BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of 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.	)	Hearing Examiner File: **W-21-007** OPCD'S REPLY IN SUPPORT OF THE MOTION FOR PARTIAL DISMISSAL AND/OR PARTIAL SUMMARY JUDGMENT

I. REPLY

The Hearing Examiner should grant OPCD's Motion and dismiss Issues C, E, G, H, K (in part), and L. Appellant concedes that Issue G should be dismissed. This reply focuses on those remaining issues.

A. Appellant's socio-economic concerns identified in Issue C are not required to be considered under SEPA, especially not for minor non-project actions that do not have direct impacts to the environment.

The Hearing Examiner previously held that economic displacement is not required to be analyzed in an environmental review because it is not identified as an element of the environment

Ann Davison
Seattle City Attorney
701 Fifth Ave., Suite 2050
Seattle, WA 98104-7095
(206) 684-8200

requiring consideration under SEPA. *Appeal of Wallingford Community Council, et. al.*, HE File Nos. W-17-006 – W-17-014, Revised Findings and Decision (December 6, 2018, at page 32, Conclusion #35). Based on Appellant's own statements, economic displacement and gentrification are clearly the focus of Issue C. Appellant asserted that "multifamily zones are distributed throughout the city, but in many cases are overlaid in the economically challenged, ethnically diverse areas" and then goes on to provide that "these types of Seattle communities can't afford typical townhouse and rowhouse developments . . . which would mean greater gentrification and displacement from those communities."

Appellant incorrectly argues that these types of impacts are intended as part of the review of the "land and shoreline" portion of the "Built Environment" regarding relationships to existing land use plans and to estimated populations and housing pursuant to SMC 25.05.444.[1] Appellant in its Notice of Appeal did not assert any error regarding the relationship to existing land use plans, or housing policies. There was no assertion that the Proposal would, in relation to the current land use plans, have any greater impact on housing affordability, gentrification and displacement which are concerns that already exist in Seattle's current housing market.

The Appellant seems to ignore the fact that the existing land use plans already allow for townhouse and rowhouse development in the LR1 zone. The Proposal slightly reduces the density level from the status quo to allow slightly smaller square footage requirements in order to incrementally add more "missing middle" housing, with the intention to reduce the cost of ownership than otherwise larger townhomes and rowhouses already allowed to be developed under the current land use plans.

[1] See Appellant's Response to Partial Motion to Dismiss ("Response"), page 5, lines 10-14.

Ann Davison
Seattle City Attorney
701 Fifth Ave., Suite 2050
Seattle, WA 98104-7095
(206) 684-8200

The BERK Report cited in the Appellant's Notice of Appeal provides as a key finding that Seattle lacks sufficient capacity for "missing middle" ownership housing production and that housing types such as townhomes "have the potential to provide a relatively lower cost entry point to family-sized ownership housing opportunities."[2] This Proposal intends to incentivize the incremental development of more "missing middle" housing within the LR1 zone to improve the supply so as to help reduce the current shortage of missing middle housing.

A review of the subparts of Issue C will show that each of the subparts should be dismissed.

Issue C.a – raises concerns about specific development projects that have already occurred under current code provisions or previous code provisions. Issue C.a does not raise any issue with the adequacy of the environmental review of the Proposal. Issue C.a should therefore be dismissed.

Issue C.b cites to the BERK Report to offer the statement that housing in Seattle is unaffordable to people in lower and middle socio-economic classes. Issue C.b does not make any assertions as to the adequacy or inadequacy of the environmental review of the Proposal. For the reasons provided in OPCD's Motion and provided above, Issue C.b should be dismissed.

Issue C.c raises the concern that the Proposal should have provided incentives to other types of "missing middle" housing such as cottage housing and apartments in the LR1 zones. This does not challenge the adequacy of the environmental review of the Proposal, rather, it is a challenge to the wisdom of the Proposal which is not within the purview of the Hearing Examiner's jurisdiction to weigh in on.

Issue C.d alleges that OPCD failed by considering a "one-size fits all" approach rather than proposing a range of alternatives focused on the diversity of communities and neighborhoods. The

[2] See Notice of Appeal, Page 9, Footnote 10. BERK Report, page 4.

Ann Davison
Seattle City Attorney
701 Fifth Ave., Suite 2050
Seattle, WA 98104-7095
(206) 684-8200

Hearing Examiner has previously held, in an appeal that raised a similar issue, that nothing under SEPA that compels a neighborhood by neighborhood analysis called for by the Appellants.[3]

B. Issue E is a challenge to the wisdom of the Proposal rather than a challenge to the adequacy of the environmental review of the Proposal and therefore outside the Hearing Examiner's jurisdiction.

The assertion in Issue E that the Proposal would lead to development that would violate the Fair Housing Act simply because it would allow slightly smaller and denser townhouse and rowhouse development is simply not credible.[4] Appellants make the unfounded assertion that "promoting smaller townhouses and rowhouses over apartments and cottages is an outright denial of housing to families with children and to those with disabilities."[5]

Appellants present no credible evidence supporting its assertion that families with children and those with disabilities would be denied from renting or owning any new townhouses or rowhouses that might be developed slightly smaller or denser as allowed by the Proposal. New developments would have to comply with Seattle's building codes or residential codes, as well as any Fair Housing Act or Americans with Disabilities Act requirements, just as townhouse or rowhouse development are required currently. Appellants also disregard the plain fact that the existing housing stock would still be available to families with children and those with disabilities if such families or persons would desire to live in a slightly larger rowhouse or townhouse or any other type of new or existing dwelling unit.

[3] See Motion, p. 7, lines 5-8, citing a Hearing Examiner decision that held an urban village level of analysis for a citywide legislative proposal called for by Appellants is not compelled by SEPA.
[4] See Notice of Appeal, pages 11-12.
[5] See Notice of Appeal, page 11, line 13-16.

Ann Davison
Seattle City Attorney
701 Fifth Ave., Suite 2050
Seattle, WA 98104-7095
(206) 684-8200

Clearly, the Appellants would prefer the Proposal focus on incentivizing more cottage housing and apartments in the LR1 zone, rather than the encouragement of the incremental development of slightly smaller and more dense townhomes and rowhouses. But this amounts to a challenge of the wisdom of the Proposal rather than the adequacy of the environmental review of the Proposal, which is outside the purview of the Hearing Examiner's jurisdiction.

C. Issue H challenges the interpretation of existing code rather than challenging the adequacy of the environmental review of the Proposal and is outside the jurisdiction of the Hearing Examiner in this SEPA appeal.

The Appellants are limited in this SEPA appeal to challenge the adequacy of the environmental review of the Proposal. The Proposal does not seek to amend any of the provisions of Seattle's land use code that the Appellants wrongly assert are being interpreted in error, i.e., lot segregations, lot boundary adjustments, and the definition of rowhouse development. Therefore, Issue H is outside the scope of this SEPA appeal, which is limited to whether the environmental review of the Proposal should be upheld.

Though irrelevant, the Appellant's erroneous interpretation of Seattle's land use code should be addressed.

First, Appellants reference a provision in the King County Code that has no application or relevance in the City of Seattle.[6] King County's land use code policies and regulations only apply in unincorporated King County, not within the City of Seattle which has adopted its own land use policies and regulations.

More importantly, Appellants misinterpret the definition of "Rowhouse development" that is central to their erroneous assertion that SDCI has misinterpreted its code.[7]

[6] Response, page 7, line 15-17 and FN 10.
[7] Response, page 9, line 8 – 23.

Ann Davison
Seattle City Attorney
701 Fifth Ave., Suite 2050
Seattle, WA 98104-7095
(206) 684-8200

SMC 23.84A.032 "Residential Use" no. 22 defines "Rowhouse development" and subsection f. includes the provision "No portion of any other dwelling unit, except for an attached accessory dwelling unit, is located between any dwelling unit and the street faced by the front of the unit." Appellants misinterpret this provision – misreading it to assert the code prohibits the approval of a townhouse development located on a separate lot behind a rowhouse development. The Appellants are wrong.

The provision applies to the lot on which the rowhouse development is proposed. The provision limits any other dwelling unit, with the exception of an attached accessory dwelling unit, from the lot with the Rowhouse development. This prohibits other dwelling units such as detached accessory dwelling units or other single-family dwelling units or otherwise from being allowed on the same lot behind the rowhouse and between any dwelling unit on a different lot. This provision does not apply to, nor does it prevent, townhouse development on a separate lot. In fact, the plain language in subsection f. recognizes that the rowhouse development will be "between any dwelling unit and the street. . .."

Nonetheless, this is irrelevant because a difference of interpretation regarding existing code language that is not subject to amendment as part of the Proposal is not within the scope of this SEPA appeal.

D. To the extent Issue K challenges the timing of the SEPA action, that part of Issue K should be dismissed.

OPCD did not seek to dismiss all of Issue K, only the portion of Issue K that challenged the timing of the SEPA DNS. Appellant seems to argue that OPCD should have reviewed this Proposal together with the proposed changes that will emerge as part of the statutorily required periodic review. This Proposal is separate and apart from the City's GMA-required periodic

Ann Davison
Seattle City Attorney
701 Fifth Ave., Suite 2050
Seattle, WA 98104-7095
(206) 684-8200

review. OPCD did not err by proceeding with the environmental review of this proposal at the "earliest possible point in the planning and decision-making process as provided in SMC 25.05.055.B. The City's GMA-required periodic review, and any proposed amendments to the City's Comprehensive Plan and municipal codes will go through its own separate SEPA review process.

E. Appellant's cumulative impacts analysis in Issue L misapplies the cumulative impacts provisions in SEPA because it is not prospective in scope.

The cumulative impacts of the Proposal were properly considered pursuant to the cumulative effects policy pursuant to SMC 25.05.670. Regarding this Proposal, the cumulative impacts would be those developments directly induced, due to a causal relationship with the Proposal, that would adversely affect the environment. The environmental checklist and DNS clearly recognize that though the Proposal is a non-project action without any direct significant adverse impacts to the environment, there would be development likely induced by the legislative changes that were studied as part of the environmental review.

Appellants erroneously assert that the cumulative impacts should have included within the scope of the environmental review for this Proposal all the impacts stemming from earlier legislative actions such as Seattle's MHA ordinance and ADU ordinance. The Appellant is wrong because separate and extensive environmental review of those actions, the cumulative impacts of each of those legislative proposals were already properly analyzed.

Just as this Proposal is separate and unrelated to the upcoming GMA-required periodic update and the environmental review of the Proposal resulting from such update, so too is this Proposal separate and unrelated to those prior legislative actions and the environmental review of those Proposals. The Appellant's assertion that the prior environmental reviews of those previous

Ann Davison
Seattle City Attorney
701 Fifth Ave., Suite 2050
Seattle, WA 98104-7095
(206) 684-8200

legislative proposals could somehow be reopened as part of the environmental review of this Proposal is erroneous and without merit.[8] The environmental review of the MHA legislation as well as the ADU legislation were both timely appealed to the Hearing Examiner and the time for appealing those prior actions are long since closed. Nothing about this Proposal would resurrect the opportunity to reopen and review those prior actions. This appeal is limited to the appeal process established in SMC 25.05.680 and the issues on appeal are limited to those raised in the Notice of Appeal.

II. CONCLUSION

For all the reasons asserted in OPCDs Motion and in this Reply, the Hearing Examiner should dismiss Issues C, E, G, H, K (in part), and L.

DATED this 4th day of February, 2022.

ANN DAVISON
Seattle City Attorney

By: *s/Daniel B. Mitchell*, WSBA #38341
Assistant City Attorney
Seattle City Attorney's Office
701 Fifth Ave., Suite 2050
Seattle, WA 98104-7097
Ph: (206) 684-8616
Fax: (206) 684-8284
Email: daniel.mitchell@seattle.gov
Attorneys for Respondent City of Seattle, Office of Planning & Community Development

[8] See Response, p. 14, line 13-24.

Ann Davison
Seattle City Attorney
701 Fifth Ave., Suite 2050
Seattle, WA 98104-7095
(206) 684-8200

CERTIFICATE OF SERVICE

I certify that on this date, I electronically filed a copy of the foregoing document with the Seattle Hearing Examiner using its e-filing system.

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

TreePac Environmental Review
512 N. 82nd Street
Seattle, WA 98103
Richard Ellison, Chair & Vice President
Pro Se Appellant
treesandpeople@pacificwest.com

DATED this 4th day of February 2022, in Puyallup, Washington.

s/ Lisë M.H. Kim
Lisë M.H. Kim, Legal Assistant

Ann Davison
Seattle City Attorney
701 Fifth Ave., Suite 2050
Seattle, WA 98104-7095
(206) 684-8200