

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeals of:
FRIEND OF MADISON PARK, et.al.

Hearing Examiner Files: **No. W-25-001, 002, 003, 004, 005, & 006**

CARY REPLY TO DEPARTMENT’S MOTION TO DISMISS

1. Exemptions from Appeal Do Not Apply

- A.** The Department relies on RCW 36A.70.0709(2), RCW 326.70A.600, RCW 36.70A680 to bar the appeal in W-25-005 by Cary et al. But, as the Department points out, the exemptions apply to “actions taken by a city”... with respect to ordinances, development regulations and amendments and other non project actions. Page 13, line 4. The exemptions apply to “actions” taken by a city.
- B.** An EIS is not an “action”. An EIS is an analysis.
- C.** The DEIS and FEIS are not “actions taken by a city.” They are analyses made by the Department to inform decisions by the City Council.
- D.** A city acts by enacting an ordinance. The city action to which the exemptions refer would be an ordinance of the Seattle City Council adopting a comprehensive plan and zoning. The Council has not taken any such action.
- E.** The exemptions do not apply.

2. Appeal Not Barred by Failure to Comment on DEIS

- A.** Publication of the One Seattle Plan and associated zoning maps in October 2024 was the first time that specific zoning was made public. Zoning was not in the draft plan or in the DEIS. October was also the first time the specific impact of the plan was made public. Previously, there were only general policy statements. Similarly, October was the first time that 330,000 was revealed to be the number of units possible under the zoning.
- B.** The specific location and application of the zoning is significant and substantial information. It ripples through much of the analysis. For example, we did not know that essentially all of the area listed on the Seattle Historic Register and Washington State Historic Register would be covered by the LR3 zone. That zoning would offer an economic incentive to demolish existing buildings and to replace them with multi unit buildings. Such buildings would deprive the area of its historic status.

- C. Another example of major and significant information that first surfaced in October is that a large part of housing outside regional and urban centers will be directed to corridors. That approach was immediately perceived to increase the vulnerability of historic areas.
- D. Finally, the potential for 330,000 new units far outstrips projected growth. The DEIS based its analysis on 120,000 new units. The surplus in the 330,000 number could substantially change the analysis. The 120,000 units analyzed in the FEIS is substantially less than the 330,000 number first revealed in October 2024 and that difference alone warrants additional analysis.
- E. I point out these implications of the zoning and the allowance of 330,000 units to show the magnitude and significance of the information first revealed in October 2024, well after the appeal period for the DEIS. I do not to ask the Hearing Examiner to make any ruling as their advisability. The point is that the October additions and changes require SEPA analysis of their impact.
- F. In summary, major information was revealed for the first time in October. It was not revealed last Spring or analyzed in the DEIS. The Department seeks to bar our appeal for failure to comment on something that did not exist. This defies all sense. Our appeal should not be denied for failure to comment on the DEIS.

3. Cary Has Not Asked the Examiner to Decide GMA Issues

- A. Contrary to the Department's allegation (beginning on page 20), Appellants do not ask the Examiner to decide any issue of compliance or non compliance with the Growth Management Act (chapter 36.70A RCW "GMA"). The issues before the Examiner are compliance with SEPA.
- B. Appellants agree with the Department's statement: "The Examiner does 'not rule on the wisdom of the proposed development but rather on whether the FEIS [gives] the City ... sufficient information to make a reasoned decision.'" Page 23, lines 20 and 21.
- C. Appellants' references to provisions of GMA create a list of subjects appropriate for EIS consideration. Appellants do not ask the Examiner to make any policy decisions on these subjects. Instead, Appellants ask the Examiner to determine whether the FEIS provides an adequate analysis of these subjects.
- D. The issues before the Examiner are whether the required subjects were raised in the FEIS and whether they were adequately analyzed. Appellants believe they were not. Appellants ask no more than this.

4. Cary Does Not Seek Duplicative Witnesses or Exhibits

- A. Cary does not contest coordination of points of appeal with Youtz and appointment of a representative to handle overlapping points. We do not desire to brief, call witnesses or provide exhibits for the same issue twice. Once is enough for us.
- B. Cary and Youtz will work together to sort out the overlaps identified by the Department on page 27, to coordinate presentation, and to identify a responsible party for overlapping issues.
- C. The Department's fear of duplication is misplaced. Coordination between Cary and Youtz will resolve the problem raised by the department. It is not grounds to grant the Department's motion.

5. Cary Appeal Not Limited to Mount Baker Neighborhood

- A. The Examiner should reject the Department's request to limit Cary's appeal issues to impacts that apply to the Mt. Baker neighborhood. Page 33, line 4. The Department's request is for more than "clarification." It seeks to revise and limit our appeal.
- B. Cary did not intend the heading in the notice of appeal to limit his issues to the Mount Baker neighborhood. The heading is an artifact of the form required for appeal. The form requires information about the appellant — name, address, and email and impact on them. The heading is simply a short-hand reference to this information.
- C. Some of the appeal issues have particular application to Mount Baker, for example, impact on the areas listed in city and state historic registers. Other issues apply not only to Mount Baker but also to other neighborhoods. For example, zoning along transit corridors and the increase in zoning capacity from 120,000 to 330,000 units.
- D. The Department's request for clarification does not clarify anything. Instead, it seeks a somewhat uncertain limitation on our appeal.

This reply is made on behalf of the appellants named in the appeal docketed as W-25-005.

Signed: John M. Cary
Dated: March 19, 2025

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this date I sent true and correct copies of the attached **CARY REPLY TO DEPARTMENT'S MOTION TO DISMISS** to each person listed below in the matter of FRIENDS OF MADISON PARK, et al. Hearing Examiner File: W-25-001, - 002, -003, -004, -005, & -006 by email.

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