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' response to City's objections to specific exhibits**
Department of Planning and Development	)	
	)	
	)	
_____	)	

Appellants respectfully offer the following response to the City's objections to specific of our exhibits. We first offer general comments, and then respond about specific exhibits.

GENERAL RESPONSE

The Appellants are at a loss as to why the City has chosen to delay until 4:42 p.m. yesterday (after the first day of the hearing and less than a day before the second day of the hearing) to offer any written objection to any of our exhibits. With the exception of the two exhibits we proposed yesterday, the City has had since Dec. 16 (24 days ago) to object to these exhibits. Whether intentionally or not, the City's lateness in objecting to exhibits interferes with the Appellants' efforts to prepare for the main part of this afternoon's hearing. Also, yesterday's City objections are quite brief, lacking substance for Appellants to reply, and lacking substance for the Hearing Examiner in which to find a basis for upholding their objections. Compounding the problems posed by the City's timetable is the City's failure to file a pre-hearing brief, further depriving the Appellants or the Hearing Examiner of substance in their objections.

It also notable that in two other processes within this case, the City has been unsuccessful in suppressing these documents. First, in its motion for partial dismissal, the City failed in every instance to persuade the Hearing Examiner to exclude the topics that are reflected in these specific documents. And second, in the discovery process, the City unsuccessfully tried to prevent the Applicants (or the Hearing Examiner) from even seeing some of these same documents, but rather was ordered by the Hearing Examiner to produce them. Now that the requested documents have been produced, we have

woven them into our case, and now to be denied them would strike a grievous blow against our ability to present the case.

Seattle Municipal Code section 2.03.090(D), on "Hearings in contested cases" (a section which specifically related to the Hearing Examiner), states clearly: "Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved." Were the City to be upheld by the Hearing Examiner in excluding these exhibits, the appellants would not have been afforded their right under this ordinance to "present evidence and argument on all issues involved. "

Also, we call attention to the following statement (p. 12) in *A Citizen Guide to the Office of the Hearing Examiner: Appealing a Decision and Participating in a Hearing* (revised and reprinted April, 2008):

> The rules regarding what evidence can be used in administrative hearings are not as strict as those used in court. Basically, anything that is relevant, comes from a reliable source, and has value in providing something at issue in the appeal can be used.

We believe that the Office of the Hearing Examiner stands behind that language, and we request to see the paper trail if any change has been made in its approach to evidence.

RESPONSES TO SPECIFIC DPD OBJECTIONS

We offer the following responses regarding the following exhibits, all of which are of probative value and are needed for the presentation of our case.

Objection#1 - (AE4) King County Buildable Lands Report. - This document is needed because it shows that, based on information that the City of Seattle itself provided to King County about its current land use laws and rules, the City has extensive development capacity already to accommodate the projected population. Appellants will show that the effects of the proposed microhousing ordinance will be to refocus this projected population to densify parts of the City in ways that will do more environmental damage than without the ordinance.

Objection #2 (AE7) - The article about Bellevue boarding houses is needed for our case because it discusses environmental impacts such as those that are posed by Seattle's proposed ordinance, and thus a parallel indication of the environmental analysis that should have been done by the City in determining the significance of probable adverse impacts. DPD in its own exhibits submitted for this case has included many articles about other cities, and should not object to our submitting a few.

Objection #3 (AE11) - The article about Seattle's apartment boom is needed for our case because it sheds light on the market forces that will, by actual building, concretely shape the environmental impact of the proposed ordinance whose SEPA significance is at issue.

Objection #4 - (AE 20-24) Code interpretations. The Code Interpretation requests provide important background on how a kitchen (DPD's current requirement for defining an apartment) is defined. They also raise issues on the proper counting of units to establish thresholds for SEPA analysis. Our case relies significantly on showing that because of undercounting, DPD has underestimated environmental impacts that, in aggregate, are thus improperly classified as insignificant in the DNS.

Objection #5 - (AE25) Correction notices - As well outlined in Mr. Saxman's testimony on Tuesday, the many correction notices are central to our ability to show that DPD is in error in its claim that the environmental consequences of the proposed ordinance can be assumed to be small because it will faithfully interpret and implement the law can be assumed to be faultless. The DPD has alleged in its DNS that any adverse environmental impacts will be mitigated by existing Codes and Regulations. In fact, the record in these many exhibits shows that implementation and interpretation have been wildly at variance with the apparent intent of the laws and regulations. The exhibits seem "repetitive" because the exceptions are more important the rules. Thus the SEPA analysis needs to make a projection of the actual meaning and implementation of the ordinance rather than take it at face value.

Objection #6 (AE31) The interview with Potter is directly apposite because it shows how micro units are actually being built and marketed--the ultimate measure of their actual SEPA impact. It also goes to the nature of the occupancy: whether these are "boarding houses" or transient hotels.

Objection #7 (AE33) and Objection #8 (AE34) As in the Bellevue instance above, the materials about San Diego are needed for our case because they discuss environmental impacts such as those that are posed by Seattle's proposed ordinance, and thus are a parallel indication of the environmental analysis that should have been done by the City in determining the significance of probable adverse impacts. Also, the City has itself provided exhibits about microhousing permitting practices in other cities.

Objection #9 (AE35) DPD's own legal experts issued the code interpretation in the Harvard Ave. case, ruling that sleeping rooms that DPD had not counted individually, but collectively as a dwelling unit, must in fact be counted as apartments. The number of actual apartment units bears directly on DPD's SEPA analysis for the DNS. The Code

interpretation bolsters our case because it shows that DPD has seriously underestimated the apartment units and thus the environmental impacts that will be produced under this ordinance. Objection #10 (AE38)Objection #10 - e-mails between DPD engineering supervisor Rick Lupton and developer Randall Spaan. As in our response to #5 above, this correspondence is needed by our case in showing that important rules regarding micro units that can limit their environmental impacts that would appear to be firm are in fact being revised through informal discussions that can vitiate their meaning and cause much greater environmental impact.

Objection #11 (AE43) The Flameguard document is not instructions; it is technical specifications for how large a building can use the sprinkler system to provide the actual fire protection promised. As DPD's SEPA analysis claims that there is no significant impact on the need for fire services, or other probably environmental impacts from fires that would otherwise have been prevented or restricted, it is very much relevant to our case that the actual fire protections in place are not as full as DPD claims. As the DPD representative at Tuesday's hearing clearly was unaware of this departure from the official version, Appellants should not have to provide how extensive is this departure, just to show that DPD failed to analyze a probable adverse environmental impact before making its SEPA determination.

Exhibit #12 (AE45). Our response to items 7 and 8 also applies here.

Objection #13 (exhibits proposed Jan. 8, 2014) We will respond to this objection at the hearing.

Prepare under extreme time pressure because of the City's extreme lateness with its objections, the above statement sums up our need for these exhibits for their probative value in evaluating the environmental significance of the proposed ordinance. We will appreciate the support of the Hearing Examiner and keeping the Exhibits and allowing them to be introduced.

Respectfully submitted,

Chris Leman, Authorized Representative for Appellants
January 9, 2014