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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) OPCD’S MOTION TO AMEND THE
15 Staley, Office of Planning and Community) RESPONSE TO APPELLANTS’
16 Development.) MOTION REQUEST FOR SUBPOENA

17 The Office of Planning and Community Development (“OPCD”), in accordance with
18 Hearing Examiner Rule 2.16, requests to amend its Response to Appellants’ Motion Request for
19 Subpoena (“Response”). OPCD requests that all references to the Director of the Seattle
20 Department of Construction and Inspections (“SDCI”) be amended to reference the Director of
21 OPCD, as shown on Exhibit A. This does not burden the Appellant since OPCD relies on the very
22 same arguments, and the amended Response also makes clear that both Geoff Wentlandt and
23 Brennon Staley from OPCD will be called as witnesses in this appeal.

1 DATED this 24th day of January, 2022.

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ATTACHEMNT NO. 1

I. RESPONSE

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

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

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

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

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

1 Proposal.¹

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

5 To have timely challenged the existing development regulations, the Appellant was required
6 to have brought a petition to the Growth Management Hearings Board challenging the development
7 regulations within sixty days after publication by the City.³ RCW 36.70A.290(2). If the Appellant
8 thinks that the City's lot segregation provisions do not comply with the Growth Management Act
9 ("GMA") or are inconsistent with the City's comprehensive planning policies, then the Appellant was
10 required to have made that challenge to the Growth Management Hearings Board within 60 days of
11 publication. Because the Appellant failed to timely challenge the adopted legislation that established
12 the City's current lot segregation provisions to the GMHA, the Appellant has waived its ability to
13 challenge them now.

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

17 Importantly, the Appellant does not have standing to challenge the application of existing
18 code provisions in this SEPA appeal because such a challenge is unrelated to the underlying question
19 as to whether the threshold determination that followed the environmental review of the Proposal,

20 ¹ Motion, p. 7.

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

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

1 should be upheld.

2 OPCD would like to make clear that it will already be calling Geoff Wentlandt and Brennon
3 Staley as witnesses at the hearing, as referenced in the Appellant's subpoena request. Additionally,
4 OPCD is ~~was already~~ considering calling a representative from SDCI as a witness to provide
5 background information as to why OPCD is making the Proposal. However, that background
6 information only speaks to the wisdom of the Proposal. But in a SEPA appeal, only the adequacy of
7 the environmental review is relevant, not the underlying wisdom of the Proposal. So, even though
8 OPCD is considering calling a representative from SDCI as a witness to provide background
9 information as to the lot segregation process, it shouldn't be compelled to do so by way of this
10 subpoena.

11
12 **B. If the Hearing Examiner does not deny the Subpoena Request, the Hearing**
13 **Examiner should allow the ~~SDCI~~OPCD Director to send a designee to appear**
and testify.

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

19 20 II. CONCLUSION

21 For the reasons mentioned above, OPCD asks that the Hearing Examiner deny the
22 Appellants' Motion Request for Subpoena. In the event that the Hearing Examiner does not deny
23

1 the Appellants' Request, OPCD asks that the Hearing Examiner amend the Subpoena request to
2 allow the ~~SDCI~~OPCD Director to send a designee ~~SDCI~~OPCD Representative, in place of the
3 Director, to provide the requested testimony.

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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 24th day of January, 2022, at Seattle, Washington.

s/Laurie Menzel
Laurie Menzel, Paralegal