

**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 MOTIONS TO  
LIMIT/COMPEL DISCOVERY**

On November 22, 2013, the Department of Planning and Development (DPD) filed a motion to limit discovery sought by the Appellants. The Appellants filed a response and a proposed order to compel discovery on November 26, 2013, and DPD filed a response and reply on December 3, 2013.

DPD's motion identified several items in the Appellants' discovery requests that it objected to on the grounds that the requests addressed issues outside the scope of SEPA review; were unclear or too general and therefore needed to be clarified or excluded; and specific questions included in the discovery request because they did not request documents. The DPD motion also referenced documents which had been provided to the Appellants. The Appellants' response addressed the items identified in DPD's motion, and explained why the documents were being requested. The Appellants' response also noted that the questions were essentially interrogatories, and were properly within the scope of discovery allowed under HER 3.11. DPD's filings indicate that it has responded to some of the requests, or in some cases, there are no documents to be discovered. It has also answered the questions posed in Appellants' requests.

1. Under HER 3.11, appropriate prehearing discovery is permitted. The Hearing Examiner may compel discovery, or prohibit or limit discovery if it is unduly burdensome, harassing, or unnecessary under the circumstances of the appeal.
2. Request 8 and Request 13 were for documents which show consideration of and evaluation of fire hazards, and other safety concerns and their impact on police and fire services, including any documents that consider the environmental impact of a single fire exit in five to six story buildings. DPD's motion objects to this request on the grounds that documents concerning "life-safety issues" would not be relevant in a SEPA appeal. While "life-safety" issues are not impacts to be reviewed under SEPA, impacts on public services are to be considered. To the extent Appellants' discovery request would be reasonably calculated to lead to discovery of relevant evidence concerning impacts on public services (e.g., impacts on fire and police services), the Appellants' request is appropriate. It appears from DPD's response that no such documents exist, but if there are any additional documents showing an analysis and evaluation of fire hazards or other safety impacts related to the proposal, DPD shall provide them to the Appellants. DPD's response also argues about the relevancy of testimony by DPD staff

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concerning the fire hazards, but potential testimony at hearing is not an issue in the discovery request. Any evidence offered at hearing, including testimony, must be relevant in order to be admitted.

3. DPD's motion requested clarification of Request 9, which references the "variety of configurations" for microhousing. Similarly, Request 17 asks for documents which discuss the variety of configurations/designs of existing and proposed micro-housing projects and their impacts. DPD's reply/response identifies documents which relate to the existing micro-housing and congregate residences, and the Director's Report. It appears that Appellants' requests are for documents that discuss the potential numbers of residents that can be housed in microhousing projects under various configurations or designs, and the impacts of those alternative designs or configurations. To the extent DPD has additional documents which respond to the requests, it shall provide them to the Appellants.

4. Request 11 seeks 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." Similarly, Request 15 seeks 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." It appears that DPD has responded to the request, by providing the existing documents which reasonably respond to the requests as written; no further action is required by DPD to address these requests.

5. DPD has objected to Requests 19 and 20 as being unclear, and also asks for Request 20 to be dismissed because it calls for remote and speculative analysis under SEPA. The requests are for documents "which consider the interaction of regulation and the growth of microhousing development and how it would affect environmental impacts" and "which discuss the environmental impact of administrative discretion on the growth of micro-housing development." The requests are not clear, but it appears from Appellants' Response that the Appellants seek documents analyzing or reviewing whether the proposed regulations could cause an increase in micro-housing projects, and documents which consider whether agency discretion in administering the proposed legislation would increase the impacts of projects. Although agency discretion per se is not relevant to the appeal, such information might lead to relevant information concerning the meaning of the proposed legislation. It does not appear that DPD has such written analyses in its possession, but if so, it shall provide them to the Appellants.

6. DPD also objects to Request 21, as being unclear and calling for remote and speculative analysis. The request is for documents "which consider the environmental impacts of rezones, upzones and other land use changes" that would allow for the spread of microhousing and congregate residences to "zones other than where it is currently located or proposed to be located." The potential for future unidentified rezones throughout the City which may cause additional properties to be subject to the proposed legislation, is too speculative to be part of the SEPA review for this proposed legislation. Environmental review of any specific rezone will occur when a rezone proposal is reasonably identified, so that its impacts can be meaningfully evaluated; SMC 25.05.055. DPD is not required to respond any further to this request.

7. DPD also objects to Request 22, which seeks documents “explaining the rationale behind counting only some of the separately leasable units in a building for various purposes.” This request is unclear. To the extent Appellants seek DPD documents concerning the impacts of existing or potential development under the existing regulations, it appears that DPD has responded, in its responses to Requests 11 and 15, so no further response is required of DPD.

8. DPD’s reply/response shows that it has answered the questions posed in Appellants’ discovery requests. No additional responses will be ordered.

9. Consistent with the discussion above, DPD’s motion to limit discovery is granted in part and denied in part; Appellant’s motion to compel discovery is granted in part and denied in part.

Entered this 11<sup>th</sup> day of December, 2013.



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Anne Watanabe  
Deputy Hearing Examiner  
Office of Hearing Examiner  
P.O. Box 94729  
Seattle, Washington 98124-4729  
(206) 684-0521 FAX: (206) 684-0536