at 801, 626 P.2d 995 (1981).

⁷ See, e.g., *In re: Nancy R. Malmgren*, W-16-002, Order on Motion to Dismiss, Findings No. 5; *In re The Ballard*
Business Appellants, W-08-007, Order on Second Motion for Reconsideration and Motions to Strike Declaration;
Appeal of Fremont Neighborhood Council, et al., W-08-005, Order; *In re Aurora Avenue Merchants Association*, W-07-
001, Order of November 30, 2007; *In re Donnelly*, W-05-007 *et seq.*, Findings and Decision; *In re Marino*, MUP-01-014,
Findings and Decision.

⁸ SMC 25.05.680.A.2.a.1.

⁹ SMC 25.05.060/WAC 197-11-060(3).

¹⁰ SMC 25.05.680.A.2.a.1 (authorizing administrative SEPA appeals of DNSs or the adequacy of an EIS to the
Examiner).

1 regulations of short-term rentals is a policy decision to be determined by the City Council, not some
2 segment of short-term rental operators and owners. But if such operators and owners want policy
3 changes to the proposal, they should lobby the Councilmembers. Appellants' disagreement with the
4 scope of the proposal is irrelevant to the issue to be decided by the Examiner in a DNS appeal:
5 *whether the proposal is likely to result in significant, adverse impacts to an element of the*
6 *environment.* Therefore, the Examiner should deny their motion for summary judgment.

7 Further, even if it did serve as a valid basis to challenge the DNS, which it does not, the
8 Appellants' claim that the City "failed to describe the proposal in terms of objectives rather than
9 preferred solutions" is patently false. The City carefully set forth the non-project proposal's
10 objectives in the DNS, the SEPA checklist and the April 2017 Policy Report. In the DNS, under
11 "Summary of Proposed Action," it states:¹¹

12 The proposal is a non-project action, applicable City-wide, that would update the
13 Land Use Code (Title 23) and Licensing Code (Title 6) to address short-term rentals
14 as an emerging type of land use and business activity. The proposal is intended to
15 help preserve the availability of long-term rental housing, protect the livability of
16 residential neighborhoods, and allow the economic opportunity that short-term
17 rentals offer residents of Seattle.

18 In addition, the DNS provides information about the lack of current regulation of housing
19 units for night or weekly rentals, it states several times that the Land Use code lacks specific
20 regulations to address the short-term rental type of business and it also provides that the
21 conversion of housing units from permanent rental housing to nightly and weekly rentals has
22 increased concerns about the ensuing loss of housing for long term rentals.¹² The DNS provides:¹³

23 The proposal is intended to update the Land Use Code and Licensing Code
(hereafter "Codes") to address this emerging land use in a way that helps preserve

¹¹ See p. 1 of Exhibit E to Aly Pennucci Declaration in Support of City's Motion to Dismiss (Determination of Non-Significance, or DNS).

¹² P. 2 of Ex. E to Pennucci Decl. in support of City's Motion to Dismiss (DNS).

¹³ *Id.*

1 the availability of long-term rentals and reduces any indirect negative effects on the
2 availability of affordable housing, while allowing the economic opportunity that
short-term rentals offers residents of Seattle.

3 This is also consistent with the objectives and goals of the proposal set forth in the SEPA
4 checklist.¹⁴ Finally, this is also consistent with the policies discussed in the April 2017 policy
5 report prepared by Councilmember Burgess's staff.¹⁵ The report lays out three goals that
6 government regulation should support, including the regulation of short-term rental housing,
7 noting among other goals: "Primary goal: providing economic opportunity while maintaining
8 rental housing stock."¹⁶ The proposal complies with WAC 197-11-060(3)(iii) by setting out the
9 policy objectives of the proposal.

10 Further, this current proposal is the second attempt the Council has made to adopt
11 regulations of short-term rentals. As noted in Appellants' Motion for Summary Judgment, the
12 Council heard briefings in 2016¹⁷ and even prepared a different proposal that was evaluated under
13 SEPA in 2016. However, upon further evaluation, the proposal proponent, here Council, modified
14 its policy goals to be more restrictive to commercial short-term rental operations, due in part
15 because of the impacts to neighbors and the rapid growth of larger commercial operations, as set
16 forth in the policy report, DNS, and environmental checklist. For that reason, Council asked SDCI
17 to prepare a new environmental checklist and DNS based on revised policy goals. And all of this
18 is part of the legislative process and does not rise to any sort of claim under SEPA.

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21 ¹⁴ See p. 3 of Exhibit A to Declaration of Christina Ghan in support of City's Response to Motion for Summary
22 Judgment (SEPA checklist).

23 ¹⁵ P. 7 of Exhibit D to Pennucci Declaration in support of City's Motion to Dismiss (Councilmember Burgess' Policy
Report).

¹⁶ *Id.*

¹⁷ P. 2:19-24 of Appellants' Motion for Summary Judgment.

1 Likewise, the City's alleged failure to form a "working group" of interested individuals or
2 groups during the development of the legislative proposal does not constitute a valid basis to
3 challenge the DNS. SEPA requires public comment and public hearing requirements; however,
4 SEPA does not require creation of a group to provide feedback on a proposal. For these reasons,
5 Appellants' fail to establish any basis to grant their motion for summary judgment.

6 IV. CONCLUSION

7 The City respectfully asks the Hearing Examiner to deny Appellants' Motion for Summary
8 Judgment because SEPA does not require consideration of alternatives when issuing a DNS.
9 Additionally, the evidence in the record establishes that, contrary to Appellants' claims, the City
10 appropriately described the non-project proposal and its objectives in the DNS and environmental
11 checklist. For these reasons, the Examiner must deny Appellants' Motion for Summary Judgment.

12 DATED this 14th day of July 2017.

13 PETER S. HOLMES
14 Seattle City Attorney

15 By: s/Elizabeth E. Anderson, WSBA #34036
16 Assistant City Attorney
17 liza.anderson@seattle.gov
18 Seattle City Attorney's Office
19 701 Fifth Ave., Suite 2050
20 Seattle, WA 98104
21 Ph: (206) 684-8202
22 *Attorneys for Respondent*
23 *The City of Seattle*

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I also certify that on this date, a copy of the same document was sent via email to the following party:

the foregoing being the last known address of the above-named parties.

Dated this 14th day of July 2017, at Seattle, Washington.

Alicia Reise
ALICIA REISE, Legal Assistant