

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeal of

621 APARTMENTS LLC, ET AL.

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

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

**ORDER ON MOTION TO
DISMISS**

The Director, Seattle Department of Construction and Inspections (“Department”) moved to dismiss these appeals on June 30, 2017. 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”), filed a response to the motion on July 14, 2017. The Department 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.

Hearing Examiner Rule (“HER”) 3.02 provides:

An appeal may be dismissed without a hearing if the Hearing Examiner determines that it fails to state a claim for which the Hearing Examiner has jurisdiction to grant relief or is without merit on its face, frivolous, or brought merely to secure delay.

The Department argues in the motion that the Appellants do not have standing to bring their appeals. There is a two-part test for standing to challenge actions under SEPA: (1) the interest sought to be protected must fall within the zone of interests protected by SEPA; and (2) the party must allege an injury in fact. *Lands Council v. Washington State Parks Recreation Com'n*, 176 Wn.App. 787,799, 309 P.3d 734, 740 (2013), citing *Kucera v. State, Dep't of Transportation*, 140 Wn.2d 200, 212, 995 P.2d 63 (2000).

The Department's motion asserts that the Appellants allege harms based only on economic injuries that are not within SEPA's zone of protected interests. The Department also argues that Appellants have failed to demonstrate that they will suffer an injury in fact that would satisfy the second part of the SEPA standing test. In order to show injury in fact, a petitioner must demonstrate that he or she will be adversely affected by the decision; if an injury is merely conjectural or hypothetical, there can be no standing. *Trepanier v. City of Everett*, 64 Wn.App. 380, 383, 824 P.2d 524, 526 (1992), *rev. denied*, 119 Wn.2d 1012 (1992). The Department asserts that the injuries alleged by the Appellants are not immediate, concrete and specific, but are instead conjectural.

Appellants' stated interest as described in the appeals:

The proposed Land Use Code and Licensing Code Text Amendments Related to Short Term Rentals and Bed and Breakfast Uses will prohibit or limit short term rentals. This will reduce housing maintenance, encourage neglect or demolition rather than renovation of existing housing, remove housing from the short and long term rental market, reduce housing affordability, reduce the availability of housing for some segments of the population, impact historic structures and increase traffic. These are significant adverse impacts to the built environment, including housing and aesthetics, relationship to existing land use plans, and policies, and to transportation. These impacts will harm Appellants.

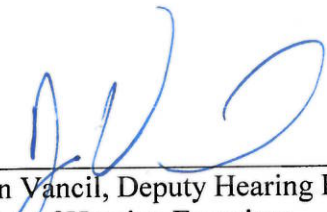
The Appellants in this matter clearly have an economic interest that may be impacted by the proposed legislation as they include property owners who use their properties for short term rentals. The Department argues that due to this interest, Appellants do not have standing to support their SEPA appeal. "It is well established that purely economic interests are not within the zone of interests protected by SEPA." Like the appellants in *Kucera v. State Department of Transportation*, 140 Wn.2d 200, 212, 995, P.2d 63 (2000), the Appellants are "undoubtedly motivated by a desire to protect the economic value of their properties." However, the Appellants' SEPA claim is based on the alleged failure to consider specific environmental effects of the proposal, not its economic effects. See *Kucera, supra* at 212. In addition to the alleged impacts identified in the appeals, Appellants' response includes declarations of its members that identify negative impacts to aesthetics, traffic, and historic resources.

The interests which the Appellants seek to protect through the DNS appeals are within the zone of interests protected by SEPA. The Appellants' notices of appeal and collective declarations in this case allege concrete injuries in fact that would flow from the proposed short term rental legislation. They have made a sufficient showing of injury to have standing to challenge the decision.

As noted, the Department also argues that the injuries alleged by the Appellants are conjectural because the impacts, as described by the DNS, would not cause the harms feared by the Appellants. At this early point in the appeals, this is an issue of fact that must be addressed at the hearing.

The motion is **DENIED**.

Entered this 16th day of August, 2017.



Ryan Vancil, Deputy Hearing Examiner
Office of Hearing Examiner
P.O. Box 94729
Seattle, Washington 98124-4729
Phone: (206) 684-0521
FAX: (206) 684-0536