

FILED  
SUPREME COURT  
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BY ERIN L. LENNON  
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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

PETITIONER'S REPLY  
ON MOTION TO  
STRIKE

In Respondents' Answer to the Petition for Review ("Answer"), Developers<sup>1</sup> represented to this court, through factual statements that are contradicted by the record, that this case is about Escala's efforts to protect their private views from condominiums in Downtown Seattle.<sup>2</sup> Despite that they have now backpedaled from that narrative in their response to Escala's Motion to Strike,<sup>3</sup> Developers' Answer did leave the impression that the sole reason that Escala appealed the City's decisions in this case was to protect their private views. And that is not true.

Ultimately, Developers could find only seven citations related to views in a record that spans seven years of litigation and voluminous pages of testimony and reports. Those citations do not support their claims.

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<sup>1</sup> As in the Motion to Strike, this reply 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."

<sup>2</sup> Answer at 1, 3, 28.

<sup>3</sup> Resp. Br. at 5.

First, Developers point to the EIS Addendum and a July 17, 2017 Escala comment letter (submitted before any appeals were filed) that both mention that private views will be impacted.<sup>4</sup> While those record citations confirm the factual statement that “[t]he Project will impact private views from Escala’s condos,” that statement by the Developers is irrelevant to any contested issue in Escala’s appeals. Clearly, that statement was provided in the Answer to feed into the false narrative that Escala residents are NIMBYs abusing litigation to protect their views.

The remaining citations to the record relied on by Developers are to uses of the word “view” in an entirely different context.<sup>5</sup> The word “view” in Petitioner’s Opening Brief (CP 8111) isn’t about protecting Escala’s cityscape or mountain panoramic views. In that brief, counsel for Escala used the word

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<sup>4</sup> Resp. at 4.

<sup>5</sup> See Resp. Br. at 6-8.

“views” within the context of explaining that the examiner erred in her analysis of health impacts because she disregarded that the views out of the Escala windows would be directly into the wall of a building 20 feet away.<sup>6</sup> The issue was whether the Examiner improperly assumed that Escala residents would spend time standing close to the windows and looking outward.<sup>7</sup>

At CP 7080 and 7751, Escala’s experts mention views almost in passing within the context of their explanation of the light/heath impacts of the building. They mention loss of view as potentially being an added factor to the problem in addition to loss of light.<sup>8</sup> These negligible mentions of views weren’t repeated or referenced in any of the briefing presented to the Examiner, the Superior Court, the Court of Appeals, or this court by Escala. In addition, those excerpts from the transcripts do not

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<sup>6</sup> CP 8111.

<sup>7</sup> *Id.*

<sup>8</sup> CP 7080; CP 7751.

support claims that case is “about efforts to protect private views from [Escala’s] condos” or that Escala residents are “litigious” neighbors who are “weaponizing” SEPA to protect their private views.<sup>9</sup>

The idea that Escala’s private views are “inextricably intertwined with light and human health” is belied by the fact that Escala has implored the City and the Developers to consider a design that would completely block their private views.<sup>10</sup> One of Escala’s central concerns with the project is the complete loss of natural light in their homes, which has the potential to cause serious health damage to them.<sup>11</sup> One of Escala’s experts testified that the Douglaston Tower could block more than 75% of the natural light to some east facing Escala units.<sup>12</sup> Other experts

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<sup>9</sup> CP 8071-8126; CP 8213-8271; AR 309; Brief of Appellant Escala Owners Association (Nov. 8, 2021); Reply Brief of Appellant Escala Owners Association (Jan. 7, 2022).

<sup>10</sup> Reply Brief of Appellant Escala Owners Association at 35.

<sup>11</sup> Brief of Appellant Escala Owners Association at 55-60.

<sup>12</sup> AR 3432-3438.

testified that severe physical and emotional health problems could result, including diabetes, cancers, and depression.<sup>13</sup> The alternative design that Escala has proposed would mitigate the light/health impacts by including a slightly increased setback off of the alley.<sup>14</sup> Yet Developers would have this Court believe that Escala, a party that has proposed less harmful alternative designs that would also block its views, is nonetheless a “litigious” neighbor “...seeking to weaponize SEPA to protect their private views.”<sup>15</sup>

Nothing in the record supports a claim that this case is about efforts to protect private cityscape views, mountain views, vistas, or panoramas from Escala’s condominiums. Loss of views is not, and has never been, an issue presented in this

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<sup>13</sup> CP 7776, 7779.

<sup>14</sup> AR 3439-3452; Reply Brief of Appellant Escala Owners Association at 35.

<sup>15</sup> Resp. at 28.

litigation since its inception.<sup>16</sup> None of Escala’s briefs, which were filed with the City of Seattle Hearing Examiner, the Washington Superior Court, the Washington Court of Appeals, or this Court, mention the lost of private cityscape views, mountain views, vistas, or panoramas from Escala’s condominiums.<sup>17</sup> The pleadings of Escala throughout this litigation leave no doubt that this case is not about loss of private views, but is instead about considering reasonable design alternatives, as is required by SEPA, to mitigate adverse impacts of this proposal.

In conclusion, Escala requests that the court strike the statements quoted in the Motion to Strike.

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<sup>16</sup> See CP 8071-8126; CP 8213-8271; AR 309; Brief of Appellant Escala Owners Association (Nov. 8, 2021); Reply Brief of Appellant Escala Owners Association (Jan. 7, 2022).

<sup>17</sup> *Id.*

Dated this 9th day of November, 2022.

Pursuant to RAP 18.17(c), I certify that this reply on the Motion to Strike contains 884 words.

Respectfully submitted,

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**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:

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Dated this 9th day of November, 2022, at Bellingham,  
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s/Peggy Cahill  
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**November 09, 2022 - 2:09 PM**

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