

**BEFORE THE HEARING EXAMINER
City of Seattle**

In the Matter of the Appeal of

DENNIS SAXMAN, et al.,

from a SEPA Determination by the Director,
Department of Planning and Development

) Hearing Examiner File:

) **W-13-008**

) **CITY'S RESPONSE TO APPELLANTS'
MOTION TO COMPEL
DISCOVERY/REPLY TO APPELLANTS
RESPONSE TO CITY'S MOTION TO
LIMIT DISCOVERY**

The Department of Planning and Development (DPD) submits the following single response and reply document to the appellants' motion to compel discovery and their related response to the City's motion to limit discovery, both dated and filed with the Office of Hearing Examiner on November 26, 2013. Contrary to the assertions in both documents, DPD has not refused to respond to any requests made by appellants' that appear to be reasonably related to the scope of the subject appeal, but has merely sought clarification of certain issues and has asked that certain other issues be determined to be beyond the scope of the hearing and therefore beyond the scope of discovery prior to the hearing. As to the questions that appellants suggest were not responded to, DPD points out that these questions were included in the context of a letter requesting documents, which DPD has provided to the appellants. Since the questions were not about documents, they appeared to be beyond the scope of the discovery request. However, in the interest of moving forward with this appeal, DPD offers the following responses to the appellants' motion to compel discovery, including the questions previously asked, which DPD believes also replies to the additional concerns and arguments raised in their response to the DPD motion to limit discovery. Each item identified by appellants in their motion is in italics below, followed by the DPD response:

1. *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.*

The physical file maintained consists of the signed SEPA DNS and the signed environmental checklist. These documents, together with a variety of electronic documents, have already been provided to appellants' representative Mr. Saxman. All physical and electronic documents are either referenced and compiled in the DPD Director's Report or in other documents provided to appellants, and are saved in various subfolders on the DPD hard drive.

2. *All documents which Bill Mills and Geoffrey Wentlandt used or considered when the Determination of Nonsignificance and the SEPA Checklist were prepared.*
3. *All documents and analyses on which the SEPA Checklist and the Determination of Nonsignificance and their conclusions are based.*

A variety of documents were already provided to appellants' representative and compiled and summarized in the DPD Director's Report and appendices. While DPD maintains that its response is complete, several additional documents not already provided that may be responsive are listed at the close of this response.

4. *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.*
5. *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.*
6. *All documents and analyses that demonstrate the consideration of whether several marginal impacts when considered together may result in a significant adverse impact.*

These requests are derived from appellants' reading of SMC Section 25.05.330.C. There are no documents that expressly discuss these items. However, Geoffrey Wentlandt, the DPD planner who prepared the proposed legislation, Director's Report, and SEPA checklist, will be available as a witness at the hearing and will testify to his consideration of the proposal with respect to 25.05.330.C. DPD Land Use Planner William Mills will testify to the analysis in the Determination of Non-significance decision. The analysis of the proposal is presented in the checklist, DNS decision and in the Director's Report.

7. *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 previously provided to the appellants include the Comprehensive Plan goals and policies listed in the Director's Report, the SEPA checklist, and Recitals of the proposed Ordinance. See also Land Use Element of the Comprehensive Plan. See also Lowrise Multifamily Zone Summary Chart.

8. *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.*

DPD analyzed the proposal in relation to provision of fire and police services. See the SEPA checklist. Mr. Wentlandt will testify at the hearing as to the analysis of the proposal on fire and police services. The Director's Report Appendix including Micro-Housing – Fire Safety Provisions in the Building Code, is part of the record. DPD agrees that the appellants can elicit testimony regarding potential impact of the proposal on fire and police services. However, the appellants cannot elicit testimony from DPD staff about whether location and number of doors is a fire hazard, for example. The appellants must show a link, relevant to SEPA, between services provided and the information

requested. Issues such as fire hazards or crime are not *per se* within the SEPA zone of interests.

9. *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.*

This request requires clarification. It is not clear to DPD how this request relates to SEPA issues. However, discussion of existing micro-housing and congregate residences is included in Micro-Housing project tracking list (Director's Report Appendix) 58 projects, and associated plans. See also Detailed DPD Operations Tracking List, provided. See also discussion throughout Director's Report considering differentiation of Congregate Housing from Micro-Housing.

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

Adding development standards to set a minimum square foot size for Micro 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.

Mr. Wentlandt will testify as to these issues at hearing. There are no specific separate documents that address these issues, but information is included in the Micro-Housing project tracking list (Director's Report Appendix) 58 projects, and associated plans. See also April 18, 2013 Micro-Housing Overview Presentation including discussion of typical micro-housing room sizes. See Director's Report pages 6 and 7 for discussion of geographic limitation of micro-housing. These documents have been provided to appellants' representative.

11. *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.*

DPD maintains that this request is not relevant to the appeal, to the extent that appellants' contend that the environmental effect of past projects should have been analyzed in this appeal. DPD is not required to retroactively apply SEPA to past projects. However, in preparing the Director's Report and SEPA checklist, Mr. Wentlandt consider past development generally, and this is reflected in the Micro-Housing project tracking list (Director's Report Appendix) 58 projects, and associated plans. See also documentation of review of built micro-housing including Director's Report Appendix: Micro-Housing

Examples and photographs provided to appellants' representative from Micro-Housing Tour.

12. *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.*

See Page 4 of April 18 overview. See also Dupree & Scott market rate rental housing reports. See Demographic Datasheet of aPodment © residents.

13. *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.*

The DPD response is the same as under item 8 above. In particular, the issue of a single fire exit is not within the SEPA zone of interest unless the appellants can demonstrate some clear link to analysis of fire and police services.

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

DPD has provided documents that demonstrate consideration. See Seattle Climate Action Plan page 16, 17 and others regarding sources of carbon emissions. See Demographic Datasheet of aPodment © residents. See micro-housing project tracking list. Also see spreadsheet documenting research on quantity of RPZ parking permits indicating number of RPZ permits issued to micro-housing projects

15. *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.*

The issue is not within the scope of the proposal. DPD is not required to analyze existing projects as part of the SEPA review of the proposed legislation. To the extent that existing projects were considered to inform how the proposed legislation could affect future projects, Mr. Wentlandt will testify at hearing about his analysis, and the existing documents already provided to appellants contain this information.

16. *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."*

This request is not clear. Documents quantifying the number of micro-units and sleeping rooms include the project tracking list provided to appellants. See also Comprehensive Plan Land Use element and Lowrise Multi-family Zone summary chart.

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

See response to item 9 above.

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

See Director's Report project location map and location of zones and discussion on page 6. See discussion under questions 3, 4 and 6 in Section D of the SEPA Checklist, including discussion of "slowing effects" on micro-housing and congregate residence production due to the proposed legislation.

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

This request is not clear.

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

The request is not clear. However, DPD cannot analyze the extent to which discretion will be exercised, if that is what the appellants are asking. This item should be dismissed as it calls for remote and speculative analysis under SEPA.

21. *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.*

This request is in the same category as item 20 above and should be dismissed as calling for remote and speculative analysis under SEPA. Under Seattle Municipal Code (SMC) Section 25.05.055.B, there must be sufficient information to allow meaningful environmental analysis. This subject is remote and speculative and is not yet ripe for analysis.

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

This request is unclear but does not appear adequately linked to environmental impact analysis and should be dismissed.

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

See project tracking list and associated permits and plans, as well as photographs documenting review of completed projects. See Director's Report including project location map. See discussion in Section D of SEPA checklist, particularly question 6. See discussion in SEPA checklist of "slowing" of the pace of development of micro-housing and congregate residences due to the proposed legislation.

24. *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.*

See response to items 1-3. In addition, DPD will provide to appellants' representative Mr. Saxman some additional resources not previously provided that may be relevant to the discovery request and that were consulted during the time of SEPA checklist and DNS preparation: Dupree & Scott housing reports, and *Unlocking Home: Three Keys to Affordable Communities* Sightline Institute publication.

Questions from appellants:

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

DPD staff visited the interiors of buildings at 1304 E. John St., 306 Summit Ave E., and 315 10th Ave. E. DPD staff viewed the majority of all completed and under construction buildings from the exteriors at different times during development of the proposed legislation and preparation of SEPA analysis.

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.

See responses to document requests above.

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

About 5 percent of the city's land area is designated for multifamily family land uses, and about 5 percent of the city's land area is designated for mixed-use commercial land uses. Both of these categories could allow for multi-family uses potentially including micro-housing. However, a specific quantitative review was not conducted as part of the subject SEPA analysis. See maps of specific zones provided in the Director's Report, and the Comprehensive Plan Future Land Use Map.

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?

The DPD analysis is based on cumulative training and experience in reviewing land use proposals and the exercise of professional judgment.

Conclusion

As stated in its motion to limit discovery, DPD believes that a complete response has been provided to the appellants' relevant discovery requests, and to the extent that there may be argument about that, we trust that this response/reply clarifies the DPD position on this matter. 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.

Rather than refusing or partially refusing appellants discovery requests, DPD is simply asking for direction from the Hearing Examiner on both the scope of discovery and the scope of the hearing in this matter. It is reasonable to ask that discovery and the hearing be limited to the relevant issues considered by the SEPA decision under appeal and this is the point of the DPD motions in this matter. The appellants have asked for documents and answers to questions that are not within the scope of the SEPA review or are unclear. DPD is not required to gather information that is not relevant or within the scope of the SEPA review, nor should it have to guess as to the information that the appellants request.

DPD therefore stands by its request 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 3rd day of December, 2013.



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

cc. Dennis Saxman, appellant

