

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeal of

Hearing Examiner File:
W-21-007

**TREEPAC ENVIRONMENTAL IMPACT
REVIEW (TIER) and GREENWOOD
EXCEPTIONAL TREES (GET),**

from a Determination of Non-Significance
issued by the Office of Planning and
Community Development.

**ORDER ON APPELLANTS'
MOTION FOR SUBPOENA**

1. Motion. The Appellants moved to subpoena the Director of the Seattle Office of Planning and Community Development or OPCD. OPCD opposed the motion based on relevance.¹ The motion describes the testimony sought:

The Director will be asked to clarify, as the Department's Director, the undocumented policy of using lot segregation practices to 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.²

The Appellants' reply elaborated on the nature of the testimony sought, explaining it is "regarding direction and policy of the department..."³

2. Subpoena Authority. A party seeking a subpoena must "show the relevance of that person's testimony, and demonstrate the reasonableness of the scope of the subpoena sought."⁴ If this showing is not made, the Examiner may limit discovery. The Examiner may "prohibit or limit discovery where the Examiner determines it to be unduly burdensome, harassing, or unnecessary under the circumstances of the appeal."⁵ Information on an issue the Examiner has no jurisdiction over is not relevant and the Examiner lacks authority to compel such testimony.

¹ OPCD briefing identified the individual sought as the Director of Constructions and Inspections, though the briefing was focused on the nature of the testimony sought rather than titling. The titling error has since been corrected. See OPCD's Motion to Amend the Response to Appellants' Motion Request for Subpoena (January 24, 2022).

² Motion, p. 2.

³ Reply, p. 2.

⁴ HER 3.12(b).

⁵ HER 3.11.

3. Appeal. The Department issued a Determination of Non-Significance under the State Environmental Policy Act, Ch. 43.21C RCW ("SEPA"). The Department's SEPA determination evaluated environmental impacts associated with adopting legislation to support "missing middle" housing such as townhouses and rowhouses.

On a SEPA appeal, the Examiner only considers issues for which SEPA requires evaluation. The Examiner cannot entertain a challenge to previously adopted legislation. The Examiner also does not resolve policy disputes.⁶

The subpoena motion does not identify the SEPA impacts Appellants wish the identified witness to address. Instead, the focus is on previously adopted legislation. To question a witness, the subject matter must be relevant to the appeal issues the Examiner has jurisdiction over. On a SEPA appeal, a department director cannot be subpoenaed to address policy debates or disputes over previously adopted legislation the Examiner has no jurisdiction over.

ORDER

The Appellants' subpoena motion is **DENIED**.

Entered January 25, 2022.

/s/ Susan Drummond
Susan Drummond, Deputy Hearing Examiner

⁶ See e.g., *Citizens All. To Protect Our Wetlands v. City of Auburn*, 126 Wn.2d 356, 362 (1995) ("We do not rule on the wisdom of the proposed development....").

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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 **ORDER ON APPELLANTS' MOTION FOR SUBPOENA** to each person listed below, or on the attached mailing list, in the matters of **TREEPAC ENVIRONMENTAL IMPACT REVIEW**, Hearing Examiner Files: **W-21-007** in the manner indicated.

Party	Method of Service
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Department Geoffrey Wentlandt OPCD 206-684-3586 geoffrey.wentlandt@seattle.gov	<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
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Dated: January 25, 2022

/s/ Angela Oberhansly
Angela Oberhansly
Administrative Specialist