BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of

621 APARTMENTS LLC, ET AL.

of a Determination of Nonsignificance issued by the Director, Seattle Department of Construction and Inspections.

Hearing Examiner File:
W-17-002 AND W-17-003

ORDER ON MOTION for SUMMARY JUDGMENT

Appellants 621 Apartments LLC, Roy Street Commons LLC, Eric and Amy Freidland, Raissa Renee Lyles, Seattle Short Term Rental Alliance, Sea to Sky Rentals, and Michelle Acquavella ("Appellants") moved for summary judgment in the above-referenced appeals on June 30, 2017. The Director, Seattle Department of Construction and Inspections ("Department") filed a response to the motion on July 14, 2017. The Appellants filed a reply on July 21, 2017. The Hearing Examiner has reviewed the file in this matter including the motion documents.

These appeals challenge a State Environmental Policy Act ("SEPA") Determination of Non-significance ("DNS") issued by the Director on April 24, 2017 for text amendments to the Seattle Land Use Code and Licensing Code related to short term rentals. If enacted, the amendments would add land use and licensing standards related to short-term rentals to the Code.

Quasi-judicial bodies, like the Examiner, may dispose of an issue summarily where there is no genuine issue of material fact. *ASARCO Inc.* v. *Air Quality Coalition,* 92 Wn.2d 685, 695-698, 601 P.2d 501 (1979). Rule 1.03 of the Hearing Examiner Rules of Practice and Procedure ("HERs") states that for questions of practice and procedure not covered by the HERs, the Examiner "may look to the Superior Court Civil Rules for guidance." Civil Rule 56(c) provides that a motion for summary judgment is properly granted where "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law."

"A party may move for summary judgment by setting out its own version of the facts or by alleging that the nonmoving party failed to present sufficient evidence to support its case ... Once the moving party has met its burden, the burden shifts to the nonmoving party *to present admissible evidence demonstrating the existence of a genuine issue of material fact.* ... If the nonmoving party does not meet that burden, summary judgment is appropriate." *Indoor Billboard/Washington, Inc.* v. *Integra Telecom of Washington, Inc.,* 162 Wn.2d 59, 70, 170 P.3d 10 (2007) (internal citations omitted) (emphasis added). "An affidavit does not raise a genuine issue for trial unless it sets forth facts evidentiary in nature, *i.e.,* information as to ... a reality as distinguished from supposition or opinion." *Curran* v. *City of Marysville,* 53 Wn.App. 358, 367, 766 P.2d 1141 (1989), *quoting Grimwood* v. *University of Puget Sound, Inc.,* 110 Wn.2d 355, 359, 753 P.2d 517 (1988). Ultimate facts, conclusions of fact, or conclusory statements of fact are insufficient to raise a question of fact. *Id.* "The whole purpose of summary judgment procedure would be defeated if a case could be forced to trial by a mere assertion than an issue exists without

any showing of evidence." *Meissner* v. *Simpson Timber Co.*, 69 Wn.2d 949, 956, 421 P.2d 674 (1966) (citation omitted).

The Appellants argue in the motion that the DNS violated SEPA requirements under WAC 197-11-060(3) (reflected in SMC 25.05.060.C) to describe the proposal in terms of objectives rather than preferred solutions. The Department responds that the Hearing Examiner does not have jurisdiction over this issue.

SMC 25.05.680.A.2.a.1. reads as follows: "The following agency environmental determinations shall be subject to appeal to the Hearing Examiner by any interested person as provided in this subsection: . . . Determination of Nonsignificance (DNS)." The Code does not designate the Department's identification of the proposal as a separate decision from its environmental determination. The definition of the proposal is inherently part of the Department's decision that an Environmental Impact Statement is not required, as it influences from the outset the potential significant adverse environmental impacts that will be considered in the SEPA analysis.

Appellants do not support their motion with reference to any case law, and do not explain how the permissive language of SMC 25.05.060.C.1.c should be considered mandatory for agencies planning under SEPA. SMC 25.05.060.C.1.c states: "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." (emphasis added). Moreover, summary judgment should only be granted where there is "no genuine issue as to any material fact." *Hudsman v. Foley*, 73 Wn.2d 880, 886, 441 P.2d 532 (1968). Here, there is a dispute as to whether the Department defined the proposal in terms of policy objectives rather than preferred solutions. Both parties submitted substantial fact based declarations that described in conflicting detail the nature of the proposal and how the Department described it in the DNS. These fact-based arguments present a genuine issue of material fact. Thus, even if the language of SMC 25.05.060.C.1.c were mandatory, rather than permissive, summary judgment would not be appropriate here.

The Appellants' motion for summary judgment is **DENIED.**

Entered this 16th day of August, 2017.

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