

**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 DEPARTMENT'S  
MOTION FOR PARTIAL  
DISMISSAL**

**1. Motion.** The Office of Planning and Community Development (“Department”) moved for partial summary judgment dismissal. The Examiner reviewed these pleadings:

- Motion for Partial Dismissal and/or Partial Summary Judgment, attaching Appendices 1-4;
- Appellant’s Response in Opposition to Partial Motion to Dismiss and for Partial Summary Judgment, attaching Exhibits A-B: and,
- OPCD’s Reply in Support of the Motion for Partial Dismissal and/or Partial Summary Judgment.

The Hearing Examiner only entertains cases the Seattle Municipal Code (“SMC”) assigns it. If issues fall outside the SMC, the Hearing Examiner Rules allow dismissal. When an appeal “fails to state an issue for which the Hearing Examiner has jurisdiction to grant relief”<sup>1</sup> a dismissal motion may be filed, which is like a CR 12(b) motion.<sup>2</sup>

**2. Background.** The Department issued a Determination of Non-Significance under the State Environmental Policy Act, Ch. 43.21C RCW (“SEPA”), which was appealed to the Examiner.<sup>3</sup> The Department’s SEPA determination evaluated environmental impacts associated with adopting legislation supporting development of townhouses and rowhouses. On a SEPA appeal, the Examiner only considers SEPA issues. Environmental impacts on “land use” may relate to:

Land and shoreline use: a. Relationship to existing land use plans and to estimated population; b. Housing; c. Light and glare; d. Aesthetics; e. Recreation; f. Historic and cultural preservation; g. Agricultural crops.<sup>4</sup>

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<sup>1</sup> HER 3.02(a); HER 2.16 (allowing for dismissal and other dispositive motions).

<sup>2</sup> HER 1.03(C) (Superior Court Civil Rules may provide guidance).

<sup>3</sup> SMC 23.76.022(C)(6); SMC 25.05.680(A)(1) (appeal procedures in Ch. 23.76 SMC).

<sup>4</sup> SMC 25.05.444(B)(2)(a-g).

While land use impacts may be raised, the Examiner cannot hear challenges to previously existing legislation or entertain policy disputes.<sup>5</sup>

**3. Policy Objections, Issues E and G.** The allegations within Issues E and G are centered on policy disputes, rather than SEPA:

- Issue E(a). The proposal “does not provide an option to households seeking appropriately sized and configured dwellings.”<sup>6</sup>
- Issue E(b). The proposal promotes “smaller townhouses and rowhouses over apartments and cottages” and “is an outright denial of housing to families with children and to those with disabilities.”<sup>7</sup>
- Issue E(c). The proposal “promotes real estate investment potential and ignores local or Department of Housing and Urban Development (HUD) regulations and guidance to fair housing within LR1 multifamily zones.”<sup>8</sup> Apartment buildings, not townhouses or rowhouses, more fully utilize the Multifamily Tax Credit, Mandatory Housing Affordability Program, and the Incentive Zoning programs.<sup>9</sup>
- Issue E(d). The Department “deliberately ignored other housing types available to LR1 zones and published a DNS to promote townhouses which are almost exclusively three-story walk-up dwellings.”<sup>10</sup>
- Issue E(e). Concerns with proposal wisdom as it is “contrary to affordable housing needs...”<sup>11</sup>
- Issue E(f). The proposal is contrary to city goals to encourage multifamily developments with residential amenities to increase appeal to families with children.
- Issue G. The Department’s goal to reduce unnecessary permits is objectionable.

Appellants may not agree with the policy choices in the code revision proposal, but the Examiner does not determine how the code should be designed to allow for housing development. This is a SEPA appeal. All the Examiner can decide are issues over SEPA compliance.

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<sup>5</sup> 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....”)

<sup>6</sup> Appeal, p. 11.

<sup>7</sup> Appeal, p. 11.

<sup>8</sup> Appeal, p. 12.

<sup>9</sup> Appeal, p. 12.

<sup>10</sup> Appeal, p. 12.

<sup>11</sup> Appeal, p. 12.

**4. Economic Displacement, Issue C.** Issues C(a)-(c) raise economic displacement and environmental justice issues. These are not environmental elements requiring SEPA analysis.<sup>12</sup> Issue C(d) raises policy questions and does not identify the significant SEPA impact warranting further analysis. Also, “there is nothing under SEPA that compels the urban village level of analysis called for by the Appellants.”<sup>13</sup>

**5. Existing Legislation, Issues G, H and L.** These issues challenge existing legislation, its interpretation and application, and current code effectiveness:

- Issue G. “OPCD should evaluate the effectiveness of the existing codes to planning objectives compromised during enforcement.”<sup>14</sup>
- Issue H. Challenges existing short subdivision, lot boundary adjustment, and unit lot subdivision regulations, and the Department’s application of them during permit review. Challenges to the City’s interpretation and application of existing code is outside the Examiner’s jurisdictional scope.
- Issue L. Issue L requests review of the MHA and AADU/DADU 2019 legislation impacts. The Examiner cannot address legislation adopted in 2019.

While SEPA cumulative impacts arguments for a challenged proposal may be made, the Examiner cannot hear issues challenging previously adopted legislation, including its interpretation, application, effectiveness, or environmental review.<sup>15</sup> Appellants conceded to Issue G’s dismissal.

**6. DNS Timing, Issue K.** SEPA requires lead agencies to issue threshold determinations “at the earliest possible point in the planning and decision-making process, when the principal features of a proposal and its environmental impacts can be reasonably identified.”<sup>16</sup> The allegation that “with haste, OPCD has issued a DNS even before the City of Seattle has completed updating the City’s Comprehensive Plan,”<sup>17</sup> does not identify a SEPA violation.

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<sup>12</sup> SMC 25.05.444(B)(2)(a-g); see e.g., *Appeal of Wallingford Community Council*, HE File Nos. W-17-006 – W-17-004, Revised Findings and Decision (December 6, 2018), Conclusion #35, p. 32.

<sup>13</sup> *Id.*, Conclusion 8, p. 25.

<sup>14</sup> *Appeal*, p. 13.

<sup>15</sup> The SMC does not provide such authority. See also *Moore v. Whitman County*, 143 Wn.2d 96 (2001); *Wenatchee Sportsmen Ass’n v. Chelan County*, 141 Wn.2d 169 (2000); *Chelan County v. Nykreim*, 146 Wn.2d 904 (2000).

<sup>16</sup> SMC 25.05.055.B.

<sup>17</sup> Notice of Appeal, p. 15.

**ORDER**

The Department's partial dismissal motion is granted. Issues C, E, G, H, K (to the extent Issue K challenges SEPA decision timing), and L are **DISMISSED**.

Entered February 8, 2022.

          /s/Susan Drummond            
Susan Drummond, Deputy Hearing Examiner

**BEFORE THE HEARING EXAMINER  
CITY OF SEATTLE**

**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 DEPARTMENT'S MOTION FOR PARTAIL DISMISSAL** 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.

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Dated: February 8, 2022

/s/ Angela Oberhansly  
Angela Oberhansly  
Administrative Specialist