BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeals of: 621 APARTMENTS LLC, ROY STREET COMMONS LLC, ERIC AND AMY FRIEDLAND, RAISSA RENEE LYLES, SEATTLE SHORT TERM RENTAL ALLIANCE, SEA TO SKY RENTALS, AND MICHELLE ACQUAVELLA of the adequacy of the Determination of Non-Significance (DNS) for Land Use Code and 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' REPLY ON MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

In its response brief, the City of Seattle ("City") argues that a Determination of Nonsignificance ("DNS") does not need to consider alternatives. This is a red herring. Appellants 621 Apartments *et al.* ("Appellants") do not argue that an evaluation of alternatives was required in the DNS. Instead, Appellants argue that the proposal should have been described in a way that encourages the consideration of alternatives by the decision makers. These are two different things. The latter is black letter law, based on the plain language of the

McCullough Hill Leary, PS
701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
206.812.3388
206.812.3389 fax

SEPA Rules (WAC Chapter 197-11) and the corresponding provisions of the City's Environmental Policies and Procedures (Seattle Municipal Code ("City Code" or "SMC") Chapter 25.05). The City failed to comply with this requirement. Accordingly, the Hearing Examiner should grant summary judgment in this matter and should remand the DNS to the Seattle Department of Construction and Inspections ("SDCI") for further review based on an appropriate proposal description.

II. AUTHORITY

A. The Hearing Examiner should disregard the City's argument that no alternatives analysis is required.

The City argues primarily that no alternatives analysis is required in the DNS. City of Seattle's Response to Appellants' Motion for Summary Judgment ("City's Response"), pp. 1-3. This argument and the authority on which the City relies are inapposite here. The Hearing Examiner should disregard them. Appellants do not claim that the DNS was required to include an analysis of alternatives. Instead, Appellants argue that the definition of the proposal is inadequate because it describes the proposal in terms of preferred solutions – here, a set of particular ordinances – rather than objectives. This is directly contrary to the requirements of WAC 197-11-060(3) and the corresponding City Code provision, SMC 25.05.060.C.1.c. The Hearing Examiner must reject the City's straw man argument.

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

The City argues that: (1) the City Council is the entity that defines the policy objectives of the proposal; (2) the proposal definition is not subject to administrative appeal but, instead, the sole issue is whether the proposal will result in significant adverse impacts; (3) the City defined

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701 Fifth Avenue, Suite 6600
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206.812.3389 fax

the proposal in terms of its policy objectives; and (4) the City's actions in 2016 do not give rise to a claim under SEPA. These arguments are without merit.

First, the City's argument that the City Council defines its policy objectives is another straw man. Appellants are not suggesting that they should define the City Council's policy objectives. Rather, they are asserting that these DNS should describe the proposal in terms of the Council's policy objectives as required by the express language of WAC 197-11-060(3) and SMC 25.05.060.C.1.c. Instead of following this statutory and City Code mandate, the City here defined the proposal as a specific set of proposed ordinances. Declaration of Courtney A. Kaylor in Support of Appellants' Motion for Summary Judgment ("Kaylor Declaration"), Ex. F, p. 1. This improperly constrains the scope of environmental review and results in less environmental information for the City Council to consider than if the proposal were more broadly described. This is the opposite of what SEPA intends. RCW 43.21C.030(2)(a), (b).

Second, the City relies on SMC 25.05.680.A.2.a.1 for its assertion that the definition of the proposal is not subject to administrative appeal. Yet, this section simply provides that a DNS is subject to appeal to the Hearing Examiner. This section supports Appellants, not the City. Obtaining information about the proposal is an integral part of environmental review that culminates in issuance of the DNS. City Code section 25.05.060 is entitled "Content of environmental review," and provides that "Environmental review consists of the range of proposed activities, alternatives and impacts to be analyzed in an environmental document . . . This section specifies the content of environmental review common to all environmental documents required under SEPA." SMC 25.05.060.A. The requirement for proper definition of a proposal is contained in this section. Specifically, SMC 25.05.060 provides that agencies "shall make certain that the proposal that is the subject of environmental review is properly

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701 Fifth Avenue, Suite 6600
Seattle, Washington 98104
206.812.3388
206.812.3389 fax

defined." SMC 25.06.060.C.1; *see also* WAC 197-11-060(3). In addition, this section provides: "Proposals should be described in ways that encourage considering and comparing alternatives. Agencies are encouraged to describe public or nonproject proposals in terms of objectives rather than preferred solutions." SMC 25.06.060.C.1.c; *see also* WAC 197-11-060(3)(iii). Thus, the definition of a proposal is part of the environmental review culminating in the DNS that is the subject of this appeal, not something separate, as the City asserts.

Third, it is simply incorrect as a matter of fact that the City defined the proposal in terms of its objectives. The DNS is very clear about how the proposal is defined. The DNS describes the proposal as: "The adoption of two companion ordinances to define and add land use and licensing standards related to short-term rentals, modify the definition and land use standards for bed and breakfast uses, and update and clarify related provisions." Kaylor Declaration, Ex. F, p. 1 (emphasis added). While the DNS mentions the City Council's policy objectives, these do not define the proposal. To the contrary, the proposal is defined narrowly – as a "preferred solution" rather than "in terms of objectives" – directly contrary to the requirements of the City Code and state law. SMC 25.06.060.C.1.c; *see also* WAC 197-11-060(3)(iii). This improperly restricts the City Council's ability to adjust the specific provisions of the legislation within the parameters of its policy goals as it considers this legislation in the future.

Fourth, the City's portrayal of the proceedings in 2016 are not accurate. The City never released draft legislation in 2016, and the DNS it prepared in 2016 was withdrawn.[1] The fact that the City considered different approaches to the issue of short term rentals in 2016 – and the fact that Councilmember Burgess recognized the importance of future stakeholder input – is

[1] http://web6.seattle.gov/dpd/luib/Notice.aspx?BID=1149&NID=22772. The Hearing Examiner may take official notice of this fact under Hearing Examiner Rules of Practice and Procedure ("Hearing Examiner Rules"), Rule 2.18.

McCullough Hill Leary, PS
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Seattle, Washington 98104
206.812.3388
206.812.3389 fax

relevant because it illustrates that there are many different approaches the City Council may take to meet its policy objectives on short term rental. The DNS improperly chose only one of these approaches – the set of two proposed ordinances – to review. This puts the cart before the horse. The role of environmental review is to inform the City Council, not to constrain its options. *See Polygon Corp. v. Seattle*, 90 Wn.2d 59, 63-64, 578 P.2d 1309 (1978) ("SEPA requires the disclosure and full consideration of environmental impacts in governmental decision making."). Here, the DNS did exactly the opposite, by narrowly defining the proposal and, correspondingly, the scope of environmental review, in direct violation of the City Code and state law. SMC 25.06.060.C.1.c; WAC 197-11-060(3)(iii).

The Hearing Examiner should reverse the DNS on this basis alone.

III. CONCLUSION

For these reasons, the Hearing Examiner should grant summary judgment and should remand the DNS to SDCI for further review based on an appropriate proposal description.

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s/Courtney A. Kaylor, WSBA #27519
Attorneys for Appellants
McCULLOUGH HILL LEARY PS
701 Fifth Avenue, Suite 6600
Seattle, WA 98104
Tel: 206-812-3388
Fax: 206-812-3389
Email: courtney@mhseattle.com