

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeal of

ESCALA OWNERS ASSOCIATION

from a decision issued by the Director,
Seattle Department of Construction and Inspections

Hearing Examiner File:
MUP-17-035 (DR, W)

Department Reference:
3019699

**ORDER ON MOTION TO
DISMISS**

This matter concerns the appeal of a State Environmental Policy Act ("SEPA") Final Environmental Impact Statement ("FEIS") issued by the Department of Construction and Inspections ("City") in association with a design review approval decision ("Decision"), to Jodi Patterson O'Hare ("Applicant"). The Appellant, Escala Owners Association ("Appellant"), appealed the City's SEPA determination. The Applicant filed a motion to dismiss a portion of the appeal. The Appellant filed a response to the motion, and the Applicant filed a reply to the response. The Hearing Examiner has reviewed the file in this matter including the motion documents. For purposes of this decision, all section numbers refer to the Seattle Municipal Code ("SMC" or "Code") unless otherwise indicated.

The Applicant moves to dismiss a single issue raised in Appellant's Notice of Appeal which states:

In some respects, the proposal violates code provisions, which in turn, causes significant adverse environmental impacts. For example, the garage layout violates 23.54.030.H. That provision requires compliance with specific stall dimensions and aisle widths if and when the valet operation ceases. As designed, the garage could never meet that code requirement since columns and elevator core locations make them impossible to meet. In addition, aisle slopes on some parking levels are greater than the code maximum of 15%.

Appellant's Notice of Appeal at 4 ("Notice of Appeal Issue 2b").


The motion to dismiss raises the issue of whether the Hearing Examiner must dismiss Notice of Appeal Issue 2b, because it raises a Type I Code interpretation issue, and is not raised in the context of a SMC 23.88.020 Code interpretation.

Notice of Appeal Issue 2b raises a challenge to project compliance with the development standards of SMC 23.54.030.H. A "[d]etermination that a proposal complies with development standards," is a Type I decision under the Code. SMC 23.76.006.B. Type I decisions are only "subject to administrative review through a land use interpretation pursuant to SMC 23.88.020." SMC 23.76.004, Table A, FN 2; SMC 23.76.022.A.1. The Appellant has not filed a Code interpretation.

Appellant points out that Notice of Appeal Issue 2b is raised under a heading indicating that the Director's decision violated SEPA, and specifically states that the alleged Code violation "causes significant adverse environmental impacts." Notice of Appeal Issue 2b is likely intended to raise a SEPA issue. However, as that issue is framed in the Notice of Appeal, Appellant must first demonstrate that the Code has been violated, and this can only be done within the framework of an appealed Code interpretation, which Appellant did not file. Further, even if the record reflects a self-evident violation of the Code, Appellant has not alleged any specific environmental impacts that could result from such violation, and Notice of Appeal Issue 2b would be precluded for a failure to state "specific objections to the decision or action being appealed," required by HER 3.01(d)(3).

The Applicant's motion to dismiss is **GRANTED**.

Entered this 9th day of February, 2018.



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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Order on Motion to Dismiss** to each person listed below, or on the attached mailing list, in the matter of **Escala Owners Association**, Hearing Examiner File: **MUP-17-035 (DR, W)** in the manner indicated.

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Dated: February 9, 2018


Michele D'Alessandro
Executive Assistant