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BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE

In the Matter of the Appeal of the:

**QUEEN ANNE COMMUNITY  
COUNCIL**

of the Final Environmental Impact  
Statement for the Citywide Implementation  
of ADU-FEIS.

Hearing Examiner File W-18-009

PART 1

EXHIBIT A TO THE  
DECLARATION OF TADAS KISIELIUS  
IN SUPPORT OF SEATTLE CITY  
COUNCIL'S MOTION FOR PARTIAL  
DISMISSAL

## LAND USE/SEPA DECISION APPEAL

RECEIVED BY  
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OFFICE OF  
HEARING EXAMINER

### A. APPELLANT INFORMATION: (Authorized Representative)

NAME: Martin Henry Kaplan, Architect AIA (Queen Anne Community Council)  
ADDRESS: 360 Highland Drive, Seattle, WA 98109  
PHONE: Work: 206-682-8600 Home: 206-972-9972  
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### B. DECISION BEING APPEALED

1. Decision Appealed: Determination of Non-Significance by OPCD (Attached)
2. Property Address: The entire city of Seattle single-family zoned property
3. Elements of decision being appealed:
  - a. Adequacy of conditions
  - b. EIS not required
  - c. SEPA Checklist not accurate
  - d. The city's decision that the proposed land use changes will not have significant environmental impacts

### C. APPEAL INFORMATION

#### 1. What is your interest in this decision? (State how you are affected by it)

As Architect, Seattle native, chair of our Queen Anne Community Council Land Use Review Committee, and previous member of the Seattle Planning Commission (7.5 years) who helped author the DADU legislation passed in 2010, I and many others across the city oppose this new legislation proposed by Councilmember O'Brien due to a host of significant impacts to all single-family zoned land. The DNS decision is without merit and ignores the property rights of those Seattleites who own and/or occupy 65% of Seattle's land. Over several months I have chaired three community meetings including hundreds of citizens and leaders from many of our Seattle neighborhoods; all remain seriously concerned about the significant impacts to their property and lives if this major land use upzone is allowed to move forward without adequate expert professional study. As this has become broadcast city wide, citizens from all around our city are beginning to advance their objections. All are extremely disappointed at not being able to provide input at typical neighborhood public meetings and hearings.

#### 2. What are your objections to the decision? (List and describe what you believe to be the errors, omissions, or other problems with this decision)

The source of our objections can be briefly itemized as follows:

- a. Public Outreach and Input: Councilmember O'Brien has failed to include the majority of Seattleites in seeking public input concerning the significant land use change in single-family zoning. In the city's "Summary of Public Input" (attached), the city admits the unprecedented lack of typical widespread and inclusive public outreach by stating the following in the introduction:

Over the next five months, we received input from many people about backyard cottages and ADUs. We interviewed dozens of homeowners who have created or considered creating backyard cottages and ADUs to learn from their experience. We also spoke with designers and builders about the common challenges that arise with backyard cottages. In January and February 2016, Councilmember Mike O'Brien and the Office of Planning & Community Development (OPCD) co-hosted two community meetings to get feedback on a number of potential land use code changes and solicit ideas and strategies for making it easier to create backyard cottages and ADUs. This report summarizes the public input we received throughout this process.

Members of our QACC (Queen Anne Community Council) attended these two meetings which did not include public input, only a marketing effort by Councilmember O'Brien and advocates. The "Summary of Public Input" dramatically exposes the serious lack of input from almost all our city's neighborhoods and thousands of citizens ignoring the voices from most Seattleites and dangerously overturning a once respected commitment from City Hall to partner with all Seattleites to gain input, consider opinions and craft legislation that reflects the values of our citizens; especially considering a proposal which will change forever 65% of Seattle land mass zoning.

b. Complete reversal of the DADU legislation: This legislation proposes to overturn the existing codes and is even titled "Removing Barriers to Backyard Cottages (DADU) and Accessory Dwelling Units (ADU)." The existing code was studied in 2009 by the Seattle PLanning Commission who consulted with experts and professionals who identified potential significant impacts to single family properties and neighborhoods. I was a member of the Seattle Planning Commission team who led this very serious effort to increase the opportunities for density in single-family zoned areas of our city. During our review, we arrived at the current code that took into consideration many potential significant impacts to almost all single-family zoned properties. This proposed legislation seeks to overturn every restriction we and experts felt was critical in protecting and preserving the rights of single-family zoned land while offering opportunities to increase density. This proposed legislation seeks to overturn these following critical components of the current code, among others:

- Allow an ADU and backyard cottage on the same lot
- Remove the off-street parking requirement
- Modify and eliminate the owner-occupancy requirement
- Reduce the minimum lot size for backyard cottages
- Increase the maximum height limit for backyard cottages
- Increase the rear yard lot coverage limit
- Increase maximum gross square footage limits
- Add flexibility for location of entry to a backyard cottage
- Increase heights of roof features that add interior space
- Allow for projections from backyard cottages
- Increase opportunities for accessory structures in required yards
- Modify definition of "Residential use" to include more density

We will demonstrate the considerable number of significant impacts from overturning the existing code.

c. The notion that this legislation is founded upon providing more affordable housing and Mayor Murray's commitment to "not touch" single family zoned land: In Mayor Murray's rollout of Housing Affordability and Livability (HALA) proposal in July 2015, he proposed very similar and significant land use changes to single family zoned land. These upzones would effectively convert all single family zoned land into duplex and triplex zoned property. Realizing immediately that this unprecedented and non-vetted proposal would forever change 65% of Seattle zoning and convert all neighborhoods into multi-family zones, he withdrew all portions of the landmark study that affected single-family zoning in any way. And since July 2015, he has stood steady in defending his decision and guarantying all Seattleites that there would be no upzones

and changes to any single-family zoned land in Seattle. Councilmember O'Brien's legislation, against the Mayor's guaranty, reintroduces all the significant changes and goes well beyond in converting all single-family zoned land.

In addition, O'Brien's basis for this legislation lies within the notion that by removing barriers to development, more affordable housing will be built. There has been no expert or professional study that confirms such. In fact, experts agree that removing the barriers will in fact produce market rate housing, limited rentals thru airbnb, VRBO and other short term rental portals, and remove affordability as current single family homes on single-family zoned lots will become duplexes and triplexes as developers and homeowners convert their properties for personal income - not affordability.

d. The SEPA Checklist has been completed without accuracy: We recognize that a typical SEPA checklist often addresses one specific project; however in this case it is questioning the environmental impacts of a proposed significant city-wide land use code change. It appears that this checklist has been completed under the mistaken assumption that because no singular project is defined, therefore no environmental impacts can be identified. However, one can easily associate scores of considerable and significant environmental impacts from the resultant construction activity, new buildings, increased densities and congestion, infrastructure pressures and demands, and reduced open space and tree canopy among many others that would result from Councilmember O'Brien's proposal.

We object that almost every SEPA Checklist question is answered by with 'Not Applicable' or 'No.' It is dismissive and inaccurate to suggest that because this is a 'non-project action', there are no foreseeable and clearly identifiable environmental impacts from this proposed legislation, and to deny such frankly takes away the public's right to review, share, and help identify the significant number of real and definable environmental impacts associated with advancing Councilmember O'Brien's legislation. In recent major land use rezones in South Lake Union and currently being studied in Uptown, there was no question that there were environmental impacts and they needed expert study and public engagement; a full EIS. And these two areas of our city contain a only fraction of the land area that would be affected by Councilmember O'Brien's proposal. The SEPA Checklist asks over 100 questions about environmental impacts including:

- pending government approvals,
- earth and stability concerns,
- air quality,
- surface water and drainage impacts,
- plants and open space impacts,
- energy and resource impacts,
- noise impacts,
- land use changes and impacts,
- comprehensive plan and density impacts,
- housing unit numbers and neighborhood impacts,
- aesthetics and height/bulk impacts,
- light and glare impacts,
- recreational impacts and displacement,
- historical and cultural preservation,
- transportation and volume impacts,
- public services,
- impacts upon utilities

To every one of these significant impacts the city has claimed that Councilmember O'Brien's proposed legislation has absolutely no environmental impact. And as a result of this checklist, the City of Seattle has issued the following SEPA DNS determination:

**ENVIRONMENTAL DETERMINATION**

*After review of a completed environmental checklist and other information on file, OPCD has determined that the amendments described above will not have a probable significant adverse environmental impact, and has issued a Determination of Non-Significance under the State Environmental Policy Act (no Environmental Impact Statement required).*

We suggest however that almost every one of the proposed changes in Councilmember O'Brien's proposal will have significant environmental impacts and the city should be held to a much higher standard to prove otherwise in a full EIS.

3. What relief do you want? (Specify what you want to Examiner to do: reverse the decision, modify conditions, etc.)

We wish to have the DNS reversed.

a. We suggest that almost every one of the proposed changes in Councilmember O'Brien's proposal will contribute significant environmental impacts to every neighborhood, single-family zoned property, capacities of Seattle's infrastructure, significant reduction in open space and tree canopy, among many others.

b. We challenge the accuracy of the Checklist as it does not identify one environmental impact, and since this checklist weighs heavily on influencing the City's DNS decision, we feel that this decision is without merit and ignores real inclusive public input, professional and expert analysis with provable metrics and design parameters, and proper unbiased government review and scrutiny.

c. We suggest that a full EIS be prepared that offers an attestable study of the significant impacts proposed by this legislation. It is without precedent that such a legislative or personal land use proposal with such huge consequence has not been required to advance without preparing and defending a complete Environmental Impact Statement. To not require the city to do so, is to ignore the easily identifiable significant environmental impacts from converting most of the zoning of 65% of Seattle's land mass and all single-family zoning to either duplex or triplex multi-family zoning.

Respectfully submitted:  
Martin Henry Kaplan, AIA  
Queen Anne Community Council

Signature:  \_\_\_\_\_

Date: 6 June 2016

**CITY OF SEATTLE  
DETERMINATION OF NON-SIGNIFICANCE BY  
THE OFFICE OF PLANNING & COMMUNITY DEVELOPMENT (OPCD)**

**Applicant Name:** City of Seattle  
**Address of Proposal:** Certain single-family zoned lands within Seattle

**SUMMARY OF PROPOSED ACTION**

The proposal is to amend various provisions of the Land Use Code related to attached accessory dwelling units (ADUs) and detached accessory dwelling units (DADUs), also called backyard cottages. The proposal would:

- Modify certain development standards for siting, designing, and constructing accessory dwelling units and backyard cottages;
- Remove the requirement for one off-street parking space when an accessory dwelling unit or backyard cottage is established;
- Allow an accessory dwelling unit and a backyard cottage on the same lot; and
- Require owner-occupancy for a period of 12 months after an accessory dwelling unit and/or backyard cottage is established.

The following approval is required:

SEPA - Environmental Determination - Chapter 25.05, Seattle Municipal Code.

**SEPA DETERMINATION:**     Exempt     DNS     MDNS     EIS  
 DNS with conditions  
 DNS involving non-exempt grading, or demolition,  
or involving another agency with jurisdiction.

**BACKGROUND**

Since 1994, the City of Seattle passed legislation to allow ADUs that are inside or attached to the principal residence in single-family zones. In 2006 the City Council adopt Ordinance 122190 allowing DADUs for homeowners living in southeast Seattle as a pilot program. DADUs were allowed citywide in 2010 through adoption of Ordinance 123141. Section 23.44.041 of the Seattle Municipal Code (SMC) includes regulations for ADUs and DADUs. The proposed code changes modify certain provisions of Section 23.44.041 pertaining to development standards and other regulations for ADUs and DADUs. The proposed changes do not alter the locations where ADUs and DADUs are allowed.

### Public Comment

Proposed changes to the Land Use Code require City Council approval. Public comment will be taken on the proposed Land Use Code changes during future Council meetings and hearings.

OPCD has considered public comment on the proposal in several public forums. In October 2015, OPCD released a report discussing a range of potential policy options, and received written and e-mailed comments on the report. In January and February 2016 two community meetings were held to receive public comment on potential code changes. In addition, two public lunch and learn events were held in City Council chambers in April of 2015 and December, 2015, both of which included public comment periods.

A summary of public input received is found in the report “Removing Barriers to Backyard Cottages and Accessory Dwelling Units Summary of Public Input” dated March 2016.

### **ANALYSIS - SEPA**

This proposal is adoption of legislation and is defined as a non-project action. The disclosure of the potential impacts from this proposal was made in an environmental checklist submitted by the proponent, dated May 16, 2016. The information in the checklist, a copy of the proposed code changes, the Director’s Report and Recommendation, and the experience of the lead agency with review of similar legislative actions form the basis for this analysis and decision.

This is a substantive change to the Land Use Code, to adjust certain development standards in the single-family zones pertaining to ADUs and DADUs. The proposed amendments may result in potential impacts and warrant further discussion.

### **ELEMENTS OF THE ENVIRONMENT**

Adoption of the proposed Land Use Code amendments would result in no immediate adverse short-term impacts because the adoption would be a non-project action. The discussion below evaluates the potential long-term impacts that might conceivably result from differences in future development patterns due to the proposed amendments.

#### **Natural Environment**

#### **Earth, Air, Water, Plants and Animals, Energy, Natural Resources, Environmentally Sensitive Areas, Noise, Releases of Toxic or Hazardous Materials**

The proposed changes would result in no direct impacts, and are unlikely to result in significant indirect or cumulative adverse impacts related to earth, air, water, plants/animals, fisheries, energy, natural resources, sensitive areas, noise, or releases of toxic/hazardous substances. At the non-project stage, it is not possible to meaningfully assess the potential impacts on the natural environment from these modifications, in the absence of a known proposed development of an ADU or a DADU. Development of specific projects on individual sites is subject to the City’s

existing regulations, such as the Stormwater, Grading and Drainage Ordinance, the Environmentally Critical Areas Ordinance, and Noise Ordinance.

The eligible locations for ADUs or DADUs would not be significantly altered by the proposal, and the proposal does not alter any procedures or regulations related to natural environment protections. New ADUs and DADUs are currently allowed in single-family zones under existing regulations and will continue to be allowed under the proposed code changes. Single-family zones are located in areas of the city designated for single-family residential uses on the City's Comprehensive Plan Future Land Use map. These are areas typically characterized by a high level of existing development and urbanization. Therefore, additional development of ADUs and DADUs in single-family zones is not expected to have a disproportionate impact on elements of the natural environment.

**Built Environment**

**Land & Shoreline Use, Height/Bulk/Scale, Transportation, Public Services and Utilities**

The proposed changes are not expected to create significant impacts on existing and planned land and shoreline use. ADUs and DADUs are currently allowed as accessory uses to principal single-family dwelling units in single-family zones, and that would not change under the proposal. Detached accessory dwelling units are not allowed to be constructed on lots in the Shoreline District.

The changes are not expected to significantly alter the scale of new developments that add an ADU or a DADU, compared to what would otherwise occur under existing regulations. The proposal may result in minor increases to the height of certain new DADU structures; it may result in DADU structures containing approximately 200 more square feet than could be constructed today; and it could allow DADU structures that occupy a greater percentage of a rear yard than under existing regulations. Taken together these adjustments amount to very minor and incremental increases to the height/bulk/scale of potential structures in single-family zones. These potential increases do not result in an increase in the total overall allowed lot coverage limit for single-family residential development that regulates the amount and area of a lot that can be covered with a structure. Height limits for DADU structures under the proposal height limit adjustments would remain lower than the allowed height limit for principal structures in single-family zones.

The proposed changes are not expected to significantly alter the overall intensity of use and activity on single-family lots in single-family zones compared to what could occur under existing regulations. The proposed Land Use Code changes are intended to encourage the production of ADU and DADUs. Measures to encourage increased production include changes to allow both an ADU and DADU on the same lot, and the reduction to the owner-occupancy requirement to a term of one year. The proposal could result in a higher production rate as is intended. As discussed in the SEPA checklist, it is also reasonable to assume that the average total household size for lots with an ADU and/or a DADU are likely to be incrementally greater than the average household size for a principal single-family residence alone. (Although it is important to note that no change is proposed to the maximum allowed household size of 8 unrelated persons, which is applied to all persons living on the lot including the ADU and/or the DADU.) These



potential increases to production rates and effective household sizes are considered. The SEPA checklist response to question 5 characterizes how the potential magnitude of increase to the rate of ADU and DADU production is small relative to the total quantity of single-family zoned lots in Seattle. It is apparent that even if rates of ADU and DADU production are increased, the incremental amount would result in minimal or negligible impacts on public services or utilities. Potential increased rates of production would remain consistent with the City's 20 year comprehensive plan projections for population growth.

The proposed changes are not expected to significantly impact transportation systems including roads, transit and non-motorized transportation infrastructure. As discussed above, the potential increased production of ADUs and DADUs would result in a very small and incremental increase in the intensity of use, such that any resultant increase to the number of trips generated would be very small. Additionally, as discussed in the SEPA checklist, the observed pattern of ADU and DADU locations across the city is distributed, and not concentrated in any one area. This pattern is not expected to change. The distributed pattern of ADU and DADU units further moderates any potential impact on transportation systems in an area.

The proposed legislation could result in minor localized impacts to the availability of on-street parking. The proposal would remove the requirement for the creation of a new off-street parking space at the time an ADU or DADU is permitted. This change could result in an increase in the demand for on-street parking in local areas or blocks where an ADU or DADU is located, if the ADU or a DADU occupant possesses a vehicle. As discussed in the checklist, the availability of on-street parking in Seattle's single-family neighborhoods varies. Single-family neighborhoods with greater constraints on on-street parking supply tend to be neighborhoods with a greater variety of transportation options closer to job centers.

None of the above described potential minor effects of the proposed legislation would result in significant adverse environmental or cumulative impacts on the built environment when compared with development that could occur in the absence of the proposed legislation. Without a specific project proposal, it is not feasible to quantify the specific levels of impact on a citywide basis of these proposed regulations. Future projects developed pursuant to the provisions of the proposal will require permits, review and project approvals as provided for in the Seattle Municipal Code.

Conclusion

The proposed code amendments to adjust development standards for ADUs and DADUs in single-family zones are expected to have minimal impacts on both the natural and the built environment. The proposed regulations do not substantially alter the scale or intensity of development compared to what could be built with existing regulations. The proposed changes may result in minor alterations to the height/bulk/scale or specific configurations of new DADUs in single-family zones. The proposed changes could result in a small increase in the rate of ADU and DADU production compared to what could occur under existing regulations. The amount of impact stemming from such an increase are not expected to lead to any significant adverse impacts. In addition, the existing regulatory framework, i.e., the Land Use Code, The Shoreline Master Program, Environmentally Critical Areas Ordinance, will address impacts of development proposals on a project-specific basis.

DECISION - SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist, code amendment, and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirement of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

- [X] Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.030(2)(c).
- [ ] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030(2)(c).

Signature: On File Date: 5/19/16  
Geoff Wentlandt, Strategic Advisor  
Office of Planning & Community Development