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IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

MICHELLE AND JAMES ACQUAVELLA,

Petitioners,

vs.

CITY OF SEATTLE,

Respondent,

and

BARRY AND LINDA ANDREWS, ROBERT
AND LESLIE FISCHER, JOHN GARDNER, S.
DON GARRISON, ROBERT AND OLESIA
GREENE, ALEX AND WANDA HORNBECK,
ROBERT LANGDON AND PATRICIA
NARASIMHAN, CASEY MACDONALD,
LUIS SALAS, REBECCA SNELLENBERG,
HENRY STOCKBRIDGE AND COLEEN
WRIGHT,

Additional Parties.

No. 08-2-39188-4 SEA

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND JUDGMENT

This matter came on for trial before this Court on the Land Use Petition brought by Petitioners Michelle and James Acquavella ("Acquavella"). Trial was held April 24, 2009. Petitioner Acquavella was represented by Courtney Kaylor, McCullough Hill, P.S. Respondent City of Seattle ("City") was represented by Patrick Downs, Assistant City Attorney, Seattle City Attorney's Office.

The Court makes the following Findings of Fact, Conclusions of Law and Judgment:

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND JUDGMENT - 1

Judge Julie Spector
King County Superior Court
516 Third Avenue
Seattle WA 98104
(206) 296-9160

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I. FINDINGS OF FACT

1. This action is a Land Use Petition filed under the Land Use Petition Act ("LUPA") (RCW 36.70C).

2. Acquavella owns and manages condominium units in the The Elektra Condominiums ("Elektra"), located at 1400 Hubbell Place in Seattle. Transcript of Proceedings Before the Hearing Examiner City of Seattle ("TR") 6:18-7:2. The Covenants, Conditions, Restrictions and Reservations ("CC&Rs") for the Elektra, recorded in 1997, expressly permit rental for periods of three days or more. Documentary Record ("DR"), Tab 12:74. Specifically, the CC&Rs state that "no Unit Owner shall be permitted to Lease his or her Unit for transient purposes which shall be deemed as Renting for any period less than three (3) days." *Id.*

3. The Elektra building was designed and constructed as a multi-family residential building. DR Tab 6:13. The building entrance is not open to the general public. TR 10:23-26. The building garage is not available for general public parking but each condominium is assigned an individual parking space in the garage. TR 10:23-11:2. Each condominium has the physical characteristics of an independent residence, including a full kitchen, living area and bedroom. TR 10:9-12. Each condominium has a separate mail box, telephone line and utilities for the exclusive use of its occupants. TR 10:12-14, 11:15-21; DR Tab 6:13.

4. The condominium units owned and managed by Acquavella have been used for owner occupancy and both long and short term rental. Acquavella testified before the Hearing Examiner that her tenants have an expectation of privacy and dominion over the rental unit. TR 11:8-9. Acquavella does not enter the condominiums except in emergencies (such as when a repair is needed) and then only after providing notice consistent with landlord tenant law. TR 11:9-14. Acquavella regards all of her

1 rentals as residential. TR 11:7-8. A rental agreement is entered into prior to occupancy by Acquavella's
2 tenants. TR 11:4-6.

3 5. Acquavella testified that she does not provide housekeeping service, room service or
4 transportation service. TR 10:11-12, 11:22-26. Acquavella's tenants may contract for outside utility
5 services, such as cable or internet service. TR 11:15-18. Acquavella's tenants receive a front door key
6 and access the building as any other resident does. TR 10:23-26. Acquavella's tenants are given a
7 garage door opener to access their parking space. TR 10:23-11:2. They are given a key to the mail box
8 associated with the unit and, at their option, may receive mail at this mail box. TR 10:15-17.
9 Acquavella's tenants have included persons working in Seattle, receiving medical treatment in Seattle,
10 and visiting Seattle for other reasons. TR 12:24-13:19.

11 6. The undated Sea to Sky Rentals rental agreement included in the City's code enforcement
12 file is consistent with Acquavella's testimony. DR Tab 101:514-517. The rental agreement gives the
13 tenant exclusive possession and use of the condominium. The rental agreement provides, "[w]hen you
14 rent the unit, you assume responsibility for it and its contents." DR Tab 101:516. The rental agreement
15 does not permit Acquavella to enter the condominium except to make required repairs at the request of
16 the tenant. *Id.* The rental agreement states the condominiums are rented furnished (including kitchen
17 equipment and linens). *Id.* However, "[h]ousekeeping services are not provided with your rental." *Id.*
18 Clean linens are provided only once at the request of the tenant. *Id.* Tenants are responsible for long
19 distance telephone charges. *Id.* The rental agreement requires a nonrefundable cleaning fee and
20 provides that tenants are liable for damages to the condominium. DR Tab 101:515. The rental
21 agreement allows eviction (the common term for an unlawful detainer action) for violation of the rental
22 agreement. DR Tab 101:514. The rental agreement refers to "guests," "check in," "reservation," and
23 recommends travel insurance. DR Tab 101:514-515.

1 7. The City issued a Notice of Violation (“NOV”) to Acquavella stating that her rental
2 activities constituted an impermissible lodging use. DR Tab 58:242-244.

3 8. The City issued NOVs to other property owners in the Elektra as well. DR Tab 58:254-
4 256. One of these property owners, the Mummerys, submitted a six month lease agreement to the City
5 in response to the NOV. DR Tab 40:178-183. The lease agreement used the Seattle Suites rental
6 agreement form. *Id.* This rental agreement form contains many terms that are similar to ones in the Sea
7 to Sky rental agreement that the City argues are characteristic of lodging. The Seattle Suites agreement
8 states that violation of the agreement will result in immediate termination (DR Tab 40:179); smoking,
9 repeated neighbor complaints, pets, parties or excessive noise will all result in immediate termination
10 (DR Tab 40:179, 182); payment can be made by credit card (DR Tab 40:181); the tenant’s credit card
11 may be charged for damages (DR Tab 40:180); the landlord pays for basic utilities but the tenant is
12 responsible for payment for long distance telephone calls and upgraded utilities (*id.*); the terms “guests,”
13 “reservation” and “check in/out” are used (DR Tab 40:181-182); and housekeeping is not typically
14 provided but may be provided for an additional fee (DR Tab 40:183). However, contrary to the City’s
15 current position, City staff determined that a six month lease using this rental agreement form
16 constituted a residential use, not a lodging use. DR Tab 39:177.

17 9. Acquavella sought reconsideration of the NOV issued to her. DR Tab 51:229-230. The
18 City then issued a Land Use Order of the Director, which upheld the NOV. DR Tab 42:188-197.
19 Subsequently, the City entered into an agreement with Acquavella that provided that Acquavella would
20 submit a request for a Code Interpretation regarding whether her rental activities constitute a residential
21 use. DR Tab 31:152-156.

22 10. Acquavella submitted the request for a Code Interpretation to the City. DR Tab 9:34-60.
23 The City then issued the Code Interpretation, which concluded that rental of condominium units in the

1 Elektra for less than 30 days is a lodging use. DR Tab 10:61-69. The Code Interpretation also
2 concluded that short term rental is not permitted as an accessory use to a primary residential use of
3 property. *Id.* Acquavella appealed the Code Interpretation to the City’s Hearing Examiner. DR Tab
4 30:147-151.

5 11. The Hearing Examiner held a quasi-judicial hearing on the appeal. DR Tab 6:12. Andy
6 McKim, a Land Use Planner with more than 20 years of experience with the City, testified that the
7 City’s prior practice was to use a 30 day “rule of thumb” for distinguishing between lodging and
8 residential uses. TR 16:20-23; TR 29:15-17; DR Tab 6:13. Following the hearing, on October 23, 2008,
9 the Hearing Examiner issued a decision (“Hearing Examiner Decision”) reversing the Code
10 Interpretation. DR Tab 6:17. The Hearing Examiner concluded that the 30 day rule announced in the
11 Code Interpretation is not supported by the Seattle Municipal Code (“City Code” or “SMC”) and cannot
12 be used by the City. DR Tab 6:16. No party appealed this portion of the Hearing Examiner Decision.

13 12. In addition, the Hearing Examiner found that the Elektra was permitted as a multifamily
14 residential building and that the building and its operations have not been modified. DR Tab 6:13. The
15 Hearing Examiner also concluded that “[e]ach condominium unit fits the definition of ‘dwelling unit’
16 because the unit itself consists of a group of rooms within a structure designed, arranged, and intended
17 to be occupied by not more than one household as independent living accommodations.” DR Tab 6:16.
18 No party appealed this finding or conclusion.

19 13. Nevertheless, the Hearing Examiner concluded that “to be considered a ‘housekeeping
20 unit,’ the person or persons who rent a condominium unit on a short term basis would have to be
21 authorized during their occupancy to manage the unit itself (‘the house’) and affairs associated with it
22 (‘home affairs’).” DR Tab 6:16. The Hearing Examiner based this determination on the definition of
23 “housekeeping” in Webster’s Dictionary but did not consider the related definition of “housekeep” in the

1 same dictionary. DR Tab 6:15. The Hearing Examiner concluded that there was not enough evidence in
2 the record to determine whether Acquavella's rental activities are a residential use. DR Tab 6:16.

3 14. In addition, the Hearing Examiner determined that Acquavella's rentals are not accessory
4 to a primary residential use of property. DR Tab 6:17.

5 15. Following the Hearing Examiner decision, the City refused to withdraw the NOV or
6 Director's Order. Instead, the City indicated that it was forwarding the matter to the City's Law
7 Department with a request that enforcement actions be filed. DR Tab 33:160.

8 16. Acquavella timely filed this action under LUPA appealing portions of the Hearing
9 Examiner Decision.

10 17. In a LUPA action this Court sits in an appellate capacity and reviews the factual record
11 created before the City. In this case, the Court supplemented the factual record created before the
12 Hearing Examiner with the City's code enforcement file. In its briefing and argument, the City relied
13 almost exclusively on documents in the code enforcement file. The City cited only one exhibit from the
14 Hearing Examiner record. The Hearing Examiner did not consider the documents in the code
15 enforcement file. Acquavella had no opportunity to cross examine witnesses whose statements are
16 contained in these documents or otherwise dispute the accuracy or relevance of the information
17 contained in them. Also, many of the documents relate to other property owners or to short term rental
18 generally. DR Tab 40, 49, 63, 65, 75, 100, 102. In addition, many of the documents are outdated, with
19 many created more than a year before the Hearing Examiner proceedings. DR Tab 56 (field notes dated
20 10/29/07), Tab 63 (anonymous correspondence dated 9/19/07), Tab 64 (correspondence dated 9/19/07),
21 Tab 65 (correspondence dated 9/19/07), Tab 67 (correspondence dated 9/19/07), Tab 74
22 (correspondence dated 9/13/07), Tab 75 (correspondence dated 9/7/07), Tab 88 (correspondence dated
23 8/31/07), Tab 101 (Sea to Sky web pages, many outdated), Tab 103 (outdated vrbo.com web pages), Tab

1 104 (outdated vacationhomrentals.com web pages), Tab 105 (outdated roadsideamerica.com web
2 pages), Tab 106 (outdated vacationrentals inamerica.com web pages), Tab 108 (outdated trails.com web
3 pages). Notably, the Sea to Sky rental agreement in the code enforcement file is undated. DR Tab
4 101:514-517.

5 18. Acquavella makes three alternative requests for relief. First, Acquavella requests that the
6 Court reverse the Hearing Examiner Decision and determine that her rental activities are residential.
7 Primarily, Acquavella argues that her rental activities are residential under the plain language of the City
8 Code. Acquavella also argues that the “control test” used by the City is not relevant to the question
9 before the Court, which is whether Acquavella’s rental activities are a residential use under the City
10 Code, because the “control test” does not appear in the City Code. Even if the “control test” were
11 relevant, Acquavella argues that her rental activities would constitute a residential use under this test. In
12 addition, Acquavella argues that the City Code is unconstitutionally vague as interpreted and applied to
13 Acquavella by the City.

14 19. Second, in the alternative, if the Court determines that the “control test” is relevant, then
15 Acquavella requests that the Court remand this matter to the Hearing Examiner for an evidentiary
16 hearing.

17 20. Third, in the alternative, Acquavella requests that the Court determine that her rental
18 activities are a permitted accessory use.

19 II. CONCLUSIONS OF LAW

20 Based on the foregoing findings of fact, the Court enters the following Conclusions of Law:

21 Jurisdiction and Standard of Review

22 1. This Court has jurisdiction over this action under RCW 36.70C.040.
23

1 2. The Court may grant relief if one of the standards set out in RCW 36.70C.130 is met.
2 These standards are: (a) The body or officer that made the land use decision engaged in unlawful
3 procedure or failed to follow a prescribed process, unless the error was harmless; (b) the land use
4 decision is an erroneous interpretation of the law, after allowing for such deference as is due the
5 construction of a law by a local jurisdiction with expertise; (c) the land use decision is not supported by
6 evidence that is substantial when viewed in light of the whole record before the court; (d) the land use
7 decision is a clearly erroneous application of the law to the facts; (e) the land use decision is outside the
8 authority or jurisdiction of the body or officer making the decision; or (f) the land use decision violates
9 the constitutional rights of the party seeking relief.

10 RCW 36.70C.130(1).

11 3. Whether a decision is an erroneous interpretation of the law is a question of law reviewed
12 *de novo*. *Schofield v. Spokane County*, 96 Wn. App. 581, 586, 980 P.2d 277 (1999). If an agency's
13 interpretation of its code is not a matter of preexisting policy, as in this case, no deference is due to that
14 interpretation. *Sleasman v. City of Lacey*, 159 Wn.2d 639, 647, 151 P.2d 990 (2007). Substantial
15 evidence is "a sufficient quantity of evidence to persuade a fair-minded person of the truth or
16 correctness" of the decision. *Schofield, supra*, 96 Wn. App. at 586. A decision is clearly erroneous if
17 "although there is evidence to support it, the reviewing court on the entire evidence is left with the
18 definite and firm conviction that a mistake has been committed." *Id.* Acquavella bears the burden of
19 proof in this matter.

20 4. In this case, the portions of the Hearing Examiner Decision under appeal are an erroneous
21 interpretation of the law, not supported by substantial evidence and a clearly erroneous application of the
22 law to the facts.

23 Principles of Statutory Interpretation

1 5. In interpreting a statute, the Court’s objective is to ascertain and carry out the legislative
2 intent. *Delyria v. Wash. State School for the Blind*, 165 Wn.2d 559, 563, 199 P.3d 980 (2009). If the
3 statute’s meaning is plain on its face, then the Court must give effect to the plain meaning as an
4 expression of legislative intent. *Id.* The dictionary may be used to define the plain meaning. *Sleasman*,
5 *supra*, 159 Wn.2d at 643. The interpretation of local ordinances is governed by the same principles as
6 the interpretation of statutes. *Griffin v. Thurston County Board of Health*, 165 Wn.2d 50, 55, 196 P.3d
7 141 (2008).

8 6. Agencies do not have the authority to make rules which amend or change legislative
9 enactments. *Washington Federation of State Employees v. State Personnel Board*, 54 Wn. App. 305,
10 308, 773 P.2d 421 (1989). Instead, the City must interpret and enforce the City Code as written, without
11 adding new criteria on a case-by-case basis. *Schroeder v. Bellevue*, 83 Wn. App. 188, 193, 920 P.2d
12 1216 (1996).

13 First Claim: Acquavella’s Rental Activities Are Residential

14 7. SMC 23.45.004 states that “multifamily structures” are a principal use permitted outright
15 in all multifamily zones. The Elektra is located in a multifamily zone. DR Tab 6:12.

16 8. “Residential” means “a use within a structure intended to be occupied as a dwelling.”
17 SMC 23.84.032. Residential uses include multifamily structures, which are structures containing two or
18 more dwelling units. *Id.* The Hearing Examiner found and the City acknowledged in its briefing that the
19 Elektra is a multifamily structure. DR Tab 6:13.

20 9. A dwelling unit is “a room or rooms located within a structure, designed, arranged,
21 occupied or intended to be occupied by not more than one (1) household as living accommodations.”
22 SMC 23.84.008. The Hearing Examiner concluded that the condominiums in the Elektra are dwelling
23 units and no party appealed this conclusion. DR Tab 6:16.

1 10. Based on this conclusion, the Court need not address the subsidiary term “household” or
2 its subsidiary term “housekeeping unit.” Nevertheless, based on the record before the Court,
3 Acquavella’s tenants qualify as households and housekeeping units.

4 11. A household is a “housekeeping unit” consisting of a limited number of people (any
5 number of related persons; eight or fewer non-related, nontransient persons; or eight or fewer related and
6 non-related nontransient persons). SMC 23.84.016. In its briefing, the City acknowledged that this
7 definition focuses on the number of residents and Acquavella’s tenants do not exceed the eight-person
8 limit.

9 12. The SMC does not define “housekeeping unit.” According to Webster’s Dictionary,
10 “housekeep” means “to perform the routine duties (as cooking and cleaning) of managing a house” and
11 “housekeeping” means “the management of a house and home affairs.” Merriam Webster’s Collegiate
12 Dictionary (10th ed. 1993). The American Heritage Dictionary provides a similar definition, stating that
13 “housekeeping” means “[p]erformance or management of household tasks.” The American Heritage
14 Dictionary of the English Language (4th ed. 2000).

15 13. Under the definitions of “housekeep” and “housekeeping” in Webster’s Dictionary and
16 the American Heritage Dictionary, authority or control over the condominium is not required. Instead,
17 under these dictionary definitions, the term “housekeeping unit” means only an individual or group of
18 people who perform routine household tasks (such as cooking and cleaning).

19 14. Acquavella’s rental of condominiums in the Elektra is a permitted residential use under
20 the plain language of the City Code.

21 15. This conclusion is consistent with the recent decision of the Court of Appeals, Division I,
22 in *Ross v. Bennett*, 148 Wn. App. 40, ___ P.3d ___ (2008). In that case, the Court construed the plain
23 meaning of the term “residential” in a property covenant. The Court held that short term vacation rental

1 qualifies as a residential use. This Court, like the Court in *Ross*, is construing the plain meaning of the
2 term “residential.”

3 16. The City Code defines “lodging” as “a retail sales and service use in which the primary
4 activity is the provision of rooms to transients.” SMC 23.84.024. The City Code does not define
5 “transients.” The dictionary definition of this term is “passing with time; transitory”; “remaining in a
6 place only a brief time.” American Heritage College Dictionary (4th ed. 2004).

7 17. In determining what constitutes a “brief time” with regard to rentals at the Elektra, the
8 Court may reasonably look to the Elektra CC&Rs. The CC&Rs define “transient” rentals as those less
9 than three days. DR Tab 12:74. Acquavella’s rentals are all for three days or more. DR Tab 6:12.
10 Therefore, they are not “transient.”

11 18. In addition, rentals less than 30 days occur only an average of 41% of the time in the
12 condominiums rented by Acquavella. TR 12:12-14. The Court cannot ignore the time that the
13 condominiums are vacant for purposes of calculating this percentage because the record does not show
14 what time period the Acquavella condominiums are vacant. Further, the City has acknowledged that the
15 residential use of an owner or long term tenant does not terminate in his or her absence. TR 43:17-15.
16 Therefore, even if rentals less than 30 days are considered “transient,” these rentals are not the “primary
17 activity” in the condominiums.

18 19. Lodging includes bed and breakfasts, hotels and motels. SMC 23.84.024. A hotel is a
19 building in “which a majority of the rooms are provided to transients for a fee on a daily or short-term
20 basis.” *Id.* No party claims that the Elektra is a bed and breakfast or motel. The Elektra is also not a
21 hotel. The Elektra has 200 condominiums but only approximately 25 condominiums are rented on a
22 short term basis. DR Tab 6:12; TR 12:18-24.

1 20. The “control test” used by the City is not relevant to the determination of whether
2 Acquavella’s rentals are a permitted use under the City Code. The “control test” does not appear in the
3 City Code. While the City Council could adopt the “control test,” it has not done so, and both the City
4 and the Court are bound to apply the City Code as written. *Washington Federation of State Employees,*
5 *supra*, 54 Wn. App. at 308; *Schroeder, supra*, 83 Wn. App. at 193.

6 21. In addition, the Court lacks jurisdiction to determine the nature of the relationship
7 between Acquavella and her renters. The issue before the Court is whether Acquavella’s rentals qualify
8 as a permitted use under the City’s Land Use Code (Title 23 of the City Code). The Land Use Code
9 establishes the rules for the City’s regulation of land; it does not determine relationships between private
10 parties.

11 22. Even if the “control test” were relevant, Acquavella’s rentals would qualify as residential.
12 In *Mercer Island v. Steinman*, 9 Wn. App. 479, 513 P.2d 80 (1973), the Court determined that a
13 residential tenant (distinguished from a lodger) “has exclusive legal possession of premises and is
14 responsible for their care and condition.” The record shows that Acquavella’s tenants have exclusive
15 legal possession during their tenancy. TR 11:8-14; DR Tab 101:514-517. In addition, they are
16 responsible for the care and condition of the condominium during their tenancy. TR 10:9-12, 11:22-26;
17 DR Tab 6:13; DR Tab 101:516. Therefore, they are residential tenants.

18 23. The Court in *Mercer Island* also identified six factors that are “indicative of tenancy”:

19 (1) the exclusive possession of the rooms by the occupiers without a right of control or entry in
20 the owner during the occupancy, (2) the separateness of each living unit from the remaining
21 areas of the structure, (3) the existence of private outside entryways for each living space with
22 keys possessed privately by the occupiers, (4) the absence of commonly shared cooking, eating
and bathing facilities or other areas, (5) the arrangement of rental on a landlord-tenant basis, and
(6) the absence of the performance of cooking, cleaning, garbage removal and telephone services
for the occupiers by the owner.

23 *Mercer Island, supra*, 9 Wn. App. 484-485.

1 24. The evidence in the record shows that Acquavella's tenants have all these indicia of
2 residential tenancy. First, they have exclusive possession of the condominiums during the tenancy
3 without the right of entry by the landlord. TR 11:8-14; DR Tab 101:514-517. Second, each
4 condominium unit is a separate and independent living unit. TR 10:12-18; DR Tab 6:13. Third,
5 Acquavella's tenants have keys to not only the condominium units that they are renting, but also to the
6 building, which has a controlled entrance not open to the public. TR 10:22-26. Fourth, there are no
7 commonly shared cooking, eating, or bathing facilities. TR 10:9-12; DR Tab 6:13.

8 25. Fifth, Acquavella's rentals are arranged on a landlord tenant basis. Acquavella regards
9 all of her rentals as residential rentals. TR 11:7-8. Acquavella's rental agreement includes the hallmark
10 of residential tenancy, exclusive use and possession by the tenant. DR Tab 101:514-517; TR 11:8-14.
11 The fact that it refers to tenants as "guests," allows payment by credit card, recommends travel
12 insurance, and refers to "check in" and "check out" is not controlling. The rental agreement is generally
13 consistent with landlord tenant law, including provisions requiring Acquavella to make repairs if
14 needed, allowing eviction (a common term for unlawful detainer) and providing that the tenant is
15 responsible for damages caused by the tenant. DR Tab 101:514-515; RCW 59.18.060(5) (duty to
16 repair); RCW 59.18.150 (right of entry to repair); RCW 59.18.140 (tenant duty to conform with
17 reasonable obligations in rental agreement), RCW 59.18.180 (substantial noncompliance grounds for
18 unlawful detainer action); RCW 59.18.285 (nonrefundable fees permitted); SMC 22.206.160.A (duty to
19 repair); SMC 22.206.170.F (right of entry for repair); SMC 22.206.160.C.1.c (noncompliance with
20 material term of rental agreement grounds for eviction). If any of the terms of the rental agreement
21 violate landlord tenant law, the result is not that the rental is not residential, but rather that these terms
22 cannot be enforced against the tenant.
23

1 26. Sixth, Acquavella does not provide cooking or cleaning services for the tenants as part of
2 the lease agreement. TR 11:22-26; DR Tab 101:516. Fresh towels may be provided only once on
3 request. DR Tab 101:516. Tenants are responsible for complying with City requirements for separation
4 of recyclables for garbage removal. *Id.* The cost of local, but not long distance, telephone service is
5 included in the rent. *Id.*

6 27. The City's claim that the Acquavella rentals are lodging under the "control test" is not
7 consistent with the City's established practice and is not entitled to deference. *Sleasman, supra*, 159
8 Wn.2d at 647. The City's historic practice has been to distinguish residential from lodging uses based
9 on a 30-day rule of thumb, not the "control test." TR 16:20-23; TR 29:15-17; DR Tab 6:13. In addition,
10 the Seattle Suites rental agreement contains many of the terms that the City identifies as characteristics
11 of lodging. DR Tab 40:179-183. However, the City determined that a six month lease using the Seattle
12 Suites rental agreement constituted a residential use. DR Tab 39:177.

13 28. The decision in *Benham v. Morton & Furbish Agency*, 929 A.2d 471, 2007 ME 83 (2007)
14 has no precedential value in this case because it is not a Washington case. In addition, it is not
15 persuasive because it conflicts with Washington precedent. *Hughes v. Chehalis School District No. 302*,
16 61 Wn.2d 222, 377 P.2d 642 (1963) (a lease can be as short as one evening); *Ross, supra*, 148 Wn. App.
17 40 (vacation rental is a residential use).

18 29. Acquavella argues that the City Code is unconstitutionally vague as interpreted and
19 applied to Acquavella by the City. In light of the Court's conclusion that Acquavella's rentals are
20 residential under the plain language of the City Code, the Court does not reach this issue. The City
21 Code is not susceptible to challenge on this basis on the record before the Court. This ruling does not
22 preclude Acquavella from bringing such a challenge in the future based on additional facts.

