BEFORE THE

CITY OF SUMNER HEARING EXAMINER

IN RE:	
Save Ryan House SEPA Appeal SEPA-2025-0001	ORDER GRANTING MOTION TO DISMISS

Overview

The City's motion to dismiss is granted. The appeal is dismissed. The hearing examiner has no jurisdiction because the appeal was untimely under WAC 197-11-680(3)(a)(vii). The appeal is also dismissed due to lack of standing.

The City's motion included claims of res judicata and priority of action. Addressing those two issues would serve no purpose at this time. They would only become pertinent if the superior court on appeal reverses this ruling. In that situation the superior court would make its own determination on res judicata and priority of action. An examiner ruling on those issues would have no bearing on the court's analysis. Resolution of those issues is not dependent upon local code except examiner appellate authority. This ruling finds that local code grants examiner jurisdiction over the subject appeal.

Amie Rang likely would have standing if she had filed the appeal on her own behalf. Her individual standing is not sufficient to establish associational standing for Appellant Save Ryan House (SRH). For associational standing SRH must establish that Ms. Rang has some control of SRH decision making. No such evidence is in the record. It is recognized that the City did not raise the control issue in its dismissal briefing. If SRH wishes, it can present new evidence on Ms. Rang's membership status and control in a motion for

reconsideration. If SHR establishes standing for Ms. Rang that alone doesn't reverse dismissal. Dismissal would still be required due to the untimeliness of the SRH appeal.

Evidence Relied Upon

June 20, 2025 City Motion to Dismiss along with Appendices A and B; Sterbank declaration in support of dismissal motion with Exhibits A-G; June 27, 2025 Appellant's Opposition to Respondent's Motion to Dismiss; Hinman Declaration with Exhibits A-H; Dressel Declaration with Exhibits 1-3; Rang Declaration; July 2, 2025 City Reply; Andrea Marquez Declaration with Exhibits A-K.

Statement of Uncontested Facts

1. Ryan House is a historical residence located in Sumner, Washington that was formerly owned by the City first mayor and postmaster. On September 18, 2023, the City Council adopted Resolution 1663. It concluded the Ryan House was unfit for habitation and required cost-prohibitive renovations. The resolution directed staff to demolish the home and convert the property to a public park. On April 1, 2025 the City issued a Mitigated Determination of Nonsignificant ("MDNS") for the demolition of the home and published it on its website.

2. On April 22, 2025, twenty-one (21) days after the MDNS was issued, SRH filed its Consolidated Land Use Petition, Writ of Review and Complaint for Declaratory and Injunctive Relief ("LUPA Petition") in Pierce County Superior Court. On the same day SRH filed an appeal of the MDNS with the Sumner Hearing Examiner alleging the same appeal issues. SRH filed in both forums because of conflicting provisions in the Sumner Municipal Code over whether the MDNS had to be filed with the hearing examiner or superior court.

3. One June 6, 2025, the Pierce County Superior Court dismissed the Appellant's LUPA petition.

4. Save Ryan House member Aime Rang is a member of the Sumner Historical Society. The Society has operated its Sumner History Museum out of the Ryan House for decades. Ms. Rang's family has been featured in the history museum, she has personally spent hundreds of hours in the Ryan House, and has given dozens of tours of the history museum.

5. Nancy Ryan Dressler, another SRH member, is a direct descendent of the Ryans who deeded the home to the City. She has a reversionary interest in the property. The City asserts the reversionary interest is limited to passing the property back to Ms. Ryan Dressler only if the City builds another structure on the property. The

City also contests whether Ms. Ryan Dressler has a reversionary interest in the property. SRH's LUPA petition et. al. claims that Mr. Ryan Dressler has a reversionary interest and that she is entitled to title because the City has violated the terms of the deed granting the reversionary interest. Pierce County Superior Court has dismissed SRH's LUPA petition et. al. except for apparently the reversionary interest claims.

Conclusions of Law

1. Examiner has Jurisdiction. The hearing examiner has jurisdiction to hear and issue a final decision on SRH's appeal. The SMC contains two conflicting provisions on appellate authority. The more recently enacted provision, which grants examiner jurisdiction, is found to apply.

SMC 16.04.185(A)(1) requires appeals of SEPA threshold determinations to be filed with the City's hearing examiner. SMC 18.56.030C requires the same appeals of to be filed in court. The two provisions are of roughly equal specificity. The judicial appeal requirement of SMC 18.56.030C was adopted by Sumner Ordinance 2472 in 2014. The hearing examiner appeal requirement of SMC 16.04.185(A)(1) was adopted by Sumner Ordinance 2691 in 2019. Where statutes are irreconcilable, the recent statute takes priority over the older statute. *City of Spokane v. Rothwell*, 166 Wash. 2d 872, 877, 215 P.3d 162, 164 (2009). SMC 16.04.185(A)(1) was adopted after SMC 18.56.030C and thus must be construed as taking priority over that statute. SMC 16.04.185(A)(1) assigns jurisdiction over SEPA threshold appeals to the hearing examiner.

2. Timeliness. The appeal is untimely because it was not filed within 14 days as required by WAC 197-11-680(3)(a)(vii).

WAC 197-11-680(3)(a)(vii) provides as follows:

> *If a county/city to which RCW 36.70B.110 applies provides for an administrative appeal, any such appeal of a procedural or substantive determination under SEPA issued at the same time as the decision on a project action shall be filed within fourteen days after a notice of decision under RCW 36.70B.130 or after other notice that the decision has been made and is appealable. In order to allow public comment on a DNS prior to requiring an administrative appeal to be filed, this appeal period shall be extended for an additional seven days if the appeal is of a DNS for which public comment is required under this chapter or under county/city rules adopted under SEPA. For threshold determinations issued prior to a decision on a project action, any administrative appeal allowed by a county/city shall be filed within fourteen days after notice that the*

determination has been made and is appealable. Nothing in this subsection alters the requirements of (a)(v) and (vi) of this subsection.

The parties disagree as to whether the WAC quoted above sets an appeal deadline of 14 days as opposed to 21 days. The Appellants filed their SEPA appeal 21 days after issuance of the MDNS under appeal.

The portion of WAC 197-11-680(3)(a)(vii) in dispute is the second sentence quoted above, "*[i]n order to allow public comment on a DNS prior to requiring an administrative appeal to be filed,* ***this appeal period*** *shall be extended for an additional seven days if the appeal is of a DNS for which public comment is required under this chapter*." (emphasis added). SRH asserts that this sentence applies to any MDNS with a public comment period, which includes the MDNS under appeal. This position is clearly at odds with the plain text of the second sentence. As identified in the bolded portion, the additional 7 days only applies to "*this appeal period*." Since "*this appeal period*" is in the second sentence of WAC 197-11-680(3)(a)(vii), it can only be referencing the appeal period identified in the first sentence. The first sentence only addresses SEPA appeals of SEPA determinations made "*at the same time as the decision on a project*." Consequently, the added seven day appeal period only applies to appeals of SEPA determinations made "*at the same time as the decision on a project*."

The second to last sentence of WAC 197-11-680(3)(a)(vii) was specifically designed for the SRH type of appeal, i.e. "*for threshold determinations issued prior to a decision on a project action*." In this case the City issued its MDNS prior to issuance of the demolition permit. As such, it's clearly subject to the second to last sentence. That sentence provides that SEPA appeals "*shall be filed within fourteen days after notice that the determination has been made and is appealable*." There is no added seven days for such appeals if SEPA is issued prior to the permits of the project.

SRH make the compelling point that SMC 16.04.185A1 doesn't limit the added seven days to appeals of SEPA determinations issued concurrently with permit decisions. SMC 16.04.185A1 more simply provides that a "*decision involving a SEPA determination of nonsignificance which required public comments shall have the appeal period extended an additional seven days…*" The SMC adopted WAC 197-11-680(3)(a)(vii) by reference under SMC 16.04.180. In this regard the SMC has conflicting provisions on the applicability of the added seven-day rule. The generally applicable seven-day language of SMC 16.04.185A1 renders most of the caveats and limitations of WAC 197-11-680(3)(a)(vii) meaningless if the provisions are harmonized by following the more generally applicable SMC 16.04.185A1 seven-day rule.

Three considerations balance in favor of finding that the limitations of WAC 197-11-680(3)(a)(vii) supersede the more generally applicable seven day standard of SMC

16.04.185A1. The first is the general rule of statutory construction that a specific statute prevails over a general statute. *O.S.T. ex rel. G.T. v. BlueShield*, 181 Wash. 2d 691, 701, 335 P.3d 416, 421 (2014). WAC 197-11-680(3)(a)(vii) with all its convoluted caveats is the more specific of the two.

The second consideration is that statutes should be construed so that no clause, sentence, or word is made superfluous, void, or insignificant; however, in special cases the court can ignore statutory language that appears to be surplusage when necessary for a proper understanding of the provision. *State v. Evergreen Freedom Foundation*, 1 Wash.App.2d 288, 299 (2018). As previously noted, concluding that all SEPA threshold determinations with public comment have an extended appeal period renders most of the text in WAC 197-11-680(3)(a)(vii) unnecessary. Given the other factors favoring WAC 197-11-680(3)(a)(vii), there is no compelling reason to ignore a large portion of the text of WAC 197-11-680(3)(a)(vii).

The third consideration is that WAC 97-11-680(3)(a)(vii) governs what the City includes in its SEPA appeal procedurals. Legislative intent is paramount in statutory construction. *State v. Barnes*, 189 Wash. 2d 492, 495, 403 P.3d 72, 74 (2017). Presumably, the City Council intends to have its appeal procedures comply with the law. The law, specifically WAC 197-11-680(3)(a)(vii), only authorizes an added seven days for SEPA determinations made concurrently with permit issuance. WAC 197-11-680(3)(a)(vii) is thus found to supersede the more general seven-day standard of SMC 16.04.185A1. The Appellant's SEPA appeal was untimely.

3. Standing Required. Standing is found required for Sumner SEPA appeals.

Whether standing is required for administrative SEPA appeals is not an issue that has yet been directly resolved in the absence of a locally adopted standing requirement. Some local codes such Renton Municipal Code 4-8-110C1 expressly requires standing. The SMC does not.

The City asserts in its briefing that it would be nonsensical to not require standing since standing would be required in a judicial appeal of the examiner's decision under RCW 36.70C.060. It would not be entirely nonsensical. If a person without standing prevails at the administrative level, they would have no need to appeal to superior court. Opposing parties with standing of course could appeal. If a person without standing acquires partial relief and wishes to appeal, that acquisition of partial relief would likely be considered enough of any interest in the case to confer standing to appeal.

Ultimately, standing is found to be an implied requirement that arises from the quasi-judicial nature of administrative appeals and their regulatory context. Tracing back SEPA standing doctrine, it appears to have been primarily developed in *SAVE v. Bothell*, 89

Wn.2d 862 (1978), at least for organizational standing. The SEPA standing doctrine in *SAVE* was not based upon any statutory standing requirement. Rather it was based upon case law from the United States Supreme Court. Id. at 866-868. The US cases in turn base their standing requirements upon US Const. Art. III, which restricts judicial power to cases and controversies. *See, e.g*. *Ass'n of Data Processing Serv. Organizations, Inc. v. Camp*, 397 U.S. 150, 152, 90 S. Ct. 827, 829, 25 L. Ed. 2d 184 (1970).

There is of course no constitutional cases and controversies clause that applies to SMP appeals. However, given the quasi-judicial nature of administrative appeals it is reasonable to conclude that administrative appeals are designed to provide an avenue for redress to those who are aggrieved. The alternative is to construe the administrative review process as authorizing self-appointed sheriffs to enforce city codes. Such an administrative process is clearly contrary to the overall Sumner regulatory framework, where code enforcement officers and the police department are the ones assigned to that role.

4. SRH Lacks Standing. SRH hasn't established institutional or associational standing for this appeal.

SRH has the burden of proof to establish standing. The party bringing a land use appeal under the Land Use Petition Act (LUPA, Chapter 36.70C RCW) has the burden to show all the required conditions of standing are satisfied. *Behind the Badge Found. v. City of Olympia*, 12 Wash. App. 2d 1009 (2020)(Unpublished). Given that this decision is subject to LUPA review, placing the burden of proof on SRH appears to be appropriate. This is also consistent with the Administrative Procedures Act, Chapter 34.04 RCW, which also places the burden of proof to establish standing on the person challenging agency action. *Benton Cnty. Water Conservancy Bd. v. Washington State Dep't of Ecology*, 25 Wash. App. 2d 717, 724, 524 P.3d 1075, 1079, review granted in part, 532 P.3d 154 (Wash. 2023), and aff'd, 546 P.3d 394 (Wash. 2024).

To have standing to bring a SEPA challenge, a party must meet a two-part standing test: (1) the alleged endangered interest 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.2d 734 (2013)

SRH asserts two forms of standing – Institutional through its interest as an organization and associational through the interests of its members. SRH hasn't established standing under either form. Institutional and associational standing are addressed in detail below.

Institutional Standing

SRH has not established institutional standing because they have not identified any

specific harm to its organization.

To satisfy the LUPA prejudice requirement for standing, a petitioner must show that he or she would suffer an injury-in-fact as a result of the land use decision. *Knight v. City of Yelm*, 173 Wash. 2d 325, 267 P.3d 973 (2011). For an organization to establish "injury in fact" for standing, the allegation must be more than a setback to its abstract social interests. *Havens Realty Corp. v. Coleman*, 455 US 363, 379 (1982). For example, the mere assertion of a "special", longstanding interest in conserving the beauty and majesty of the Sierra Nevada mountains does not constitute a sufficient "injury in fact" to confer standing to the Sierra Club. *Sierra Club v. Morton*, 405 US 727 (1972). Injury must be concrete, such as the refusal to rezone property to enable an affordable housing organization to build an affordable housing complex. *See Village of Arlington Heights v. Metropolitan Development Corp*., 429 US 252 (1977). As noted in the *American Legal Foundation* case, for an association to establish "injury in fact" it must assert an interest greater than "seeing" the law obeyed or a social goal furthered. Rather, the organization must allege that discrete programmatic concerns are being directly and adversely affected by the defendant's actions. 808 F.2d at 92.

SRH has not identified any specific programmatic activity that is adversely affected by the Ryan House demolition. Its interests are limited to abstract social concerns that are not by themselves sufficient to confer standing.

Associational Standing

SRH has not established associational standing because it hasn't identified any SRH member that has sufficient control over SRH activities.

An association has standing to bring suit on behalf of its members when (1) the members of the organization would otherwise have standing to sue in their own right; (2) the interests that the organization seeks to protect are germane to its purpose; and (3) neither claim asserted nor relief requested requires the participation of the organization's individual members. *Washington State Nurses Ass'n v. Yakima HMA, LLC*, 196 Wn.2d 409, 415, 469 P.3d 300, 304 (2020), as amended (Nov. 9, 2020).

In addition to the above, case law also requires that the members presented for standing have some meaningful control over association activities. Associational standing is premised on the fact that an association is representing the interests of its members, which can only be accomplished through member control over association activities. *See Friends of Tilden Park, Inc. v. District of Columbia*, 806 A.2d 1201, 1209 (2002) ("*such a right [for association to sue on behalf of members] requires the representational right to be a strong one, in order to ensure the fidelity of the organization to those for whom it claims to speak*"). As stated in another association case:

> *…one principal undergirding the standing doctrine is that "the decision to seek review must be placed 'in the hands of those who have a direct stake in the outcome,'…not …in the hands of 'concerned bystanders,' who will use it simply as a 'vehicle for the vindication of value interests*.'"

American Legal Foundation v. FCC, 808 F.2d 84, 91 (1986). The American Legal Foundation asserted that television viewers constituted its members in a case against the Federal Communications Commission. The Friends of Tilden Park asserted that neighborhood residents were members by virtue of their proximity to a development project that the organization contested. The courts in both cases readily threw those arguments out in part on the basis that the "members" had no control over the selection of association leadership, activities or financing – they largely just acted as bystanders.

In this case Aime Rang likely would have standing if she had filed the appeal on her own behalf. As identified in the findings of fact, she has been directly involved in activities that occurred within and because of the Ryan House. In this regard Ms. Rang's interests satisfy requirements for standing based upon threatened harm in that the injury must be immediate, concrete and specific as opposed to conjectural or hypothetical. *Thompson v. City of Mercer Island*, 193 Wash. App. 653, 662, 375 P.3d 681, 685 (2016), *as amended on denial of reconsideration* (May 4, 2016). Demolition of the Ryan Home, which the City intends on doing ASAP, will permanently deprive Ms. Rang of the ability to conduct further historical activities within and for the Ryan House. That is specific, immediate and concrete harm.

In its reply brief the City asserts that it's too late in any event for Ms. Rang to have her injury redressed because Ryan House is already shuttered and unfit for occupancy. However, the remedies sought by Ryan House in its appeal are enjoining the Ryan House demolition and/or requiring an environmental impact statement. Both remedies could give time to find alternative sources of funding or other options to enable occupancy of the Ryan House. Those objectives may be highly unrealistic, but it is too speculative and premature to make that determination now without hearing the appeal.

Ms. Ryan Dressler's individual standing is not as clear cut. Her standing depends upon the resolution of her reversionary rights to the subject property, which is currently in litigation. The deed as described in the City's LUPA motion to dismiss, Sterbank Dec. Ex. E, doesn't appear to grant any reversionary rights until after the Ryan House been demolished and replaced with another structure. If her rights are limited in that fashion Mr. Ryan Dressler's interests are not harmed in any apparent adverse way by the demolition permit. The demolition of the Ryan House could expedite the reversion of the property to her, but that doesn't appear to be an adverse impact.

SRH claims in Par. 8.4 of its LUPA et. al. appeal that the City has violated the terms of the deed and that this violation "*triggers a reversionary interest held by the Ryan heirs, putting title to the property in the hands of Dressel and other Ryan heirs*." Sterbank Dec, Ex. A, pdf 14. If Ms. Ryan Dressel does have immediate reversionary rights, then of course the damage to her would be concrete and specific as required for standing.

The hearing examiner has no authority to adjudicate Ms. Ryan Dressel's reversionary rights. Since Ms. Ryan Dressel's standing is dependent upon the results of the declaratory relief component of her LUPA appeal, her standing cannot be assessed until that issue is resolved. Older case law suggests that the appeal proceeding should be stayed pending resolution of the Applicant's quiet title action. *See Halverson v. Bellevue*, 41 Wn. app. 457 (1985). *Halverson* involved City Council review of a preliminary plat application. Plat laws at the time required that all persons who had an ownership interest in plat property had to sign off on the application. The City Council approved the plat despite receiving notice from an adjoining property owner that she had filed a lawsuit against the plat owners on the basis that she had acquired ownership over a portion of the plat property through adverse possession. The claimant had not signed the application for preliminary plat approval. The Court of Appeals ruled that the City Council did not have the authority to adjudicate claims to adverse possession and thus had to suspend review of the plat application until the ownership issue was resolved in superior court. Id. at 460.

The primary distinguishing and determinative feature from the *Halverson* case is the City's assertions that the Ryan House is that further delay will come at considerable risk to public safety and public expense. As outlined in Sumner Resolution No. 1663, the City Council has found Ryan House unfit for habitation, that renovation is cost-prohibitive and that the house is subject to repeated break ins an vandalism. Given these factors, a judicial request for injunctive relief would be the most effective means of balancing the interest of the public verses those of Mr. Ryan Dressel for resolution of Ms. Ryan Dressel's standing rights. SRH has in fact already requested injunctive relief and a stay in its LUPA/Declaratory Judgement action. That request has been denied. See Sterbank Dec., Ex. G, pdf 233. If Ms. Dressel Ryan's standing status was not factored into the denial of that request then perhaps this examiner ruling can serve as new evidence to make the request again. In any event, there is insufficient cause presented to stay this proceeding pending resolution of Ms. Dressel Ryan's declaratory judgment action.

Although SRH has demonstrated sufficient standing for Ms. Rang, it hasn't established sufficient member control as required by the *Friends of Tilden Park* and *American Legion* cases cited above. As previously noted, SRH has the burden of proof to establish standing. As noted in the City's briefing, Mr. Rang's associational standing claim wasn't

raised in SRH's LUPA claim. There's nothing in the record to suggest that Ms. Rang was simply added to SRH in post-hoc fashion without any real ties to SRH solely to establish associational membership. As noted in the Overview of this ruling, it is recognized that member control was not an issue raised in the City's briefing. As such, SRH will be allowed to present new evidence in a reconsideration motion to establish Ms. Rang's membership status and control in SRH. To expedite reconsideration review the City can of course stipulate that Ms. Rang has the requisite control.

Order

Based upon the facts and conclusions above, the SEPA-2025-0001 is dismissed due to untimely filing and lack of standing.

ORDERED this 17th day of July 2025.

Phil Olbrechts
Sumner Hearing Examiner

Appeal Right and Valuation Notices

SMC 2.58.160 provides that hearing examiner decisions are the final administrative decision o the City of Sumner unless an ordinance provides otherwise. As a final land use decision of the City, this decision is subject to appeal to Pierce County Superior Court as governed by the Land Use Petition Act (LUPA), Chapter 36.70C RCW. As required by LUPA, appeals must be filed and served within 21 days of issuance of this decision.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.