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OFFICE OF
HEARING EXAMINER

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June 19, 2014

Sue Tanner, Hearing Examiner
City of Seattle
P.O. Box 94729
Seattle, WA 98124-4729

Re: SEPA Appeal – DNS Issued on Land Use Code Text Amendments for Lowrise Multi-Family Zoning Code Adjustments

Dear Hearing Examiner Tanner:

Roger Valdez is the Director of Smart Growth Seattle and a resident of the City of Seattle. On behalf of Smart Growth Seattle and Roger Valdez, we file this appeal of the City of Seattle (the "City") State Environmental Policy Act ("SEPA") Determination of Non-Significance ("DNS") issued for Land Use Code Text Amendments for Lowrise Multi-Family Zoning Code Adjustments. Pursuant to public notice published May 29, 2014, appeals are due to your office by June 19, 2014.

APPELLANT INFORMATION

The Appellant is Smart Growth Seattle and Director Roger Valdez. Appellant would prefer to receive information from the Office of the Hearing Examiner via email. Contact information for the Appellant is:

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roger@smartgrowthseattle.org

The authorized representative for the Appellant is Nancy Bainbridge Rogers, at Cairncross & Hempelmann, and I prefer to receive information from the Office of the Hearing Examiner via email. My contact information is:

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direct: (206) 254-4417

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DECISION BEING APPEALED

Smart Growth Seattle appeals the City's SEPA DNS issued for Land Use Code Text Amendments for Lowrise Multi-Family Zoning Code Adjustments (the "Lowrise Multifamily Zoning Code Adjustments"). A copy of the DNS is enclosed.

APPEAL INFORMATION

1. What is your interest in this decision? (State how you are affected by it)

Roger Valdez is the Director of Smart Growth Seattle, and a resident of the City of Seattle. Smart Growth Seattle is a non-profit membership organization that advocates for policies to increase housing supply and meet demand for housing created by new jobs. While named "Smart Growth Seattle," the group recognizes that the impacts of land use decisions taken by the City of Seattle extend beyond the City's incorporated boundaries. Therefore, Smart Growth Seattle advocates for the implementation of sound growth strategies under the State's Growth Management Act ("GMA"), including creating more housing choices and supply in Seattle that support more growth inside the City, rather than outside the Urban Growth Boundary. Smart Growth Seattle asserts that the current proposal to adopt the Lowrise Multifamily Zoning Code Adjustments and the environmental impacts of the proposal are antithetical to principles of smart growth, the GMA, and the City's own Comprehensive Plan.

Smart Growth Seattle and Roger Valdez have participated in public meetings and provided comment on the proposed Lowrise Multifamily Zoning Code Adjustments, including written correspondence to the City. Smart Growth Seattle's members (and the entire region) will be adversely affected by the significant adverse environmental impacts of this legislation. In short, the Lowrise Multifamily Zoning Code Adjustments will eliminate viable housing choices in the City, forcing future residents to either pay more for housing in the City or face longer commutes by living elsewhere.

2. What are your objections to the decision? (List and describe what you believe to be the errors, omissions, or other problems with this decision.)

By way of background, the legislation appears to have been proposed originally not by a member of the Seattle City Council or a City Department, but by a group of neighbors who put together a petition. In their petition they demanded that the City Council, in their words "rollback" height increases allowed in previous 2010 legislation. The 2010 legislation authorized increased height for some buildings in the LR 3 zone, in urban villages and centers, up to 40 feet, and updated other circa 1980s development standards for the lowrise zone. If adopted, the currently proposed Lowrise Multifamily Zoning Code Adjustments would substantially restrict the development capacity in the City's lowrise zones, eliminating thousands of housing units that otherwise could be built. Smart Growth Seattle's position is that the current lowrise zones are working well, allowing appropriately scaled and a wide variety of multifamily housing that meets much of the housing needs in neighborhoods like Capitol Hill. The City's SEPA review failed to properly evaluate the significant adverse environmental impacts of the proposed Lowrise Multifamily Zoning Code Adjustments.

First, the City's SEPA review and DNS failed to identify and evaluate the land use impacts of the Lowrise Multifamily Zoning Code Adjustments on the remainder of the City of Seattle lands that are not zoned lowrise. For example, the Director's Report and Recommendation on the Lowrise Multifamily Zoning Code Adjustments opens by noting that "[r]ecceiving growth in lowrise-zoned areas allows single-family zones to remain single-family neighborhoods." Despite this acknowledgement, the City's DNS discloses no potential impact on increased development demand for single-family zoned lands, and having failed to identify the impact, fails to analyze it as well, let alone impose mitigation.

Second, the City's DNS inaccurately portrays the reduction of development capacity associated with the Lowrise Multifamily Zoning Code Adjustments as resulting in only reductions in impacts as to height/bulk/scale, intensity of use, and transportation impacts on neighboring lands. The Lowrise Multifamily Zoning Code Adjustments will result in a loss of development capacity of up to 40% on some LR 3 zoned lands. Elimination of development capacity of up to 40% constitutes a profound environmental impact, since the people who are coming to Seattle in future years will have fewer choices when they decide where to live. In recent testimony before the Seattle City Council, the City's Department of Planning and Development (DPD) staff said that 120,000 people will be moving into the City of Seattle in the next two decades, creating a demand for at least 75,000 new units of housing. The proposed legislation undermines the City's capacity to meet that demand. Therefore, and as noted above, this means there will be increased pressure on the intensity of use in other zones, including single-family zones, due to the reduction in housing capacity in the lowrise zones, resulting in a significant adverse environmental impact. The legislation also will result in new significant adverse environmental impacts as to transportation, as more new regional residents are forced to find housing further from, and commute longer distances, to their jobs. Some of this transportation and transit impact will fall inside the City of Seattle and some will fall outside the City borders, but the City failed to meet its obligation to identify and evaluate either these internal or extra-jurisdictional impacts.

Third, the City's SEPA review failed to identify or analyze the likely impact on transportation and transit services of the revisions in the Lowrise Multifamily Zoning Code Adjustments that will result in less parking being built for projects in the lowrise zones. The elimination of the FAR exemption for basements will lead to a significant increase in the number of projects built without any parking. The SEPA transportation analysis is incorrect, as it does not identify or analyze impacts on transportation and transit use associated with the reduction or elimination of parking.

Fourth, the DNS asserts only a minor impact on housing affordability. Again, reduction of any development potential will have an impact on affordability. Reduction of development potential on some LR3 sites of up to 40 percent (a 20 percent reduction for counting exterior circulation as Floor Area Ratio (FAR) plus a further 25 percent reduction for removal of the basement FAR exemption), will have far more than a minor impact on housing affordability, meaning that the impact on housing affordability is a significant adverse environmental impact.

Fifth, the DNS references the 2010 legislation, asserting that the Lowrise Multifamily Zoning Code Adjustments somehow will bring the City back to what the City thought it adopted and analyzed in 2010. However, there appears to have been no formal adoption or incorporation of that 2010 SEPA analysis in the now current Lowrise Multifamily Zoning Code Adjustments SEPA process. Accordingly, the City may not rely on the 2010 SEPA analysis to justify the current DNS.

Sixth, the Lowrise Multifamily Zoning Code Adjustments include revisions to eliminate an existing FAR exemption for unenclosed exterior stairs, hallways, and breezeways. The current FAR exemption allows the construction of low energy building types with healthy open spaces. Elimination of this exemption will result in an effective prohibition of this building type. The City's SEPA review failed to identify or analyze the significant adverse environmental impact of increased energy usage in multifamily housing resulting from the Lowrise Multifamily Zoning Code Adjustments.

Seventh, at the same time that the City is assessing the Lowrise Multifamily Zoning Code Adjustments, the City also is reviewing other code provisions affecting microhousing projects, which are often located within the LR3 zones. Nothing in the City's SEPA review for the Lowrise Multifamily Zoning Code Adjustments identifies or evaluates the potential cumulative impacts on all of the issues listed above of making uncoordinated multiple code changes.

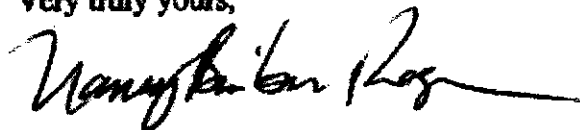
3. What relief do you want? (Specify what you want the Examiner to do: reverse the decision, modify conditions, etc.)

The City's SEPA analysis failed to identify and/or fully analyze, let alone propose mitigation for, the adverse significant environmental impacts listed above. The DNS should be reversed and the City directed to prepare an environmental impact statement on these impacts. In the alternative, the DNS should be reversed and remanded to DPD for additional analysis and imposition of mitigation conditions

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necessary to mitigate the adverse impacts associated with the Lowrise Multifamily Zoning Code Adjustments. In addition, the Appellants request such other and further relief as may be appropriate under law.

Very truly yours,

A handwritten signature in black ink, appearing to read "Nancy Bainbridge Rogers", with a long horizontal flourish extending to the right.

Nancy Bainbridge Rogers

NBR/kgb
Enclosure

**CITY OF SEATTLE
DETERMINATION OF NON-SIGNIFICANCE BY
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Applicant Name: The Department of Planning and Development

Address of Proposal: All lowrise multi-family zoned areas in the City of Seattle

SUMMARY OF PROPOSED ACTION

The proposal is to amend the Land Use Code with a set of adjustments to Lowrise multi-family zoning standards. The Land Use Code changes are intended to bring development outcomes more in line with the expected development outcomes at the time of a 2010 major update to the city's Lowrise multi-family zoning code. For all Lowrise multi-family zones (Lowrise 1 (LR1), Lowrise 2 (LR2), and Lowrise 3 (LR3)), the proposed code amendments would modify certain exceptions to building height limits; modify certain exemptions from the calculation of maximum floor area ratio (FAR); and modify rounding practices for density limits in lowrise zones. The code amendments would also add a side setback requirement for rowhouse development and add a density limit for rowhouses in the Lowrise 1 zone.

The following approval is required:

SEPA - Environmental Determination - Chapter 25.05, Seattle Municipal Code.

SEPA DETERMINATION: ☐ Exempt ☒ DNS ☐ MDNS ☐ EIS

 ☐ DNS with conditions

 ☐ DNS involving non-exempt grading, or demolition,
 or involving another agency with jurisdiction.

BACKGROUND

The proposed code amendments would accomplish the following:

- Eliminate a height allowance of up to an additional four feet above the base height limit for apartment housing type developments that include a partially below grade story.
- Eliminate a floor area exemption from the floor area ratio (FAR) calculation for the portion of buildings in a partially below grade story for apartment type developments.
- Add a new height control to limit the maximum street-facing façade height for development on sloping sites to 44 feet in a 40 foot maximum height Lowrise zone, and 34 feet in a 30 foot maximum height Lowrise zone.

- Place a 30 percent coverage limit on how much of a rooftop may be covered by clerestory architectural features.
- Require the area of unenclosed exterior stairs, hallways and breezeways to be included as chargeable floor area in FAR calculations.
- Include the floor area of loft spaces that are less than full ceiling heights in the FAR calculation.
- Add a side setback requirement for rowhouse developments that are next to other types of housing.
- Change the rounding up threshold for the density limits in Lowrise zones from 0.5 to 0.85.
- Add a density limit of one dwelling unit per 1,600 square feet of lot area for rowhouse development on small lots in the Lowrise 1 zone.

Public Comment

Proposed changes to the Land Use Code require City Council approval. Public comment will be taken on the proposed text changes during future Council hearings. DPD has considered public comment in several public forums and discussions on the topic during recent months including a citywide community meeting on Capitol Hill on January 14th, 2014, a meeting with the Eastlake Community Council on March 18, 2014, a meeting with the Congress of Residential Architects (CoRA) in January of 2014, and several other meetings as described in the Director's Report prepared for the proposed legislation.

ANALYSIS - SEPA

This proposal is an adoption of legislation and is defined as a non-project action. The disclosure of the potential impacts from this proposal was made in an environmental checklist submitted by the proponent, dated May 8, 2014. The information in the checklist, a copy of the proposed code changes, the Director's Report and Recommendation, and the experience of the lead agency with review of similar legislative actions form the basis for this analysis and decision.

This is a substantive change to the Land Use Code, to adjust certain development standards in the Lowrise multi-family zones. This amendment may result in potential impacts and warrants further discussion.

ELEMENTS OF THE ENVIRONMENT

Adoption of the proposed Land Use Code amendments would result in no immediate adverse short-term impacts because the adoption would be a non-project action. The discussion below evaluates the potential long-term impacts that might conceivably result from differences in future development patterns due to the proposed amendments.

Natural Environment

Earth, Air, Water, Plants and Animals, Energy, Natural Resources, Environmentally Sensitive Areas, Noise, Releases of Toxic or Hazardous Materials

The proposed changes would result in no direct impacts, and are unlikely to result in significant indirect or cumulative adverse impacts related to earth, air, water, plants/animals, fisheries, energy, natural resources, sensitive areas, noise, or releases of toxic/hazardous substances. At the non-project stage, it is not possible to meaningfully assess the potential impacts on the natural environment from these modifications, in the absence of a known proposed Lowrise multi-family development project. Development of specific projects on individual sites is subject to the City's existing regulations, such as the Stormwater, Grading and Drainage Ordinance, the Environmentally Critical Areas Ordinance, and Noise Ordinance, and will be subject to environmental review (if they meet or exceed thresholds for environmental review).

The potential locations and sizes of proposed development in Lowrise multi-family zones would not be significantly altered by the proposal, and the proposal does not alter any procedures or regulations related to natural environment protections. New Lowrise multi-family development in the form of townhouses, rowhouses, or apartment projects are allowed under existing regulations and will continue to be allowed under the proposed code changes in Lowrise 1, Lowrise 2 and Lowrise 3 multi-family zoned areas throughout the city. Lowrise zones are located in areas of the city designated for multi-family residential development on the City's Comprehensive Plan Future Land Use map. About half of Lowrise multi-family zoned lands are in designated Urban Villages and Urban Centers in the city's comprehensive plan, with the other half being most commonly located along arterial roadways. These are areas typically characterized by a high level of existing development and urbanization. Therefore additional development of Lowrise multi-family housing in these zones is not expected to have a disproportionate impact on elements of the natural environment.

Built Environment

Land & Shoreline Use, Height/Bulk/Scale, Transportation, Public Services and Utilities

The changes are not expected to significantly alter the scale or quantity of new multi-family developments that would otherwise be allowed in the absence of the proposed Land Use Code changes. Lowrise multi-family housing in a variety of formats would continue to be allowed to be built in the Lowrise 1, Lowrise 2, and Lowrise 3 zones. The proposal would be most likely to affect the built environment for two types of development that can occur in the Lowrise zone: 1) apartment developments most commonly located in the LR3 zone, but also allowed in LR2 and LR1 zone; and 2) townhouse and rowhouse development in the LR1 zone. The proposed code changes could result in minor alterations to the height/bulk/scale or specific configurations of new developments in these areas compared with the development that would occur in the absence of the proposed code adjustments.

For apartment developments, the proposed code changes could result in minor reductions in the total height of new developments as well as reductions in the total floor area contained in new buildings. For building height, this is due to the proposed amendments removing the code allowance for up to four feet of additional height if a building includes a partially below grade story. A new standard limiting the maximum façade height for facades at the downhill sides of slopes could also reduce total allowable building height. Buildable floor area could be reduced because under the proposed adjustments, floor area contained in a partially below grade story would be counted against chargeable FAR. Exterior corridors and breezeways will also be counted in the FAR calculation under the proposed adjustments, which could reduce the overall amount of floor area that could be constructed. Taken together these adjustments would have the effect of reducing height/bulk/scale for specific types of development by modest amounts. For certain specific types of development (particularly apartment type developments in urban centers and urban villages) buildable floor area could be reduced by as much as 20 percent, and height could be reduced by 4 feet or more depending on a site's slope. The result would be potential reduction of height/bulk/scale impacts on adjacent sites associated with new development. Compared with development that could occur under existing regulation, development under the proposal will have moderately reduced impacts with respect to shadowing and incongruities of scale with adjacent existing development.

In the Lowrise 1 zone, the proposal will lead to minor reductions in the amount of allowable density of housing in new development for certain housing types – particularly rowhouses and townhouses. This is due to changes in density rounding practices. Additionally, for rowhouses, the proposal would add a side yard setback standard not currently in the code. In many cases, for rowhouses and townhouses this could result in the allowable number of housing units on a commonly platted 5,000 square foot lot to be reduced from 4 to 3. The result would be potential reduction of the intensity of use occurring on sites in the LR1 zone, which could reduce built environment impacts on adjacent sites.

The changes stemming from the code adjustment described above could also result in very minor reductions to impacts on the transportation network, public services and utilities associated with new development. The minor reductions in allowable height, buildable floor area, or density would have the effect of reducing the increment of vehicle transportation, utility load, or public service demand stemming from new development by very small amounts. This would occur because there could be very minor reductions to the number of persons living in a development or vehicle trips generated, compared to the slightly larger development that could occur in the absence of the proposed adjustments.

The above described minor reductions in buildable floor area, allowable height or density, could conceivably result in impacts to the overall supply of new housing in the city, which could have very minor effects on housing affordability over a long period of time. Any such effect would be very small due to the limited nature of the proposed code adjustments, and would not be realized in the short term.

Further, when the amount of development capacity stemming from the proposed legislation is compared to expected capacity that was evaluated at the time of the major 2010 amendments to the Lowrise regulations, the proposed changes bring potential buildable floor areas and density levels back in line with amounts that were expected and evaluated at the time of the 2010 updates and should not be viewed as a reduction in development capacity that would deviate from adopted plans or policies.

The proposed Ordinance only directly affects specific types of development, particularly in the Lowrise 3 zone for apartments within urban villages and centers, and for rowhouse/townhouse development in the LR1 zone. When put in context of all development that could occur, the magnitude of the proposed changes on cumulative development capacity in the LR zones is small. Accordingly, the proposed changes would continue to allow and encourage land uses compatible with the existing Comprehensive Plan and neighborhood plans.

None of the above described potential minor effects of the proposed legislation would result in significant adverse environmental or cumulative impacts on the built environment when compared with development that could occur in the absence of the proposed legislation. Without a specific project proposal, it is not feasible to quantify the specific levels of impact on a citywide basis of these proposed regulations. Future projects developed pursuant to the provisions of the proposal will require permits, review and project approvals as provided for in the Seattle Municipal Code and will be subject to environmental review (if they meet or exceed thresholds for environmental review).

Conclusion

The proposed code amendments to adjust development standards for the Lowrise multi-family zones are expected to have minimal impacts on both the natural and the built environment. The proposed regulations do not substantially alter the size, scale or location of Lowrise residential development that could be built when compared with existing regulations. The proposed changes may result in minor alterations to the height/bulk/scale or specific configurations of new apartment developments primarily in Lowrise 3 zones and townhouse or rowhouse development in Lowrise 1 zones when compared with the development that would occur in the absence of the proposed code adjustments. These changes are not expected to have significant adverse impacts. In addition, the existing regulatory framework, i.e., the Land Use Code, The Shoreline Master Program, Environmentally Critical Areas Ordinance, and the City's SEPA ordinance, will address impacts during review of development proposals on a project-specific basis.

DECISION - SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist, code amendment, and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirement of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

- [X] Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.030(2)(c).
- [] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030(2)(c).

Signature: On File Date: 5/29/14
William K. Mills, Land Use Planner Supervisor
Department of Planning and Development