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7 BEFORE THE HEARING EXAMINER
8 CITY OF SEATTLE

9 In the Matter of the Appeal of)
10) Hearing Examiner File:
11 TreePac Environmental Impact Review)
12 (TEIR) and Greenwood Exceptional) **W-21-007**
13 Trees (GET) of the November 15, 2021)
14 Determination of Non-Significance by Brennon) OPCDs RESPONSE TO APPELLANTS'
15 Staley, Office of Planning and Community) MOTION REQUEST FOR SUBPOENA
16 Development.)

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18 **I. RESPONSE**

19 The Hearing Examiner should deny the Appellants' Request for Subpoena ("Request")
20 because the testimony requested of the Seattle Department of Construction and Inspections ("SDCI")
21 Director is not relevant to the environmental review of the Proposal and is outside the scope of this
22 SEPA DNS appeal. Alternatively, in the event the Request is granted, the subpoena should be
23 amended to provide that an "SDCI representative as designated by the Director" should be named on
the subpoena.

1 **A. The requested testimony from the SDCI Director is not relevant to the**
2 **environmental review of the Proposal and is outside the scope of this SEPA**
3 **DNS appeal.**

4 The Hearing Examiner should deny the subpoena request for two main reasons. First, the
5 SDCI Director did not have any involvement in, nor any first-hand knowledge of, the environmental
6 review of OPCD's legislative proposal to make minor code amendments ("Proposal"). Therefore, the
7 SDCI Director will be unable to provide any relevant testimony related to the environmental review
8 of OPCD's proposed Seattle Municipal Code ("Code") amendments.

9 Second, the requested testimony from the SDCI Director is irrelevant as it is unrelated to the
10 environmental review of the proposed Code amendments and outside the scope of the SEPA appeal.

11 OPCD has already filed a Motion for Partial Dismissal ("Motion") that asks the Hearing
12 Examiner to dismiss, among others, Appellant's Issues G and H because those issues challenge
13 existing Code provisions instead of challenging the adequacy of the environmental review of the
14 Proposal.¹

15 Likewise, the Subpoena Request should be denied under the same or similar grounds. Here,
16 the Appellant attempts to challenge existing development regulations related to lot segregation, not
17 the adequacy of the environmental review of the Proposal.²

18 To have timely challenged the existing development regulations, the Appellant was required
19 to have brought a petition to the Growth Management Hearings Board challenging the development
20 regulations within sixty days after publication by the City.³ RCW 36.70A.290(2). If the Appellant

21 ¹ Motion, p. 7.

22 ² The Appellant asks the SDCI Director to testify to "the undocumented policy of using lot segregation practices to
23 circumvent density limits and rowhouse development rules for this decision's Core Documents assumptions in contrast
24 with SMC 23.84A.032(R), and other variances from the Subdivision requirements of Chapter 23.24, 23.45, 23.53, and
25 related code sections."

26 ³ *Woods v. Kittitas County*, 162 Wn.2d 597, 609, 174 P.3d 25 (2007) ("Petitions challenging whether a comprehensive
27 plan or development regulation complies with the GMA must be filed within sixty days after publication by the
28 legislative bodies of the county or city.")

1 thinks that the City's lot segregation provisions do not comply with the Growth Management Act
2 ("GMA") or are inconsistent with the City's comprehensive planning policies, then the Appellant was
3 required to have made that challenge to the Growth Management Hearings Board within 60 days of
4 publication. Because the Appellant failed to timely challenge the adopted legislation that established
5 the City's current lot segregation provisions to the GMHA, the Appellant has waived its ability to
6 challenge them now.

7 Also, if the Appellant thinks that SDCI has misapplied or misinterpreted existing code, then
8 the Appellant can challenge a project decision, so long as the Appellant has standing. In addition, the
9 Appellant might decide to request an interpretation as allowed by the SMC.

10 Importantly, the Appellant does not have standing to challenge the application of existing
11 code provisions in this SEPA appeal because such a challenge is unrelated to the underlying question
12 as to whether the threshold determination that followed the environmental review of the Proposal,
13 should be upheld.

14 OPCD would like to make clear that it was already considering calling a representative from
15 SDCI as a witness to provide background information as to why OPCD is making the Proposal.
16 However, that background information only speaks to the wisdom of the Proposal. But in a SEPA
17 appeal, only the adequacy of the environmental review is relevant, not the underlying wisdom of the
18 Proposal. So, even though OPCD is considering calling a representative from SDCI as a witness to
19 provide background information as to the lot segregation process, it shouldn't be compelled to do so
20 by way of this subpoena.

B. If the Hearing Examiner does not deny the Subpoena Request, the Hearing Examiner should allow the SDCI Director to send a designee to appear and testify.

In the alternative, if the Hearing Examiner decides not to deny the subpoena request, the Hearing Examiner should amend the request to allow the Director to send a designee to come and testify. This would allow the SDCI Director to select the SDCI representative that the Director thinks is most experienced, knowledgeable, and qualified to provide such testimony on behalf of the department.

II. CONCLUSION

For the reasons mentioned above, OPCD asks that the Hearing Examiner deny the Appellants' Motion Request for Subpoena. In the event that the Hearing Examiner does not deny the Appellants' Request, OPCD asks that the Hearing Examiner amend the Subpoena request to allow the SDCI Director to send a designee SDCI Representative, in place of the Director, to provide the requested testimony.

DATED this 21st day of January, 2022.

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I also certify that on this date, a copy of the same document was sent via email to the following parties:

Dated this 21st day of January, 2022, at Seattle, Washington.

s/ Keton Handy
Keton Handy, Legal Assistant