

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 TO LIMIT
Department of Planning and Development)	DISCOVERY

The Department of Planning and Development (DPD) respectfully requests that, pursuant to Hearing Examiner Rules (HER) 2.16(e), 3.02, and 3.11, the Hearing Examiner (Examiner) limit the scope of discovery in the above-captioned appeal. This motion is filed in response to appellants' written request for discovery submitted to DPD on November 1, 2013, as well as appellants' letter to the Examiner dated November 7.

Argument

DPD filed an informal letter with the Examiner dated November 7, which outlined its concerns about the scope of appellants' discovery request. The present motion formalizes that letter as a motion to limit discovery. A copy of the DPD letter and copies of appellants' discovery request to DPD and his letter to the Examiner, also dated November 7, 2013, are attached to this motion and will be referenced as needed in the discussion below.

DPD believes that some of the appellants' requests for discovery and questions are not relevant to this appeal or within the scope of what is appealable under SEPA, and DPD objects to these requests and questions. DPD states its objections to certain of the appellants' requests and questions below. The references are to each page of the appellants' letter received November 1 and then to the respective paragraphs on each page. For example, page 1, paragraph 1; page 2, paragraph 1, and so forth.

DPD objects to the following items:

- Documents that show consideration and analysis of life-safety issues, both as to micro-housing as a particular housing type, and its environmental impact on neighborhood life-safety issues and services. Page 2, paragraph 3. Life safety issues are outside the scope of SEPA review.
- Documents recognizing and discussing that micro-housing has been and is being proposed in a variety of configurations, and considering how that variation determines environmental impacts and affects the analysis of environmental impacts, and which show that variation was actually considered in the environmental impact analysis. Page 2, paragraph 4. Differences in

configurations are outside the scope of SEPA review, and analysis of alternatives is not required in SEPA review.

- Documents that reflect consideration and evaluation of the potential environmental impact of prohibiting construction of micro-housing in the Lowrise 1, Lowrise 2, and Neighborhood Commercial 1 zones. Page 2, paragraph 5, part (2). Needs clarification.
- Documents which show consideration of and evaluation of fire hazards, and other safety concerns, and their impact on Police and Fire services. I am particularly interested in any documents that consider the environmental impact of a single fire exit in five to six story buildings. Page 2, paragraph 8. This issue is outside the scope of SEPA review.
- Documents that are the basis for the DPD's touting of micro-housing as an affordable housing option, especially any which show a detailed, comparative analysis and consideration of the issue of affordability, including any contribution micro-housing might make to increased rents overall as other landlords increase their rents because of the high square footage rental rates received by developers and owners of micro-housing projects. Page 2, paragraph 7. DPD objects to this entire item except the first clause, on the basis that the potential impact of affordability and general effect on rents is remote and speculative, and therefore inappropriate for SEPA analysis.
- Any documents that explain why the DPD did not consider the environmental impacts of a number of completed and leased projects and a large number of projects under construction. Page 3, paragraph 2. Since completed projects and projects under construction are approved under existing regulations, they are irrelevant to and outside the scope of SEPA review of proposed legislation.
- Documents which consider the interaction of regulation and the growth of micro-housing development and how it would affect environmental impacts. Page 3, paragraph 6. This request is very general and unclear and should either be clarified or excluded.
- Documents which discuss the environmental impact of administrative discretion on the growth of micro-housing development. Page 3, paragraph 7. This request is very general and unclear and should either be clarified or excluded.
- Documents which consider the environmental impacts of rezones, upzones and other land use changes that might allow for the spread of micro-housing and congregate residences to zones other than where it is currently located or proposed to be located. Page 3, paragraph 8. This issue is beyond the scope of

this legislation and is remote and speculative, and therefore inappropriate for SEPA analysis.

- DPD also objects to the specific questions raised at page 3, paragraphs 12-14 (last three paragraphs) and page 4, paragraph 1. These items are not requests for discovery of documents and are therefore beyond the scope of a discovery request.

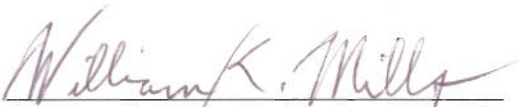
In appellants' response to the DPD informal letter about discovery, the point is raised that life safety issues should be considered because of impact on police and fire services, but there is nothing to suggest that technical information about building or fire codes is needed to address these impacts. Even if there is discussion in the DPD Director's Report about some issues relating to building and fire codes, the Director's Report is a broad policy document that considers issues outside the scope of SEPA review, and discussion in the Director's Report does not bring every issue in the report into an appeal of a SEPA decision.

As to documents that relate to existing projects and speculative issues such as potential future rezones, it remains the DPD position that the issue before the Examiner is the evaluation of impacts from the proposed legislation solely relative to changes made to existing regulations. There must be reasonable limits to the information required for the hearing on this matter, as this is not a forum for policy debate on the concept of micro-housing.

Conclusion

DPD believes that a complete response has been provided to the appellants' relevant discovery requests. Information reasonably available to DPD and relevant to the subject appeal has been made available, either by copying the applicant or by reference to on-line documents, microfilm, electronic records, or project files that are all readily accessible to the public. DPD therefore requests that the Hearing Examiner determine, pursuant to HER 3.11, that DPD has provided sufficient response to appellants' discovery request and otherwise issue an order limiting discovery in the matter under appeal.

Entered this 22nd day of November, 2013.



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

cc. Dennis Saxman, appellant



City of Seattle

Department of Planning and Development

Diane M. Sugimura, Director

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-13-008)**

Dear Hearing Examiner Watanabe:

The Department of Planning and Development (DPD) has received a request for discovery from the appellants in the above-captioned matter. A copy of the appellants' discovery request is attached to this letter for your reference. The Department has reviewed this request and has already provided the appellants with a list of documents and indicated that those documents will be provided to the appellants. In addition, DPD will furnish other documents as they are determined to be relevant and responsive to discovery that is within the scope of the subject SEPA appeal.

However, DPD believes that some of the appellants' requests for discovery and questions are not relevant to this appeal or within the scope of what is appealable under SEPA, and DPD objects to these requests and questions. We hope that the issues can be appropriately narrowed through discussion at the prehearing conference, which is scheduled for November 13, 2013, and therefore a formal motion to limit discovery or to strike certain elements of the appeal will be unnecessary, but DPD is prepared to file such a motion if agreement cannot be reached in the prehearing conference.

To assist in the discussion at the prehearing conference, the Department states its objections to certain of the appellants' requests and questions below. The references are to each page of the appellants' letter and then to the respective paragraphs on each page. For example, page 1, paragraph 1; page 2, paragraph 1, and so forth. Our letter should therefore be read together with the appellants' discovery request.

DPD objects to the following items:

- Documents that show consideration and analysis of impacts to life-safety. Page 2, paragraph 3. Life safety issues are outside the scope of SEPA review.

- Documents recognizing and discussing that micro-housing has been and is being proposed in a variety of configurations, and considering how that variation determines environmental impacts and affects the analysis of environmental impacts, and which show that variation was actually considered in the environmental impact analysis. Page 2, paragraph 4. This request needs to be clarified. Current proposals for micro-housing are being determined under existing Code and it is not clear what relationship they have to the proposed amendments.
- Documents that reflect consideration and evaluation of the potential environmental impact of prohibiting construction of micro-housing in the Lowrise 1, Lowrise 2, and Neighborhood Commercial 1 zones. Page 2, paragraph 5, part (2). This issue requires clarification. It appears that the appellants are asking DPD to speculate about possible alternative policy choices, and it is not clear how this is relevant to a SEPA appeal of the proposed legislation.
- Documents which show consideration of and evaluation of fire hazards, and other safety concerns. Page 2, paragraph 8. This issue is outside the scope of SEPA review.
- Any documents that explain why the DPD did not consider the environmental impacts of a number of completed and leased projects and a large number of projects under construction. Page 3, paragraph 2. This request required clarification, since completed projects and projects under construction are approved under existing regulations. DPD has not conducted project-level SEPA review at this stage and has not conducted SEPA analysis for many existing micro-units.
- Documents which consider the interaction of regulation and the growth of micro-housing development and how it would affect environmental impacts. Page 3, paragraph 6. This request is very general and unclear and should either be clarified or excluded.
- Documents which discuss the environmental impact of administrative discretion on the growth of micro-housing development. Page 3, paragraph 7. This request is very general and unclear and should either be clarified or excluded.
- Documents which consider the environmental impacts of rezones, upzones and other land use changes that might allow for the spread of micro-housing and congregate residences to zones other than where it is currently located or proposed to be located. Page 3, paragraph 8. This issue is beyond the scope of this legislation and is remote and speculative, and therefore inappropriate for SEPA analysis.
- DPD also objects to the specific questions raised at page 3, paragraphs 12-14 (last three paragraphs) and page 4, paragraph 1. These items are not requests for discovery of documents and are therefore beyond the scope of a discovery request.

Anne Watanabe
November 7, 2013
Page 3

Thank you for your attention to this letter.

Sincerely,

A handwritten signature in cursive script that reads "William K. Mills". The signature is written in dark ink and is positioned above the printed name and title.

William K. Mills
Senior Land Use Planner, DPD

cc. Dennis Saxman, appellants' representative

October 31, 2013

Mr. Bill Mills, Senior Land Use Planner
Seattle Department of Planning and Development
PO Box 34019
Seattle, WA 98124-4019

Case W-13-008: Appellants' Discovery Request

Dear Mr. Mills:

In a nutshell, I am asking for all documents used to prepare the SEPA Analysis for the Determination of Nonsignificance (DNS) and the SEPA Checklist. I have two goals in requesting the following documents: one is to obtain copies of any documents that show you generally considered the environmental impacts of factors discussed in the DNS and enumerated on the SEPA Checklist; the second is to obtain information re the evaluation of environmental impacts on specific issues. I also list four questions at the end of this document.

When I use the word "environmental", it should be understood as referring to both the natural and built environment.

"Document" means all written, recorded, or graphic material that is in your possession, custody, or control, regardless of the form of the media in which it is preserved or by whom it was prepared. It includes, but is not limited to, electronic correspondence (e-mails) and drafts of documents, copies of documents that are not identical duplicates of the originals, and copies of documents the originals of which are not in your possession, custody, or control.

General Consideration of Environmental Impacts

Contents of any file maintained regarding the DNS and the SEPA Checklist to the extent they show information reasonably sufficient to evaluate the environmental impact of the proposal.

All documents which Bill Mills and Geoffrey Wentlandt used or considered when the Determination of Nonsignificance and the SEPA Checklist were prepared.

All documents and analyses on which the SEPA Checklist and the Determination of Nonsignificance and their conclusions are based.

All documents and analyses that demonstrate the consideration of whether the same proposal may have a significant adverse impact in one location but not in another location.

All documents and analyses that demonstrate the consideration of the absolute quantitative effects of the proposal, which may result in a significant adverse impact regardless of the nature of the existing environment.

All documents and analyses that demonstrate the consideration of whether several marginal impacts when considered together may result in a significant adverse impact.

Documents considered and the basis for concluding that “The proposed changes would continue to allow and encourage land uses compatible with the existing Comprehensive Plan and neighborhood plans. The proposal is intended to implement Comprehensive Plan land use goals and policies for a broad range of multi-family development in appropriately designated locations.”

Documents that show consideration and analysis of life-safety issues, both as to micro-housing as a particular housing type, and its environmental impact on neighborhood life-safety issues and services.

Documents recognizing and discussing that micro-housing has been and is being proposed in a variety of configurations, and considering how that variation determines environmental impacts and affects the analysis of environmental impacts, and which show that variation was actually considered in the environmental impact analysis.

Consideration of Environmental Impacts on Specific Issues

Documents that reflect consideration and evaluation of the potential environmental impact of :

- (1) Adding development standards to set a minimum square foot size for Micros within Micro-Housing and for sleeping rooms in Congregate Residence, between 185 and 220 square feet.
- (2) Prohibiting construction of micro-housing in the Lowrise 1, Lowrise 2, and Neighborhood Commercial 1 zones.

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.

Documents that are the basis for the DPD’s touting of micro-housing as an affordable housing option, especially any which show a detailed, comparative analysis and consideration of the issue of affordability, including any contribution micro-housing might make to increased rents overall as other landlords increase their rents because of the high square footage rental rates received by developers and owners of micro-housing projects.

Documents which show consideration of and evaluation of fire hazards, and other safety concerns, and their impact on Police and Fire services. I am particularly interested in any documents that consider the environmental impact of a single fire exit in five to six story buildings.

Documents which show consideration of impacts of insufficient parking facilities on the availability of parking for existing neighborhood residents.

Any documents that explain why the DPD did not consider the environmental impacts of a number of completed and leased projects and a large number of projects under construction.

Documents underlying the DPD's statement that the proposal "might not provide for predictability about the allowed density limit, or could lead to a level of density inappropriate for some of the lower density lowrise zones."

Documents which discuss the variety of configurations/designs of existing and proposed micro-housing projects and the effect that might have on environmental impacts.

Documents which reflect consideration of cumulative environmental impacts that are likely to be increased by the concentration of micro-housing in particular neighborhoods.

Documents which consider the interaction of regulation and the growth of micro-housing development and how it would affect environmental impacts.

Documents which discuss the environmental impact of administrative discretion on the growth of micro-housing development.

Documents which consider the environmental impacts of rezones, upzones and other land use changes that might allow for the spread of micro-housing and congregate residences to zones other than where it is currently located or proposed to be located.

Documents explaining the rationale behind counting only some of the separately leasable units in a building for various purposes.

Documents which were used to evaluate the likelihood of micro-housing to increase demands on transportation or public services and utilities?

Any other documents containing information reasonably sufficient to evaluate the environmental impacts of the proposal and which was actually used by the DPD to arrive at the conclusions found in the Determination of Nonsignificance and the SEPA Checklist.

Specific Questions:

What micro-housing projects were visited by the DPD for preparation of the Determination of Nonsignificance and the SEPA Checklist?

Did the City conduct any neighborhood specific analyses of impacts of the proposed action? If so, please describe those analyses, and provide any documents evidencing these analyses.

What percentage of the entire developable land area of Seattle is in all zones that allow multi-family residential uses in City of Seattle?

Would you elaborate on what is meant by the statement that the experience of the lead agency with review of similar legislative actions form the basis for this analysis and decision?

How would you like to proceed with this? Would you just like to make copies of the relevant documents or could you just assemble them and then I could come in and examine them to determine which documents I would like a copy of, like in public disclosure procedures. It could be a way of saving time, paper and expense for everyone, and for controlling the size of the record on appeal.

Thank you for your time and attention.

Sincerely yours,



Dennis Saxman

Cc: Geoffrey Wentlandt, Mike Podowski

Certification of Service

Copies of this Discovery Request were provided to Bill Mills, Geoffrey Wentlandt and Mike Podowski via email on November 1, 2013.

Executed this 1st day of November, 2013



Dennis Saxman,
Authorized Representative
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peregrin@isomedia.com

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,



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

Dennis Saxman

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