

FILED
SUPREME COURT
STATE OF WASHINGTON
10/10/2022 11:05 AM
BY ERIN L. LENNON
CLERK

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

ESCALA OWNERS
ASSOCIATION,

Petitioner,

v.

CITY OF SEATTLE; JODI -
PATTERSON O'HARE; G4
CAPITAL SEATTLE
HOLDINGS, LLC, 1921-27
FIFTH AVENUE
HOLDINGS 591683; 1921-
27 FIFTH AVENUE
HOLDINGS LLC,

Respondents.

NO. 101214-4

MOTION TO STRIKE

I. IDENTITY OF MOVING PARTY

Appellant Escala Owners Association seeks the relief designated in Part 2.

II. RELIEF REQUESTED

Escala Owners Association requests that the court strike the following sentences from Respondents' Answer to Petition for Review:

The Project will impact private views from Escala's condos.

Answer at 1.

There is no substantial public interest in extending Escala's efforts to protect private views from their condos.

Answer at 3.

[Future developers] will not need to defend themselves from litigious neighbors seeking to weaponize SEPA to protect their private views.

Answer at 28.

III. FACTS RELEVANT TO MOTION

The City of Seattle recently approved the development of a new 48-story tower in downtown Seattle that will include 431 apartments, 155 hotel rooms, retail, and about 13,000 square feet of restaurant and bar uses. *Id.* Escala Condominiums, a 30-story residential condominium building with over 400 residents, is located at the corner of 4th Avenue and Virginia Street, immediately adjacent to and west of the Project site. CP 7027. The City of Seattle determined that the development proposal, which is referred to as the Fifth and Virginia Project herein, was a major action that would significantly affect the quality of the environment pursuant to the State Environmental Policy Act (SEPA), specifically RCW 43.21C.030(2)(c).

Escala Owners Association has implored the City and the Developers to increase the setback of the building off of the alley side to address the project's significant adverse impacts. *Escala Owners Association v. City of Seattle*, Cause No.

830376-I, Reply Brief of Appellant Escala Owners Association (Jan. 7, 2022) at 35. Escala has sought consideration of a project alternative in the form of a *taller* building with the same square footage, but set back slightly further from the alley, with a more slender design. *Id.* The City did not consider any alternative designs for the Fifth and Virginia Project. *Id.*

Division I filed its opinion on July 25, 2022. Escala filed a Petition for Review with this court on August 24, 2022.

Developers¹ filed an Answer to Petition for Review on September 23, 2022. In that Answer, Developers made statements that have no support in the record and that mischaracterize the relief sought by Escala. This motion seeks an order striking those statements from the Answer to Petition for Review.

¹ This Petition refers to Respondents Jodi-Patterson O’Hare, G4 Capital Seattle Holdings, LLC, 1921-27 Fifth Avenue Holdings 591683, and 1921 Fifth Avenue Holdings LLC as the “Developers.”

IV. GROUNDS FOR RELIEF

Developers falsely state that Escala residents are pursuing this litigation for the purpose of protecting their views. The record does not support that claim and, in fact, proves that it is false. These statements should be stricken from the Answer.

The Land Use Petition Act (LUPA), Chapter 36.70C RCW, dictates the process for judicial review of local land use decisions. Under LUPA, the Court's review is confined to the record of the quasi-judicial administrative proceedings below. RCW 36.70C.120(1). Parties cannot present factual statements that are unsupported by the record to this court.

Specifically, Escala requests that the court strike the following sentences from Respondents' Answer to Petition for Review:

The Project will impact private views from Escala's condos.

Answer at 1.

There is no substantial public interest in extending Escala's efforts to protect private views from their condos.

Answer at 3.

[Future developers] will not need to defend themselves from litigious neighbors seeking to weaponize SEPA to protect their private views.

Answer at 28.

These three statements were presented in the Answer without any citation to the record to support them.

Escala has never once raised the loss of private views as an objection in this litigation. In fact, Escala has expressly sought consideration of an alternative design that would completely block Escala's private views. Escala has sought a proper SEPA process in which the City of Seattle would be required to engage in an analysis of at least one, and perhaps more, alternative building design(s) that that would still block

their views entirely, but would just slightly increase the setback of the building off of the alley. *Escala Owners Association v. City of Seattle*, Cause No. 830376-I, Reply Brief of Appellant Escala Owners Association (Jan. 7, 2022) at 35. Escala has argued for consideration of a taller, but more slender, structure as allowed by the city code, SMC 23.49.008.B. *Id.* Such a structure would still meet the developer’s objective, but would also allow for more light to reach Escala and more room to address traffic impacts in the alley. *Id.* This alternative design, which Escala expressed support for, would clearly block Escala’s private views.

SEPA requires an analysis of at least one alternative design. RCW 43.21C.030; WAC 197-11-400; WAC 197-11-402; WAC 197-11-440(5), WAC 197-11-792(2)(b). *See also Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 38, 873 P.2d 498 (1994). The City of Seattle has conducted no analysis of any alternative designs. Instead, the City and Developer have

spent over two years litigating this matter to avoid considering alternative designs. The Developers claim that this case is about Escala residents seeking to weaponize SEPA to protect their private views is false and has no support in the record. Escala requests that the court strike the statements quoted above.

Dated this 10th day of October, 2022.

Respectfully submitted,

BRICKLIN & NEWMAN, LLP

By: 

Claudia M. Newman
WSBA No. 24928
123 NE 36th St., Suite 205
Seattle, WA 98107
206-264-8600
newman@bnd-law.com
Attorneys for Appellant
Escala Owners Association

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that today I filed this document via the Clerk's electronic portal filing system, which should cause it to be served by the Clerk on all parties, and emailed a courtesy copy of this document to:

Elizabeth E. Anderson
Seattle City Attorney's
Office
701 Fifth Avenue, Ste 2050
Seattle, WA 98104
Liza.anderson@seattle.gov

John C. McCullough
Ian Morrison
Katie Kendall
McCullough Hill Leary, P.S.
701 Fifth Avenue, Ste 6600
Seattle, WA 98104
jack@mhseattle.com
imorrison@mhseattle.com
kkendall@mhseattle.com

Dated this 10th day of October 2022, at Bainbridge
Island, Washington.

s/Anne Bricklin
Bricklin & Newman
123 NE 36th St., Suite 205
Seattle, WA 98107

BRICKLIN & NEWMAN, LLP

October 10, 2022 - 11:05 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 101,214-4
Appellate Court Case Title: Escala Owners Association v. City of Seattle, et al.

The following documents have been uploaded:

- 1012144_Motion_20221010110413SC831786_3672.pdf
This File Contains:
Motion 1 - Strike
The Original File Name was 2022 10 10 Motion to Strike.pdf

A copy of the uploaded files will be sent to:

- bricklin@bnd-law.com
- eric.nygren@seattle.gov
- imorrison@mhseattle.com
- jack@mhseattle.com
- kkendall@mhseattle.com
- liza.anderson@seattle.gov
- mwarnock@mhseattle.com

Comments:

Sender Name: Peggy Cahill - Email: cahill@bnd-law.com

Filing on Behalf of: Claudia Macintosh Newman - Email: newman@bnd-law.com (Alternate Email: cahill@bnd-law.com)

Address:
1424 Fourth Avenue
Suite 500
Seattle, WA, 98101
Phone: (206) 264-8600

Note: The Filing Id is 20221010110413SC831786