

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeals of
**WALLINGFORD COMMUNITY
COUNCIL, ET AL.**

Hearing Examiner File:
W-17-006 through
W-17-014

of adequacy of the FEIS issued by the Director,
Office of Planning and Community Development

**PRELIMINARY ORDER
ON PREHEARING
MOTIONS**

The parties have filed various prehearing motions in this matter. On May 31, 2018, a motions hearing was held regarding the prehearing motions. Represented at the conference were the Appellants: Wallingford Community Council (W-17-006), by Lee Raaen, attorney-at-law; Morgan Community Association (W-17-007), by Deborah Barker; Friends of Ravenna-Cowen (W-17-008), by Judith Bendich; Seattle Coalition for Affordability, Livability and Equity (“SCALE”) (W-17-010), by Claudia M. Newman and David A. Bricklin, attorneys-at-law; Seniors United for Neighborhoods (W-17-011), by David Ward; Beacon Hill Council of Seattle (W-17-012), by Mira Latoszek; Friends of the North Rainier Neighborhood Plan (W-17-013), by Talis Abolins; West Seattle Junction Neighborhood Organization (W-17-009), by Richard Koehler, and Christine M. Tobin-Presser, attorney-at-law; and Fremont Neighborhood Council (W-17-014), by Toby Thaler, attorney-at-law. The City of Seattle (“City”), was represented by Tadas Kisielius and Jeffrey Weber, attorneys-at-law.

The following motions have been filed:

1. Motion for Partial Dismissal filed by the City (“City’s Motion”).
2. Cross Motions to the City’s Motion filed by Seniors United for Neighborhoods, Wallingford Community Council and the West Seattle Junction Neighborhood Organization.
3. Motion to Dismiss on Summary Judgment filed by SCALE (“SCALE’s Motion”).
4. Motion to Dismiss on Summary Judgment filed by Friends of the North Rainier Neighborhood Plan.
5. Motion to Dismiss on Summary Judgment filed by Friends of Ravenna-Cowen.
6. Motion to Dismiss on Summary Judgment filed by the West Seattle Junction Neighborhood Organization and a Cross Motion to Dismiss filed by the City.

In addition to the motions filed, respective responses to the motions and replies have been filed by the parties.

The Hearing Examiner has reviewed the file in this matter including the motions documents. For purposes of this decision, all section numbers refer to the Seattle Municipal Code (“SMC” or “Code”) unless otherwise indicated.

Quasi-judicial bodies, like the Hearing Examiner, may dispose of an issue summarily where there is no genuine issue of material fact. *ASARCO Inc. v. Air Quality Coalition*, 92 Wn.2d 685, 695-698, 601 P.2d 501 (1979). Rule 1.03 of the Hearing Examiner Rules of Practice and Procedure (“HERs”) states that for questions of practice and procedure not covered by the HERs, the Hearing Examiner “may look to the Superior Court Civil Rules for guidance.” Civil Rule 56(c) provides that a motion for summary judgment is properly granted where “the moving party is entitled to a judgment as a matter of law.” The Hearing Examiner “must consider the facts in the light most favorable to the nonmoving party, and the motion should be granted only if reasonable persons could reach only one conclusion.” *Labriola v. Pollard Group, Inc.*, 152 Wn.2d 828, 832-833, 100 P.3d 791 (2004).

“A party may move for summary judgment by setting out its own version of the facts or by alleging that the nonmoving party failed to present sufficient evidence to support its case ... Once the moving party has met its burden, the burden shifts to the nonmoving party to present admissible evidence demonstrating the existence of a genuine issue of material fact. ... If the nonmoving party does not meet that burden, summary judgment is appropriate.” *Indoor Billboard/Washington, Inc. v. Integra Telecom of Washington, Inc.*, 162 Wn.2d 59, 70, 170 P.3d 10 (2007) (internal citations omitted) (emphasis added). “An affidavit does not raise a genuine issue for trial unless it sets forth facts evidentiary in nature, *i.e.*, information as to ... a reality as distinguished from supposition or opinion.” *Curran v. City of Marysville*, 53 Wn.App. 358, 367, 766 P.2d 1141 (1989), quoting *Grimwood v. University of Puget Sound, Inc.*, 110 Wn.2d 355, 359, 753 P.2d 517 (1988). Ultimate facts, conclusions of fact, or conclusory statements of fact are insufficient to raise a question of fact. *Id.* “The whole purpose of summary judgment procedure would be defeated if a case could be forced to trial by a mere assertion that an issue exists without any showing of evidence.” *Meissner v. Simpson Timber Co.*, 69 Wn.2d 949, 956, 421 P.2d 674 (1966) (citation omitted).

Motion for Partial Dismissal filed by the City.

1. Adequacy of Alternatives Analysis. The City’s Motion concerning challenges to the adequacy of the FEIS alternatives analysis is **DISMISSED** for failure to demonstrate that there is no genuine issue of material fact concerning this issue.
2. Relevancy of prior environmental review e.g. 2015 DNS for different proposal. The City’s Motion concerning this issue is **GRANTED**, Wallingford Community Council Notice of Appeal Section 2.b at pg. 6-7 is **DISMISSED**.
3. Amendments to the Comprehensive Plan are not barred. To the degree Friends of Ravenna-Cowen Notice of Appeal issue ¶7 at pg. 7 challenges the FEIS for consideration of a proposal which may require amendment of the Comprehensive Plan, the City’s Motion is **GRANTED**.

4. Adequacy of mitigation is not relevant. To the degree parties were raising the issue of challenging the adequacy of mitigation measures identified in the FEIS the City's Motion is **GRANTED**. However, issues raised by the Appellants concerning the FEIS level of analysis, and specifically the adequacy of analysis associated with mitigation proposals is permitted.
5. Need to address impacts not attributable to proposal. Morgan Community Association Notice of Appeal ¶6 of 6 at pg. 2 is **DISMISSED**. Beacon Hill Council of Seattle Notice of Appeal pg. 4 last ¶ is **DISMISSED**. These issues concern impacts not attributable to the proposal, and are therefore not required to be addressed by the FEIS.
6. Phased review compliance. To the degree the West Seattle Junction Neighborhood Organization and Fremont Neighborhood Council challenge the compliance of the FEIS with phased review requirements those issues are **DISMISSED**. The FEIS satisfies the City's phased review process requirements.

Cross Motions to the City's Motion filed by Seniors United for Neighborhoods, Wallingford Community Council and the West Seattle Junction Neighborhood Organization.

- A. Seniors United for Neighborhoods. Seniors United for Neighborhoods motion seeking summary judgment on the basis that the FEIS alternatives analysis is inadequate is **DISMISSED** for failure to demonstrate that there is no genuine issue of material fact concerning this issue.
- B. Wallingford Community Council. Wallingford Community Council's motion seeking summary judgment on the basis that the FEIS alternatives analysis is inadequate is **DISMISSED** for failure to demonstrate that there is no genuine issue of material fact concerning this issue.
- C. West Seattle Junction Neighborhood Organization
 1. West Seattle Junction Neighborhood Organization's motion seeking summary judgment on the basis that the FEIS alternatives analysis is inadequate is **DISMISSED** for failure to demonstrate that there is no genuine issue of material fact concerning this issue.
 2. Phased review compliance. West Seattle Junction Neighborhood Organization's challenge of the City's use of phased review for the FEIS is **DISMISSED**. The FEIS complies with the requirements for phased review.
 3. Failure of FEIS to identify conflicts with Comprehensive Plan. West Seattle Junction Neighborhood Organization's challenge of the FEIS on the basis that the proposed action conflicted with the Comprehensive

Plan and the FEIS did not adequately describe possible amendments to the Comprehensive Plan is **DISMISSED**.

Motion to Dismiss on Summary Judgment filed by SCALE.

1. To the degree SCALE raises a distinct challenge to the programmatic nature of the FEIS, SCALE's Motion is **DISMISSED** for failure to demonstrate that as a programmatic FEIS the FEIS is flawed as a matter of law.
2. SCALE's challenge to the adequacy of the FEIS analysis concerning historic resources is **DISMISSED** for failure to demonstrate that there is no genuine issue of material fact concerning this issue.
3. SCALE's challenge to the adequacy of the FEIS analysis concerning the tree canopy is **DISMISSED** for failure to demonstrate that there is no genuine issue of material fact concerning this issue.
4. SCALE's challenge to the adequacy of the FEIS analysis concerning impacts of proposed text amendments outside urban villages is **DISMISSED** for failure to demonstrate that there is no genuine issue of material fact concerning this issue.
5. SCALE's challenge to the adequacy of the FEIS analysis concerning comprehensive plan inconsistencies and amendments needed to allow the proposal is **DISMISSED**. The FEIS was not required to include specific language for proposed amendments to Comprehensive Plan policies, and SCALE failed to demonstrate that there is no genuine issue of material fact concerning the FEIS analysis of the proposal's consistency with all comprehensive plan policies.

Motion to Dismiss on Summary Judgment filed by Friends of the North Rainier Neighborhood Plan.

1. To the degree Friends of the North Rainier Neighborhood Plan raises a distinct challenge to the programmatic nature of the FEIS, Friends of the North Rainier Neighborhood Plan's Motion is **DISMISSED** for failure to demonstrate that as a programmatic FEIS the FEIS is flawed as a matter of law.
2. The Friends of the North Rainier Neighborhood Plan's challenge to the adequacy of the FEIS analysis concerning open space and recreation is **DISMISSED** for failure to demonstrate that there is no genuine issue of material fact concerning this issue.

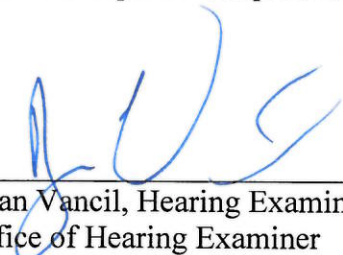
Motion to Dismiss on Summary Judgment filed by Friends of Ravenna-Cowen. This motion was **DISMISSED** at the motion hearing for failure to demonstrate that significant impacts would result from the proposed expansion of the Roosevelt Village into the Ravenna Neighborhood East of 15th Avenue N, and thereby failed to demonstrate that no genuine issue of material fact remained concerning this issue.

Motion to Dismiss on Summary Judgment filed by the West Seattle Junction Neighborhood Organization and a Cross Motion to Dismiss filed by the City. The West Seattle Junction Neighborhood Organization's motion is **DISMISSED**, and the City's Cross Motion is **GRANTED**. (a) The Determination of Significance Notice described the

proposal adequately to meet the notice requirements of SMC 25.05.360.A and WAC 197-11-360, (b) The Determination of Significance Notice publication in the Daily Journal of Commerce complied with the notice requirements of SMC 25.05.360 and 25.05.510, and (c) The FEIS scoping meetings met the requirements of SMC 25.04.409. The primary basis for the arguments raised by the West Seattle Junction Neighborhood Organization in its motion is that the City notice process could have been better, and been more inclusive. However that may be, the Determination of Significance Notice complied with Code and SEPA notice requirements and was therefore adequate under law.

The Hearing Examiner may issue an additional order to supplement this preliminary order prior to the hearing, and/or may reserve discussion on dispositive aspects of this order for the final decision on this matter.

Entered this 8th day of June, 2018.



Ryan Vancil, Hearing Examiner
Office of Hearing Examiner
P.O. Box 94729
Seattle, Washington 98124-4729
Phone: (206) 684-0521
Fax: (206) 684-0536

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **Preliminary Order on Prehearing Motions** to each person listed below, or on the attached mailing list, in the matter of **Wallingford Community Council, et al.**, Hearing Examiner Files: **W-17-006 – W-17-014** in the manner indicated.

Party	Method of Service
Appellants Wallingford Community Council c/o G. Lee Raen lee@lraaen.com Morgan Community Association (MoCA) c/o Deb Barker djb124@earthlink.net Friends of Ravenna-Cowen c/o Judith Bendich jebendich@comcast.net West Seattle Junction Neighborhood Organization admin@wsjuno.org c/o Rich Koehler rkoehler@cool-studio.net Coalition for Affordability, Livability, and Equity c/o Claudia Newman newman@bnd-law.com David Bricklin bricklin@bnd-law.com Seniors United for Neighborhoods (SUN) c/o David Ward booksgalore22@gmail.com Beacon Hill Council of Seattle c/o Mira Latoszek mira.latoszek@gmail.com Friends of North Rainier Neighborhood Plan	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Inter-office Mail <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger

c/o Talis Abolins
talis.abolins@gmail.com

Fremont Neighborhood Council
fremont@loupploup.net
c/o Toby Thaler
toby@thaler.org

Department Legal Counsel

Jeff Weber
Assistant City Attorney
Jeff.weber@seattle.gov

Daniel Mitchell
Assistant City Attorney
Daniel.mitchell@seattle.gov

Tadas Kiselius
tak@vnf.com

Dale Johnson
dnj@vnf.com

Clara Park
cpark@vnf.com

Alicia Reise
Alicia.reise@seattle.gov

Cara Tomlinson
cat@vnf.com

Amanda Kleiss
ack@vnf.com

Geoffrey Wentlandt
OPCD
Geoffrey.wentlandt@seattle.gov

MHA.EIS@seattle.gov

- U.S. First Class Mail, postage prepaid
- Inter-office Mail
- E-mail
- Fax
- Hand Delivery
- Legal Messenger

Dated: June 8, 2018



Alayna Johnson
Legal Assistant