

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of:

Hearing Examiner File:

W-21-007

TreePAC Environmental Impact Review
(TEIR) and Greenwood Exceptional
Trees (GET) of the November 15, 2021
Determination of Non-Significance by
Brennon Staley, Office of Planning and
Community Development (OPCD).

APPELLANTS' REPLY TO
DEPARTMENT'S RESPONSE TO
REQUESTED SUBPOENAS

I. BACKGROUND

On January 14, 2022, pursuant to Hearing Examiner Rules HER 3.12 Subpoenas, the Appellants respectfully requested to subpoena with the objective is to provide testimony relative to City Core Document exhibits received and pending relative to Appellant Interrogatories 1 to 8. The Deputy Hearing Examiner confirmed this with the Second Pre-Hearing Order on January 18th ¹. Following, the City's Attorney issued the OPCDs Response to the Appellants' Motion Request for Subpoena dated January 21, 2022. This reply issued this day is to reply relative to the errors in the above mentioned OPCDs Response.

II. REPLY

The Response from the Department to deny the Appellants' Request for Subpoena ("Request") is erroneous because the Appellant's subpoena request does not request testimony from the Seattle Department of Construction and Inspections ("SDCI"). This

¹ Second pre-hearing order established the Discovery Deadlines.

- Appellants' Interrogatories January 14, 2022
- Appellants' Subpoena Motions January 14, 2022
- Department's Subpoena Motions Response January 21, 2022
- Examiner Decision on Subpoena Motions January 25, 2022
- Appellants' Hearing Subpoenas January 27, 2022

1 request was for the Director of the Office of Planning and Community Development
2 (OPCD). Clearly SDCI is not directly involved with the matter of this appeal unlike the
3 OPCD. Alternatively, in the event the Request for the Director of OPCD is not granted,
4 the subpoena may be amended to the Deputy Director of the Office of Planning and
5 Community Development. The Appellant has already identified Brennon Staley and
6 Geoffrey Wentlandt of the Office of Planning and Community Development so that any
7 suggestion for an alternative to the Director with a “representative as designated by the
8 Director” would circumvent relative testimony regarding direction and policy of the
9 department and accountability to the process².

10 The Acting Director of OPCD has been announced on March 1, 2021³ by Mayor Durkan
11 as Rico Quirindongo who is more than capable of representing the Department’s
12 leadership in this citywide matter. The Director has held this leadership role at least six
13 months before the November 15, 2021 public notice on the matter of the appeal. He is
14 well qualified to address the matters of relative land-use code. Before his appointment in
15 2021, Mr. Rico Quirindongo was with the international architecture firm DLR Group
16 where he was the Civic Design Leader for the Northwest Region. For the past 25 years,
17 Rico has been working to revitalize and reimagine Seattle historic landmarks and
18 neighborhoods.⁴

19 The Director is understood to oversee and direct effective implementation of planning
20 recommendations for the City. The townhouse and rowhouse initiative included within
21
22

23
24 ² The OPCD Director should be the best qualified to speak to and answer why his department is not complying
25 with SEPA requirements as laid out by the Seattle city government. It appears as if the Department is implying that
26 the Director is not qualified or that the Director may not executing oversight of his own department's compliance with
27 decisions relative to SEPA. The public's interest in hearing this testimony surely outweighs minor scheduling
28 concerns. At best, a Director’s staff may be able to enhance the Director's testimony - not substitute for it entirely.

³ Announcement from former OPCD Director Sam Assefa <https://dailyplanit.seattle.gov/a-message-from-our-director-sam-assefa-2>

⁴ OPCD website about us <https://www.seattle.gov/opcd/about-us>

1 this appeal would be included in any reports to the mayor and City Council and fall
2 within the Director's knowledge and responsibilities.

3 The City suggests in their response "...the requested testimony from the SDCI Director is
4 irrelevant as it is unrelated to the environmental review of the proposed Code
5 amendments and outside the scope of the SEPA appeal." Again, our request is for the
6 Director of OPCD and not the Director of SDCI. To the contrary to the Department's
7 argument, the Department has identified Core Documents that have followed a policy of
8 enforcement that contrast code. That policy has not been reviewed relative to the
9 environmental impacts and is precisely one reason why the Appellants needed to appeal
10 in this case. Appeal item 'H' clearly indicated that the OPCD decision 'Misrepresents
11 the intent and purpose and density of townhouse development', and the Core Document
12 examples all exceed the allowable code limits of dwelling count and rowhouses with
13 other dwellings. If the OPCD Director has no knowledge of why his or other City
14 agencies are not complying with code and environmental review regulations, then this
15 decision should be remanded for such a review^{5 6}.

18 ⁵ Department Statement: "Also, if the Appellant thinks that SDCI has misapplied or misinterpreted existing
19 code, then the Appellant can challenge a project decision, so long as the Appellant has standing. In addition, the
20 Appellant might decide to request an interpretation as allowed by the SMC." The Department is attempting to divert
21 the basis of the DNS by referring to examples of townhouse and rowhouse development that have met the appeal cited
22 code sections. The hearing examiner surely does not intend to forestall the Appellants or every citizen their right to
23 question whether city agencies have allowing their Directors and staff from compliance with code while establishing
24 a city-wide policy with a SEPA DNS. The intent of having environmental regulations such as SEPA compliance is
25 preventative in nature - prevent the harm before done, not make amends and token remediation at the actual
26 construction stage (when usually too late).

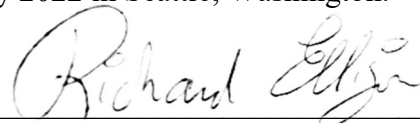
27 ⁶ Department Statement: "Importantly, the Appellant does not have standing to challenge the application of
28 existing code provisions in this SEPA appeal because such a challenge is unrelated to the underlying question as to
whether the threshold determination that followed the environmental review of the Proposal should be upheld." The
appellants have recorded numerous examples of tree loss – and also documented in city tree loss reports between 2016
to 2018. TreePAC's existence provides unique standing in this matter especially given the environmental review is
proposed as being insignificant. Every citizen in the city limits has standing to enforce the laws already incumbent
upon these citizens and agents of its representative government. Otherwise laws only apply to citizens and apparently
not the government or its agencies. The threshold determination mentioned here is only relevant after the actual SEPA
work and certification was done - it wasn't done, hence there can be no threshold determination until it is done - that
is the point of this appeal.

1 The response from the Department includes this Statement: “OPCD would like to make
2 clear that it was already considering calling a representative from SDCI as a witness to
3 provide background information as to why OPCD is making the Proposal. However, that
4 background information only speaks to the wisdom of the Proposal. But in a SEPA
5 appeal, only the adequacy of the environmental review is relevant, not the underlying
6 wisdom of the Proposal. So, even though OPCD is considering calling a representative
7 from SDCI as a witness to provide background information as to the lot segregation
8 process, it shouldn’t be compelled to do so by way of this subpoena.” The Appellant has
9 no objection to the Department calling SDCI to provide background information,
10 especially on the Core Document Examples that the OPCD may not be able to adequately
11 represent. The Hearing Examiner may wish to inquire on the difference between the word
12 'considering' and the words 'actually calling' such a representative.
13

14 **III. RELIEF**

15 The Response from the Department is irrelevant to the original request and need not be
16 considered by the Hearing Examiner. As a reminder and not addressed in the response by
17 the Department, in addition to the subpoena of the OPCD Acting/ Interim Director, the
18 Appellant is reliant on the response to Interrogatory No . 1 which is to list the City staff
19 who had essential roles in the matter of this appeal. The Department has been ordered to
20 reply to that interrogatory by February 4, 2022. As such, Hearing Examiner prepared and
21 Appellant-served subpoena would follow ideally within two days from the complete
22 response to the interrogatory, or earliest February 6, 2022.
23

24 Signed this 24th day of January 2022 in Seattle, Washington.

25 

26 Richard Ellison, appellant rep pro se
27
28

Certificate of Service

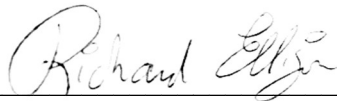
I, Richard Ellison, certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies, via e-mail, of the **Appellant's Reply to Department's Response to Requested Subpoenas** to the person listed below, in the matter of the Determination of Non-Significance issued by the Director, Office of Planning and Community Development, Hearing Examiner File No. W-21-007. I also certify that on this date, a copy of the same document was sent via email to the following parties:

Department:
Geoffrey Wentlandt
Office of Planning and Community Development
Email: geoffrey.wentlandt@seattle.gov

Department Legal Counsel:
Daniel Mitchell
Seattle City Attorney's Office
Email: daniel.mitchell@seattle.gov

Co-Appellant:
Ivy Durslag
Greenwood Exceptional Trees
512 N. 82nd Street Seattle, WA 98103
Email: ivyhaley@msn.com

I declare under the penalty of perjury under the laws of the State of Washington that the foregoing statement is true and correct to the best of my knowledge and belief.
Signed this 24th day of January 2022 in Seattle, Washington.



Richard Ellison, appellant rep pro se