

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeal of

DENNIS SAXMAN, et al.,

W-13-008

From a SEPA determination by the Director,
Department of Planning and Development

**ORDER ON MOTION FOR
PARTIAL DISMISSAL**

DPD filed a motion for partial dismissal of this appeal on November 22, 2013. The motion seeks dismissal of several issues and Appellants' request for an injunction, which appear in the appeal statement of October 28, 2013. The Appellants filed a response on December 4, 2013. DPD filed a reply on December 9, 2013. After reviewing the filings in this matter, the following is hereby ordered:

1. The motion asserts that the issues raised in the first full paragraph under part on page 5 of the appeal statement are irrelevant and go to matters that are not part of the SEPA decision. This portion of the appeal states an objection to DPD's "conclusion that the 2,842 units created by the 59 existing, under construction, and proposed micro-housing projects will have no significant environmental impacts." DPD's motion argues that this claim should be dismissed, since the proposed legislation does not affect existing development or projects which are vested to existing regulation. Similarly, DPD's motion seeks dismissal of several issues discussed on pages 7 and 8 of the appeal which reference the impacts of existing microhousing projects. The Response argues that the checklist and SEPA decision reference existing projects, and that the impacts of existing development should be discussed.

2. There is nothing to show that the subject proposal, i.e., the proposed legislation, purports to affect existing projects or projects which are vested to existing regulations. To the extent the appeal claims that DPD's SEPA decision was in error for failure to treat existing projects or vested projects as part of this proposal and to review their impacts as such, that claim is dismissed. However, the existing environment, including projects built under existing regulations, constitutes the baseline for identifying and evaluating the potential impacts caused by the proposed legislation. The above claims of error are dismissed, but evidence concerning existing projects may be relevant for the purpose of comparing the existing environment with the impacts from the proposed legislation in order to determine the proposal's impacts, and can be offered for that purpose.

3. The DPD motion seeks dismissal of the argument that DPD did not give "adequate consideration to the policy behind SEPA to provide consideration of environmental factors at the earliest possible stage" (page 6, appeal statement). The appeal and the Appellants'

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response do not identify an error in the decision or a remedy in connection with this argument, and it is therefore dismissed.

4. The motion seeks dismissal of several issues which appear on page 7. As noted above, the claims that existing projects should have been reviewed a part of the proposal, including the existing projects' impacts on single family housing, existing architectural context, or density levels within lowrise density zones, are dismissed. The appeal also states that the decision fails to "consider the creativity of developers as to form." To the extent Appellants literally posit "developer creativity" as an impact, it is not an impact subject to SEPA review. Presumably the statement reflects in part Appellants' belief that the proposed legislation as written can be implemented so as to cause environmental impacts; the interpretation of the proposed legislation can certainly be argued at hearing.

5. The motion also seeks dismissal of three issues which appear at the top of page 8 of the appeal statement, as being remote and speculative, or otherwise irrelevant. The appeal argues that the "environmental impact of continued lax regulation on the profitability of micro-housing" should have been considered, and that the development market will be skewed in "unanticipated directions not intended by the Comprehensive Plan," but these claims do not identify impacts under SEPA. Similarly, the claim that the decision failed to consider the "environmental impacts of the increased discretion provided to DPD" does not identify an impact that can be considered in this SEPA appeal. Similar to the above "developer creativity" claim, the amount of discretion provided to DPD as part of the proposal may be heard as part of Appellants' argument as to the meaning of the proposed legislation. Finally, the claim that DPD failed to 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 other zones, identifies remote and speculative impacts that are not to be evaluated under SEPA. The above three issues are therefore dismissed.

6. DPD's motion seeks dismissal of items 9, 13, 16, 17, 18, 28, 49, 51 and 52 (pages 8-10 of the appeal), which the appeal contends should have been considered. Item 9 identifies "Privacy impacts on adjacent properties" as an impact, and Appellants' response states that this is related to density impacts. But "privacy" is not an impact within the meaning of SEPA, and is not an item which supports Appellants' claims of density-related environmental impacts. Item 13 is "the impact on public health resulting from a large number of residents living in such compact housing" and DPD argues that SEPA does not call for analysis of public health issues. The appeal and response do not show how the proposal would affect public services, including public health care, except to say that it is "common knowledge that some diseases spread more rapidly in dense populations that live in close proximity." This issue is dismissed. Appellants argue that item 16, "the effect of counting only some of the units" is related to the proposal's density impacts, and this issue is not dismissed at this time. Items 17 and 18 claim impacts from the names and labels given to projects (e.g., "townhouse, congregate residence") which the Appellants find

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misleading, but no environmental impact has been alleged under these items and they are dismissed as claims.

7. Item 28 identifies impacts from future rezones that would allow more land area to be affected by the proposed legislation; as noted above, this claim is remote and speculative, and is dismissed.

8. Item 49 states "Inaccurate counting of number of residents." The item is not dismissed at this time, since it appears at least on its face to be related to Appellants' claims of density-related impacts.

9. Item 51 asserts increased impacts "due to changes in existing neighborhood contexts and environments." Although Appellants argue that the item relates to density, this item as stated is not reasonably related to a SEPA impact, and is dismissed.

10. Item 52 states "Increased administrative discretion and new Director's Rules which may lessen the application of statutory or regulatory mitigation." These are not environmental impacts under SEPA and this claim is dismissed. As noted above, Appellants are not prevented from presenting argument as to how the proposed legislation is likely to be interpreted or implemented.

11. DPD also moves to strike the portion of the appeal which seeks to enjoin the permitting of any additional microhousing projects until an EIS has been prepared; DPD argues that the Hearing Examiner lacks any authority to do so. The Appellants' response cites cases involving superior court's issuance of injunctions, but no Code or cases have been cited for the proposition that a Hearing Examiner has such powers in an administrative appeal. It should be noted that the "action" which is at issue in this SEPA appeal is the proposed legislation, not the permitting of vested projects under current regulations, as noted above. If the Appellants' appeal were granted and an EIS required, the proposed legislation could not be acted upon until following the preparation of that EIS, so the underlying action here would necessarily be stayed. Because the Examiner lacks authority to grant the requested injunctive relief, this portion of the appeal must be dismissed.

12. DPD's motion for partial dismissal is granted in part, as noted above.

Entered this 11th day of December, 2013.



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