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4 **BEFORE THE HEARING EXAMINER
FOR THE CITY OF REDMOND**

5 In the Matter of the Appeals of:

6 **Keith Brewé; Rosemarie Ives;**
7 **Nokomis Club of Redmond; Redmond**
8 **Historical Society; and Curtis Nelson,**
9 **Appellants,**

SEPA-2015-00017
LAND-2014-01610/SPE

162Ten Appeal

10 Of the February 17, 2015, Determination of
11 Non-Significance (SEPA-2015-00017) and
12 the April 22, 2015 Technical Committee
approval of a Site Plan Entitlement (LAND-
2014-01610/SPE)

APPLICANT NATURAL AND BUILT
ENVIRONMENTS' REPLY ON MOTION
TO DISMISS APPELLANTS ROSEMARIE
IVES' AND CURTIS NELSON'S APPEALS

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14 **I. INTRODUCTION**

15 Applicant Natural Built Environments (hereinafter the "Applicant") submits this Reply
16 in support of its motion to dismiss Appellant Rosemarie Ives' (hereinafter "Ives") appeals of the
17 Determination of Non-Significance (DNS) and the Technical Committee's approval decision
18 for the Applicant's "162Ten" development project (hereinafter "162Ten Project" or "Project")
19 and Curtis Nelson's (hereinafter "Nelson") Appeal of the "2/17/15 decision" also for the
20 162Ten Project. Ives lack standing to properly bring their appeals before the Hearing
21 Examiner. While Ives provided comments during the application process, satisfying one of the
22 elements for standing, she fails to meet all of the requisite criteria to be a "person aggrieved"—
23 the threshold requirement for standing as defined under Washington law. Additionally, Nelson
24 admits that his appeal was untimely, and as such his appeal must also be dismissed.
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II. ARGUMENT IN REPLY

A. Ives' Appeals Must Be Dismissed for Lack of Standing.

1. *Ives' Claimed Injuries Are Generalized and Cannot Meet the Threshold of Standing.*

Ives does not have standing because her claims of injuries resulting from the approval decisions are outside the zone of protected interests and are too generalized in nature. As discussed in Applicant's Motion to Dismiss, to achieve standing—an absolute requirement to challenge an agency's SEPA determination or the City's Technical Committee Decision, a person must be "aggrieved" by the decision being appealed. RCW 34.05.530; RCW 43.21C.075; RMC 20F.30.35-080. In turn, a "person aggrieved" must have an interest that is protected by statute or constitutional guarantee in question and an injury in fact. *Snohomish County Property Rights Alliance v. Snohomish County*, 76 Wn. App. 44, 52-53, 882 P.2d 807 (1994) (citing *Trepanier v. City of Everett*, 64 Wn. App. 380, 382, 824 P.2d 524 (1992)); *see also, Chelan County v. Nykreim*, 146 Wn.2d 904, 52 P.3d 1 (2002) (Washington courts have explained that the prejudice requirement in the APA is a codification of the 'injury in fact' requirement.).

In Ives' Response, she claimed of grievances resulting from the planned demolition of the Nokomis Building, such that she "will be deprived of the presence of the Nokomis building." *See*, Rosemarie Ives Response. Ives also argue that it is a "moral imperative" for her to appeal lest her "integrity would be in question." *See, Id.* However, none of Ives' assertions listed in her appeals nor her Response brief can be classified as injuries in fact. Rather, these alleged harms are so generalized that any person can make the same assertion. None of these harms reveal a showing of "immediate, concrete, and specific injury to him or herself." *Trepanier*, 64 Wn. App. at 383 (citing *Roshan v. Smith*, 615 F.Supp. 901, 905 (D.D.C.1985)). To allow a person's feelings of moral obligation for or against an issue, or singular and unsubstantiated opinion as to the value of a building to the community, to

1 constitute standing would essentially abolish the requirement for standing altogether. Thus,
2 Ives cannot demonstrate that her claims, passionate as they may be, confer her standing and as
3 such, her appeals must be dismissed.

4 2. *Ives' Interests Are Adequately Represented by the Nokomis Club of Redmond, a
5 Party in this Case.*

6 Ives' particularized interests as to the existing building on site are represented by the
7 Nokomis Club of Redmond ("Nokomis"), a party in this case. Ives has explained that she is a
8 member of Nokomis, and in such capacity, is able to ensure that Nokomis adequately
9 represents its members' interests. Clearly, Ives' position regarding the historical and cultural
10 significance of the Nokomis Building to the overall community coincides with the arguments
11 advanced by Nokomis alleging the same. Ives devoted almost all of her Response brief to the
12 symbolic, aesthetic, and historical value she finds in the building. Similarly, Nokomis' appeal
13 brief focused on the Nokomis building's historical, cultural, and spiritual importance to the
14 community.

15 Ives is a dues paying member of Nokomis. In support of Ives, Nokomis wrote a
16 Response letter stating that Ives "has all the rights and responsibilities of Club membership to
17 participate and by Presidential appointment to represent the Club in their activities." Nokomis
18 Club of Redmond Response Letter, dated June 12, 2015. Thus, even though Ives lack
19 individual standing to bring her own appeals, Ives has the opportunity to participate in
20 challenging the Project decisions through Nokomis. Undisputedly, Nokomis is able to
21 adequately represent Ives' interests in this case and Ives' appeals must be dismissed.

1 **B. Nelson's Appeal Must Be Dismissed for Untimeliness or Alternatively, Lack**
2 **of Standing.**

3 1. *Nelson's Appeal Is Untimely and Must Be Dismissed.*

4 In his response, Nelson admits that his appeal was late, which indicates that his appeal
5 is for the '2/17/15 decision', i.e. the SEPA determination. See, Curtis Nelson's Response,
6 Email, dated June 10, 2015 ("I thought...late appeals would be allowed."). As discussed in the
7 Applicant's Motion to Dismiss, the appeal provisions in SEPA strictly require timely filing of
8 an appeal challenging a government action pursuant to SEPA or otherwise are barred. RCW
9 43.21C.075; WAC 197-11-680(3). Nelson filed his appeal on May 5, 2015, well beyond the
10 ending of the appeal period and thus, Nelson is time barred and his appeal must be dismissed to
11 the extent it challenged the SEPA determination.

12 2. *Alternatively, if Nelson's Appeal Concerns the Technical Committee*
13 *Decision, His Appeal Must be Dismissed Because He Lacks Standing.*

14 Although Nelson did not do so in his Response, Nelson may later argue he meant to
15 appeal the Technical Committee Decision dated April 22, 2015, which would mean that his
16 May 5, 2015 appeal would be timely. Regardless, as the Applicant fully discussed in its
17 Motion to Dismiss, Nelson's appeal must still be dismissed for lack of standing. Nelson did not
18 submit any written comments before the issuance of the Technical Committee Decision and is
19 not a party of record. Consequently, Nelson does not have standing as defined and required by
20 City Code and his appeal must be dismissed as it might relate to the Technical Committee
21 decision.

22 In sum, Nelson's appeal should, respectfully, be dismissed as a whole since it neither
23 complies with SEPA or the City's requirements to appeal the Technical Committee decision.
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III. CONCLUSION

Based on the foregoing argument, and materials in the Hearing Examiner's record, Applicant Natural Built Environments respectfully requests that the Hearing Examiner dismiss Petitioners Ives' and Nelson's appeals.

DATED this 17th day of June, 2015.

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1625-16 Applicant's Reply on Motion to Dismiss 6-17-15