

BEFORE THE HEARING EXAMINER
City of Seattle

In the Matter of the Appeal of)	Hearing Examiner File:
DENNIS SAXMAN, et al.,)	W-13-008
from a SEPA Determination by the Director,)	CITY'S MOTION FOR PARTIAL
Department of Planning and Development)	DISMISSAL AND CLARIFICATION

The Department of Planning and Development (DPD) respectfully requests that, pursuant to Hearing Examiner Rules (HER) 2.16 and 3.02, the Hearing Examiner (Examiner) dismiss portions of the appeal by Dennis Saxman in the above-captioned matter. Under HER 3.02, the Examiner may dismiss an appeal without a hearing if the appellant fails to state a claim for which the Examiner has jurisdiction to grant relief or the appeal is without merit on its face. The portions of the appeal discussed below should be dismissed for both reasons.

Background

The decision appealed is a review under the State Environmental Policy Act (SEPA) of proposed Land Use Code amendments by the City Council to establish a definition for micro-housing, apply design review thresholds to micro-housing and congregate residences, and modify certain development standards including:

- *require common spaces in micro-housing and congregate residences;*
- clarify prohibition of micro-housing in single family zones;
- provide for vehicle and bicycle parking for micro-housing and congregate residences; and
- modify income eligibility requirements for incentive programs related to micro-housing, congregate residences, and very small studio apartments.

Copies of the proposed legislation, the DPD Director's Report, the SEPA checklist, and the SEPA determination decision, are attached to this motion for reference. The current Land Use Code regulations allow micro-housing and congregate residences in a variety of zones including multifamily and commercial zones. The proposed legislation is intended to clarify existing practice with respect to regulation of these uses, establish new development standards, define terminology, and require closer review of micro-housing projects through the City's design review program. SEPA review of legislative proposals is required if those proposals "... contain standards controlling use or modification of the

environment,” per Section 25.05.704.B.2.a. While the proposed legislation does contain such standards, the evaluation of the impacts of the ordinance under SEPA should be limited to consideration of the potential impacts of the proposal solely relative to changes made to existing regulations.

Argument

The eleven page appeal filed October 28 is very broad and raises numerous issues that would go well beyond consideration of impacts from the proposed legislation. Most of the issues raised by the appellant are simply drawn point by point from the environmental checklist filed by DPD and dated September 18, 2013. The allegations of what DPD allegedly failed to consider do not contain any information to support them. To have merit, a SEPA appeal should provide some plausible factual information showing how the proposal might have a probable significant adverse environmental impact. Otherwise, deference must be given to the DPD analysis and the determination of non-significance. This appeal fails to present any such facts or argument. Instead, the appellant incorrectly focuses on three main issues: First, the appellant argues that the SEPA analysis improperly failed to consider the environmental impact of existing micro-housing projects. This point is irrelevant, since current projects are evaluated under existing regulations, not the proposed amendments. Second, the appellant confuses consideration of policy issues with analysis of environmental impacts. The purpose of the SEPA appeal is not to have a debate about City land use policy with respect to micro-housing and whether it is a good idea or a valid housing type permitted by the Land Use Code. Third, most of the environmental issues raised are premature at the legislative stage and more appropriate for project level, site specific SEPA review, when applicable. The proposed regulations, as the checklist notes, cannot be evaluated for possible future impacts from site specific projects on issues such as noise, water runoff, or global climate change. The regulations themselves do not have any impact on such issues. Project level impacts stemming from the regulations cannot be evaluated absent project level SEPA review.

The appellant raises a series of objections to the DPD decision in part 2 of the appeal, beginning on page 5. DPD responds to the points that it views as subject to dismissal by noting each item below and moving to dismiss as discussed in each response:

1. Appellant's general objection to the SEPA decision in the first full paragraph under part 2 on page 5 is irrelevant and outside the scope of the legislation

The appellant argues that DPD's SEPA review somehow concluded that micro-housing that is already built, under construction, or in the permitting process will have no environmental impacts. This argument misreads and misunderstands the SEPA decision under appeal. The proposed legislation has nothing to do with existing development approved or vested under existing regulations. As noted above, DPD considered current projects in terms of drafting new Code requirements proposed in the legislation such as square footage thresholds for design review, specific development standards for congregate residences that distinguish them from micro-housing, and definitions of

“micro” and “micro-housing” that better distinguish them from congregate residences and other types of multifamily dwelling units. It is significant that the proposed legislation would actually impose somewhat increased requirements for vehicle parking, bicycle parking, and solid waste and recyclable materials storage, and design review. These modest changes have nothing to do with the numbers or impacts of existing development, and all aspects of this appeal relating to environmental impacts of existing development or development vested under existing regulations should be dismissed.

2. DPD has considered environmental factors at the earliest possible stage

The third paragraph on page 6 raises an issue that should be dismissed. The argument does not affect the adequacy of the SEPA determination under appeal and no remedy is sought. In any event, the consideration of every environmental factor is noted in the SEPA checklist prepared by DPD.

3. DPD has considered environmental impacts particular to micro-housing as summarized in the SEPA checklist and discussed in its DNS decision

Appellant contends on page 7 and the top of page 8 of the appeal that DPD failed to consider environmental impacts particular to micro-housing. The argument presented is essentially an extension of the general assertion that DPD should be reviewing impacts of already built or vested development in its analysis of the legislation. To the contrary, impacts from existing development are entirely irrelevant and beyond the scope of this appeal. The only analysis of impacts that is relevant is the analysis of the potential impacts that the proposed legislation could cause versus what is permitted by existing Code. While there is no evidence of any probable significant adverse impacts from the changes that could be caused by the legislation, DPD agrees that discussion of that issue could be the subject of appeal. But this issue is very narrow. The concern about developer creativity in design is remote and speculative and should be dismissed. The issues at the top of page 8, first three paragraphs, are also either irrelevant or raise remote and speculative issues under SEPA (effect of “lax regulation” on profitability of micro-housing, alleged increased discretion under the proposed legislation, and failure to consider the spread of micro-housing that could occur from rezones, upzones or other land use changes that may occur but for which there is no information suggesting that they will occur). Therefore these issues, too, should be dismissed.

4. In the list of “environmental factors” that appellant suggests DPD failed to consider, several as discussed below are not within the zone of interest under SEPA, do not state an environmental impact, or they are irrelevant

DPD objects to items 9, 13, 16, 17, 18, 28, 49, 51 and 52 on pages 8-10 and moves to strike them from this appeal. Item 9, respecting privacy impacts on adjacent properties, is outside the zone of interest under SEPA. It is not an environmental impact to be evaluated in the checklist. Item 13, impacts on public health, is beyond the scope of SEPA, which does not call for analysis of public health issues. Items 16-18 do not state environmental impacts and they present policy issues beyond the scope of SEPA, such as

how to count units, what terminology to use in defining units, and whether existing terminology in the Land Use Code (boarding house, congregate residence, etc.) should be used to describe micro-housing project are all issues for discussion and debate at City Council but have nothing to do with evaluating environmental impacts of the proposed legislation. Further, this line of argument by the appellant appears to relate to the theme of arguing about existing Code that runs throughout the appeal, and this is also beyond the scope of review of the subject SEPA analysis and decision under appeal. Item 28, raising a question about increase in impacts due to future rezones, is premature in this appeal and states a remote and speculative issue. Since no rezone is proposed by this legislation, argument about rezones must be analyzed some other time, if and when they are proposed. Item 49, alleged inaccurate counting of number of residents, fails to state an impact and, in any case, again relates to current practice not properly at issue in this appeal. Items 51 and 52 are meaningless assertions that fail to state environmental impacts and are purely speculative. Changes in neighborhood contexts and possible increased administrative discretion or possible new Director's Rules (which are not in the legislation and in any case are not yet proposed, if at all) are not potential impacts and are not identified as points to be addressed in the SEPA checklist.


5. The relief sought by appellant is appropriate only in part

The appellant cannot request that the Hearing Examiner enjoin further permitting of micro-housing, as such a judicial action is beyond the scope of the Examiner's jurisdiction as well as beyond the scope of relief that can be granted in a review of a SEPA determination.

Conclusion

For the reasons stated above, the portions of the subject appeal identified should be dismissed.

Entered this 22nd day of November, 2013.



William K. Mills, Senior Land Use Planner
Department of Planning and Development

Attachments: Proposed legislation, DPD Director's Report, SEPA checklist, SEPA decision

cc. Dennis Saxman, appellant