

November 7, 2013

Anne Watanabe
Deputy Hearing Examiner, City of Seattle
700 5th Avenue, Suite 4000
P.O. Box 94729
Seattle, WA 98124-4729

Re: Matter of Appeal of Dennis Saxman, et al
Hearing Examiner File W-18-003

Dear Hearing Examiner Watanabe:

The Appellants do not understand why Mr. Mills found it necessary to send a letter to you regarding a discovery dispute in the absence of an order to do so from you. Appellants' understanding of the Hearing Examiner Rules is that "[u]nless provided otherwise by order, the Hearing Examiner should not be copied on discovery documents, or on correspondence and electronic mail about discovery matters." HER 3.11. As authorized representative, I have repeatedly expressed to Mr. Mills and Mr. Wentlandt the Appellants' desire to keep this proceeding as informal as possible, and Mr. Mills and I had a good conversation the other day. However, since his letter to you has also been posted online in the case file, Appellants feel obliged to respond. For ease of reference, I will follow the order established by Mr. Mills' letter.

Appellants do not agree that life safety issues are outside the scope of SEPA review. One of the items on the SEPA checklist asks "[w]ould the project result in an increased need for public services (for example: fire protection, police protection, health care, schools, other)?" and asks about "[p]roposed measures to reduce or control direct impacts on public services, if any." Another inquires about environmental health impacts: "Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe." (WAC 197-11-160). Further the Director's Report and Recommendations includes an Appendix titled "Micro-Housing – Fire Safety Provisions In The Building Code." The presence of this Appendix suggests that the Department of Planning and Development (DPD) did consider fire safety relevant to its SEPA analysis. At the minimum, police and fire protection relate to life safety issues.

If it is not clear how current proposals for micro-housing projects determined under existing Code are related to the proposed amendments, then why did the DPD base its Determination of Nonsignificance on documents and discussions about existing and proposed micro-housing projects? The proposed legislation is intimately related to existing and proposed developments as it proposes to modify the alleged "rules" under which the current and proposed projects are proceeding, and would make little sense without reference to existing and proposed projects. The Director's Report and Recommendations, labeled as "SEPA Draft", is replete with references to existing and proposed projects, and the Report's Appendices consist chiefly of information on existing and proposed projects. Further, the environmental impacts of micro-housing projects are affected by their varying scale, their varying design, and their varying number of occupants: that

is why documents which discuss the variety of configurations/designs of existing and proposed micro-housing projects and the effect they might have on environmental impacts is relevant to a process and an Appeal that is for the purpose of determining whether sufficient analysis of environmental impacts has been done. Further, significant administrative discretion is preserved by the proposed legislation such that the variation in micro-housing projects and the resultant variation in environmental impacts are likely to continue. Those impacts must be considered now.

If documents that reflect consideration and evaluation of the potential environmental impact of existing micro-housing and congregate residence projects, which were examined or considered in arriving at the conclusion that they would be no significant impact indeed requires speculation about alternative policy choices, and it is not clear those these documents are relevant to a SEPA appeal of the proposed legislation, then why did the DPD state twice in its Determination of Nonsignificance that “The potential to prohibit location of Micro-Housing and Congregate Residences from Lowrise 1 and Lowrise 2 zones, and Neighborhood Commercial 1 zones would have minimal cumulative effect because very few projects are located in those zones under existing regulations.” Further, the DNS also states: “Potential environmental impacts for the following actions are also evaluated as a part of the proposal, although the draft ordinance does not include these items as part of the legislation: . . . Prohibit construction of micro-housing in the Lowrise 1, Lowrise 2, and Neighborhood Commercial 1 zones. ” Since the DPD discussed this issue in its SEPA DNS and its SEPA Checklist, it is relevant to this SEPA Appeal.

For the reasons stated in the second paragraph of this letter, documents which show consideration of and evaluation of fire hazards, and other safety concerns, and their impact on Police and Fire services, and any documents that consider the environmental impact of a single fire exit in five to six story buildings are relevant to this Appeal and within the scope of SEPA review.

The DPD states in its DNS “[a]t the non-project stage, it is not possible to meaningfully assess the potential impacts on the natural environment from these modifications, in the absence of a known proposed micro-housing or congregate residence project.” (Page 3, next to last paragraph). There are almost 60 existing or proposed micro-housing or congregate residence projects: the failure to meaningfully assess potential impacts on the natural or built environment is due more to a lack of will than to its possibility. The DPD’s admission that SEPA review and analysis has not been done for many existing micro-units underlines the importance of SEPA review at this stage. The presence or absence of SEPA review and analysis contributes to the extent of environmental impacts and must be considered.

It is commonly and widely understood that the regulatory environment impacts the profitability and feasibility of a given project or a particular type of development. Indeed, this issue has been one of the main topics of discussion in the 20th and 21st century. It is an issue that is always being raised to the DPD and other City Departments by developers. In the Seattle debate on micro-housing, the potential negative impact of changing laws or regulations on the development of existing and proposed micro-housing projects has been repeatedly discussed, including by the DPD. The intensity of development or its lack of intensity clearly has environmental impacts – a large percentage of the contribution to global warming comes from the construction and operation of the built environment. Ditto for the next two issues that the DPD asks the Appellants to clarify: administrative discretion, upzones, rezones and other land use changes

affecting the location of micro-housing projects are all part of the regulatory environment. They have played and will continue to play a major role in determining the profitability and feasibility of micro-housing and congregate residence projects. The relationship is quite simple: the more projects, the greater the environmental impact, either individually or cumulatively. It is difficult for the Appellants to understand why these requests were unclear to the DPD, an agency which deals with such issues all the time, and has repeatedly raised them at public forums.

In response to the last objection, the Appellants felt that rather than make highly formal Requests for Production of Documents and Interrogatories (Questions), and given their desire to preserve the informality of this proceeding, that they would request documents and ask questions in the same informal document. It is commonly and widely understood that requests for productions of documents, interrogatories, and depositions are all part of discovery. This is clearly the understanding of the Hearing Examiner also, as HER 3.11 states: "Appropriate prehearing discovery, including written interrogatories, and deposition upon oral and written examination, is permitted." Therefore, the questions the Appellants asked are not beyond the scope of discovery.

For ease of reference, I am providing the following link to a DPD website that contains links for the Director's Report and Recommendations and its Appendices (total of 41 pages) and the SEPA Checklist (14 pages):

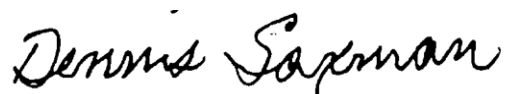
<http://seattle.gov/DPD/codesrules/changestocode/micros/projectdocuments/default.htm>

The same documents are also available on the following link, which contains the notice in the Land Use Bulletin regarding this matter, and has links to the same documents in the Attachment section of the Bulletin: <http://web1.seattle.gov/dpd/luib/Notice.aspx?BID=855&NID=16049>

Appellants believe this matter could be resolved informally by discussions between Mr. Mills and Appellants Authorized Representative, without the need for threats to file formal motions, and without requiring the Hearing Examiner's involvement.

Thank you for your time and consideration of this letter.

Sincerely,

A handwritten signature in black ink that reads "Dennis Saxman". The signature is written in a cursive, flowing style.

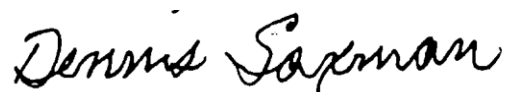
Dennis Saxman
Appellants' Authorized Representative

Cc: Geoffrey Wentlandt, Mike Podowski

Certification of Service

Copies of this Appellants' Response to DPD's W-13-008Ltr were provided to Bill Mills, Geoffrey Wentlandt and Mike Podowski via email on November 8, 2013.

Executed this 8th day of November, 2013

A handwritten signature in black ink that reads "Dennis Saxman". The signature is written in a cursive, flowing style.

Dennis Saxman,
Authorized Representative
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