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8 BEFORE THE HEARING EXAMINER
9 FOR THE CITY OF SEATTLE
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11 In the Matter of Appeal of:

12 ESCALA OWNERS ASSOCIATION

13 Of a Master Use Permit Decision issued by the
14 Director, Seattle Department of Construction &
15 Inspections
16

Hearing Examiner File: MUP-17-035

RESPONDENTS CITY OF SEATTLE AND
JODI PATTERSON-O'HARE'S JOINT
REPLY IN SUPPORT OF
MOTION FOR PARTIAL DISMISSAL

17 I. INTRODUCTION

18 In its response, Escala Homeowners Association ("Appellant") fails to establish facts or
19 demonstrate as a matter of law that the Hearing Examiner has jurisdiction over the Garage
20 Slope/Layout Claim. Specifically, Appellant fails to establish that: (1) the Garage Slope/Layout
21 Claim is truly a State Environmental Policy Act ("SEPA") claim because they concede, as they
22 must, that the claim solely challenges the Project's compliance with the Seattle Municipal Code
23 ("Code") development standards; and (2) the Hearing Examiner has authority to hear Appellant's
24 challenge to the City of Seattle's ("City's") approval of Type I decisions on the application of
25 development standards to the Project when the Appellant failed to file a Code interpretation.
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1 Thus, the City and Jodi Patterson O'Hare ("Applicant") (collectively, "Respondents")
2 request that the Hearing Examiner grant the Joint Motion for Partial Dismissal ("Joint Motion").

3 II. ARGUMENT

4 A. The Garage Layout/Slope Claim challenges the application of the Code, not SEPA

5 Appellant argues that the Garage Layout/Slope Claim addresses a SEPA issue and,
6 therefore, is within the Hearing Examiner's jurisdiction. Appellant's Response to Motion for
7 Partial Dismissal ("Response"), pg. 1. But Appellant's attempt to reclassify the Garage
8 Slope/Layout Claim's Code interpretation challenge as a SEPA challenge fails for three reasons.

9 First, Appellant concedes, as they must, that the plain language of the Garage
10 Layout/Slope Claim alleges that the "proposal *violates code provisions*, which in turn, causes
11 significant adverse environmental impacts." Response, pg. 3 (emphasis added).

12 Appellant now tries to recast the Garage Layout/Slope Claim as a challenge of "the
13 failure to disclosure, analyze and mitigate impacts that will be caused by the decision to exempt
14 the proposal from the code requirements." *Id.*, pg. 4. But Appellant's newly discovered meaning
15 is not reflected in the text. Appellants must raise "specific objections" in its appeal. SMC
16 23.76.022.C.3; Hearing Examiner Rules of Procedure ("Rules") 3.05. Appellant's citation to the
17 general headings of its Notice of Appeal are unavailing where the text of the Garage
18 Layout/Slope Claim expressly challenges the application of the Code to the Project.¹ See
19 Response, pg. 3 (arguing Garage Layout/Slope Claim is "presented under the heading" alleging
20 SEPA violations). The Appellant's attempts to reframe the Garage Layout/Slope Claim must fail.

21 Having realized that the failure to request a Code interpretation here is fatal to its claim,
22 Appellant doubles-down in its attempt to disguise the Garage Layout/Slope Claim as a SEPA
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28 ¹ Appellant also failed to timely amend its Notice of Appeal to clarify the Garage Slope/Layout Claim per Rule 3.05.

1 Claim. This too must fail. In asserting that the Garage Layout/Slope Claim is raising a SEPA
2 issue, Appellant alleges that it will show at hearing that: (1) the City and Applicant relied on a
3 provision of SMC 23.54.030 to exempt the Project's garage from certain stall dimensions and
4 aisle widths due to valet operations; (2) this Code provision requires compliance with additional
5 standards; and (3) that the Project's garage could no longer meet those applicable standards in
6 the hypothetical event that the Project's valet operations ever stopped. Response, pg. 4.
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8 Appellant's purported SEPA impacts are all predicated on these alleged Code interpretation
9 issues. *Id.* In other words, the Garage Layout/Slope Claim is necessarily a challenge to the City's
10 application of the Code to the Project. This is the very definition of a Code interpretation. SMC
11 23.88.020.A ("A decision by the Director as to the meaning, application or intent of any
12 development regulation in [SMC] Title 23...as it relates to a specific property...is known as an
13 'interpretation'."). Appellant admits as much where it describes its argument as a "SEPA claim"
14 that "because the code violates requirements in the code, the proposal may have significant
15 adverse impacts." Response, pg. 2. There can be no doubt the Appellant's claim objects to the
16 City's application of the Code to the Project. Once unpacked using Appellant's own words, the
17 attempt in the Response to disguise its Code interpretation as a SEPA claim falls flat under the
18 weight of its own inconsistencies.
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21 Second, Appellant's Garage Layout/Slope Claim is grounded only in conjecture and
22 speculation. Appellant's argument also concedes, as it must, that the alleged impacts would only
23 happen "if and when" the valet operations ceased. Response, pg. 3 (citing Garage Layout/Slope
24 Claim). In its Response, Appellant has failed to demonstrate any evidentiary facts to demonstrate
25 that the Project's valet operations will necessarily cease. Of course, Appellant cannot. As a
26 matter of law, Appellant's argument here is meritless and should be dismissed.
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1 Lastly, Appellant's Garage Layout/Slope Claim is not one where the Hearing Examiner
2 can grant relief. If, in some future event, Appellant's speculation materializes and the Project's
3 valet operations cease, then the remedy would be *upon the cessation of the valet operations* to
4 initiate a Code enforcement action under SMC Ch. 23.90. As a quasi-judicial official, the
5 Hearing Examiner "has only the authority granted it by statute and ordinance." *HJS*
6 *Development, Inc. v. Pierce County*, 148 Wn.2d 451, 471, 61 P.3d 1141 (2003); SMC 3.02.115;
7 Rule 2.03. The Hearing Examiner lacks authority over Code enforcement actions. *See* SMC
8 23.76.022.B; 23.76.006.C (Code enforcement actions are not listed as a Type II decision
9 appealable to the Hearing Examiner). As a matter of law, the Hearing Examiner does not have
10 jurisdiction to grant relief based on Appellant's speculative assumed future violation of the Code.
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12 For these reasons, Respondents request that the Hearing Examiner grant the Joint Motion.
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14 **B. The Hearing Examiner lacks jurisdiction over the Garage Layout/Slope Claim**
15 **because it is a Type I decision and the Appellant failed to file a Code interpretation**

16 Appellant next argues, in the alternative, that the Hearing Examiner has jurisdiction over
17 the Garage Layout/Slope Claim because Appellant appealed the Type II Master Use Permit for
18 the Project. Response, pg. 4. This is wrong because Appellant misunderstands the difference
19 between Type I and Type II decisions and their associated appeal requirements. Contrary to
20 Appellant's reading, the Code expressly requires the filing of a Code interpretation in order to
21 challenge Type I decisions such as the approval of the Project's garage layout and slope
22 modifications. SMC 23.76.004, Table A; 23 88.020.C. Appellant failed to do so. Joint Motion,
23 pgs. 4-7. Thus, the Hearing Examiner lacks jurisdiction over the Garage Layout/Slope Claim.
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25 Appellant asserts that because the Garage Layout/Slope Claim is "presented in an appeal
26 of a Type II decision," the Hearing Examiner has jurisdiction. Response, pg. 5. Because
27 Appellant is conflating Type I and Type II decisions to manufacture jurisdiction, this claim fails.
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1 As discussed above, the City's approval of the Project's garage layout and slope
2 modifications are Type I decisions that a "proposal complies with development standards." SMC
3 23.76.006.B.1. It is true that Type I decisions are consolidated with Type II decisions as
4 components in a Master Use Permit. SMC 23.76.006.A. However, that fact that the Master Use
5 Permit contains both Type I (compliance with development standards) and Type II (design
6 review and EIS adequacy challenges) decisions does not change the fundamental Code
7 requirement that Type I decisions may only be subject to an administrative appeal to the Hearing
8 Examiner through compliance with SMC 23.88.020 provisions for filing an interpretation. SMC
9 23.76.022.A.1; *In the Matter of the Appeal of Jack Nikfard*, HE File No. MUP-17-019 (DR)
10 (Order on Motion to Dismiss), June 23, 2017, pg. 3. The Type II decision appeal procedures are
11 irrelevant to jurisdiction over a Type I decision challenge. *Id.* The Hearing Examiner should not
12 sanction Appellant's attempted misdirection. The fact is Appellant failed to file an interpretation
13 in relation to the Garage Layout/Slope Claim. Joint Motion, pgs. 4-7. As a matter of law, the
14 Hearing Examiner lacks jurisdiction over this Type I claim and must grant the Joint Motion.

15 Confronted with that reality, Appellant manufactures an argument that Code
16 interpretations are optional for "Type II project consistency with the Code." Response, pg. 5. For
17 the reasons raised above, this argument is also nonsensical in relation to the Type I compliance
18 with development standards issues raised in the Garage Layout/Slope Claim. Appellant is
19 comparing apples and oranges and hoping that the Hearing Examiner does not notice the
20 difference. The Hearing Examiner should reject Appellant's attempted misdirection out of hand.

21 III. CONCLUSION

22 For these reasons, the Respondents respectfully request that the Hearing Examiner
23 dismiss the Appellant's Garage Layout/Slope Claim and grant Respondent's Joint Motion.
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1 DATED this 19th day of January, 2018.

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