

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,	)	Appellants' Motion to
Department of Planning and Development	)	Compel Discovery;
	)	Proposed Order
_____)	

MOTION TO COMPEL DISCOVERY

The Appellants request the Hearing Examiner to compel discovery for the documents and questions listed in this Motion. Appellants have tried to resolve this matter informally with staff of the Department of Planning and Development (DPD), but are meeting with intransigence, and the repeated use of invalid arguments for not producing the documents requested by the Appellants and responding to a series of questions posed by the Appellants. As the relevant and redundant documents have already been provided to the Hearing Examiner, the Appellants have chosen not to supply additional copies. The relevant documents are: Appellants' Discovery Request, dated October 31, 2013 (included in City's Motion to Limit Discovery), W-13-008 Ltr, Appellants' Response to W-13-008 Ltr, City's Motion to Limit Discovery, and Appellants' Response to City's Motion to Limit Discovery. As the Appellants assume that the Hearing Examiner will be familiar with the contents of these documents, Appellants will not repeat arguments here that they have made in both their response to the W-113-008 Ltr and to the City's Motion to Limit Discovery and which are equally applicable to this Motion.

The most egregious refusal to respond to the discovery request is the DPD's refusal to respond to a series of questions at the end of the Appellants Discovery Request. The DPD repeatedly asserts as the reason for refusing to respond to these questions that "these are not requests for discovery and are therefore beyond the scope of a discovery request." The DPD maintains this refusal despite Appellants having repeatedly explained to the DPD that HER 3.11 explicitly states that interrogatories (i.e., questions) are included in appropriate prehearing discovery, and the Hearing

Examiner having confirmed Appellants' understanding. Such wilful defiance and disregard for the Rules can only be cured by a Motion to Compel.

Appellants request that the Hearing Examiner issue an order compelling the DPD to produce documents and responses to questions as listed below, which documents and questions are relevant to the subject matter of this appeal, or are reasonably calculated to lead to documents and information that are relevant to the subject matter of this appeal.

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

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.

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.

Questions:

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

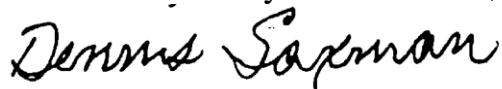
Did the City conduct any neighborhood specific analyses of impacts of the proposed action? If so, please describe those analyses, and provide any documents evidencing these analyses.

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?

Since the DPD states in its Motion to Limit Discovery that it has provided a complete response only to the Appellants' relevant discovery requests, and has never provided a response to Appellants' specific questions, Appellants request the Hearing Examiner issue an order compelling discovery.

Entered this 26th day of November, 2013



Dennis Saxman, Authorized Representative for Appellants

Cc: William Mills, Geoffrey Wentlandt, Mike Podowski

In the Matter of the Appeal of	)	Hearing Examiner File:
)	
DENNIS SAXMAN, et al.	)	W-13-008
)	
From a SEPA Determination by the Director,	)	Proposed Order Compelling
Department of Planning and Development	)	the Department of Planning
	)	And Development to
_____	)	Provide Discovery

This matter came before the Hearing Examiner on Appellants’ Motion to Compel Discovery. The Hearing Examiner, having considered the arguments of the City and the Appellants, and the relevant documents and law, finds that (1) Appellants’ discovery requests are within the scope of the discovery permitted by HER 3.11, are relevant to the subject matter of the Appeal, or are reasonably calculated to lead to documents that are relevant to the subject matter of the Appeal; (2) that the Department of Planning and Development has repeatedly refused, without reason, and in contradiction to the express terms of HER 3.11 to respond to Appellants specific written questions

Ordered:

The Department of Planning and Development is to respond promptly, without further delay, to the Appellants request for the production of documents and specific written questions. Failure to do so in a manner which will permit Appellants to adequately prepare their final list of witnesses and exhibits and their prehearing brief will result in continuance of the hearing currently scheduled for January 7, 2014 and adjustments to other hearing deadlines as necessary.

Entered this _____ day of November/December

Anne Watanabe, Deputy Hearing Examiner