

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeals of:

FRIENDS OF MADISON PARK, TREVOR
COX & JAKE WEYERHAEUSER,
HAWTHORNE HILLS COMMUNITY
COUNCIL, CHRIS R. YOUTZ, JOHN M.
CARY, and JENNIFER GODFREY et. al.

Hearing Examiner File: W-25-001, -002, -
003,-004,-005, and-006 (consolidated)

*W-25-002 RESPONSE TO THE
DEPARTMENT'S COMBINED MOTION TO
DISMISS SIX APPEALS IN WHOLE OR IN
PART, MOTION TO REJECT GODFREY
ISSUE CLARIFICATION, AND MOTION
FOR CONSOLIDATION AND
CLARIFICATION OF ISSUES*

I. Introduction

a. Background

The Office of Planning and Community Development (“OPCD”) moved to dismiss the “Cox appeal”, challenging the Final Environmental Impact Statement (“FEIS”) of the One Seattle Proposal, which encompasses the City of Seattle’s (“City”) proposed Comprehensive Plan (known as the One Seattle Plan) and the implementing development regulations and zoning maps (referred to as “Phase 1” and “Phase 2” legislation).

This motion should be denied for the reasons stated below.

To be clear, Cox is not opposed to increased housing or the need of the One Seattle Plan. Cox clearly understands the need for more housing as it relates to the homeless crisis in the Seattle region, and the need for significantly more housing so younger generations can afford entry level housing, building equity for future home ownership.

However, from the looks of the One Seattle Plan, it seems like the City is handing the keys over to real estate developers to let the developers dictate the future of Seattle over the next two decades; and developers might be less inclined to care about the environment, traffic, and other problems created by rapid development.

This is why the FEIS is an important document for the future of Seattle, and why the related zoning is equally as important. Once the developers start their work, it might be too late, and irreversible damage may be caused.

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b. Origins of the Appeal

Originally, the Cox objections to the One Seattle Plan started with one simple issue: protect one block in Madison Park from unnecessary property damage caused by the change in zoning in the One Seattle Plan. Based on the prior experience of Cox’s neighbors, the development of large buildings on this block could cause damage to surrounding homes due to underground water streams and a high-water table. They did not want the zoning changes in the One Seattle Plan to damage their properties. They wanted to be heard about this one issue, that is all.

Unfortunately, no one at the City was responsive to Cox’s communications. The staff of our city council member did not respond to emails. OPCD refused to respond.

Cox understands the One Seattle Plan and the FEIS are major undertakings and individual concerns will need to be scarified in the name of the “greater good”, but we were hoping that OPCD would have a “real process” to hear individual concerns with some latitude to make changes, as opposed to the comment sessions that the OPCD conducted. The Cox request was for a small change to the One Seattle Plan to preserve the safety of the homes on one block.

Admittedly, the Cox appeal became much broader when we started looking at the issues. In the summer of 2024, the beach in Madison Park was shut down for weeks due to contamination. We were surprised that the City alerts stated that animal *or human* waste were causing the contamination. During the discussions of the One Seattle Plan with Friends of Madison Park (“FOMP”), Cox started learning about the causes of the contamination related to drainage and realized that increased population could have an impact on Madison Park Beach and the health of our children, other people in the community, and animals.

The Cox appeal is not intended to slow down the One Seattle Plan. Cox and FOMP have both made it clear to the City that their issues can be resolved quickly, but the City must engage first.

c. Legal Arguments

The City’s motion to dismiss did a fine job of dissecting the Cox appeal and cited a tremendous amount of case law and other materials. At this stage, with such a short time to respond, Cox is not in a position to battle the OPCD point by point on all the legal arguments. Cox is not represented by counsel familiar with land use laws, litigation, or other aspects of the appeal.

Before filing the appeal, Cox asked the Hearing Examiner Office twice if Cox needed legal counsel to make this appeal. The Hearing Examiner Office suggested that unrepresented citizens file appeals all the time.

When Cox spoke with potential legal counsel prior to filing, Cox was advised that Cox would lose the appeal for a variety of reasons, and our money would be better spent focused on political activism towards the fall election than fighting a losing legal battle. However, first, we wanted to be sure the OPCD and the City at least understood our concerns.

The City has now read our concerns about the underwater streams, drainage and other issues in Madison Park. OPCD’s motion to dismiss seems to suggest that either the OPCD does not care about these issues, or they are simply playing legal games.

1 Cox and FOMP have both made it clear to the City that their issues can be resolved quickly. It is
2 up to the OPCD and the City to decide if winning on a motion to dismiss is the best outcome for
3 them.

4 **Arguments**

5 **1. SEPA and the GMA Appeals Barred because the One Seattle Plan Includes 6 Increased Housing.**

7 OPCD argues that the Examiner must dismiss all six appeals under broad statutory exemptions
8 in the GMA and SEPA that prohibit administrative SEPA appeals of non-project actions that
9 will increase housing capacity and housing affordability or mitigate displacement.

10 To avoid duplication with other appellants, Cox will not repeat the same legal points of the other
11 appellants. However, Cox hereby incorporates by reference the relevant points on this subject
12 from all the other appellants, including but not limited to W-25-001 and W-25-004.

13 To be clear, the intention is not to slow down housing development. Cox has been asking to
14 speak with the OPCD and the City Council for months and FOMP have been asking for almost a
15 year. The issue is not our desire to delay, but the process run by the OPCD and their lack of
16 responsiveness.

17 **2. Lack of Standing Due to Failure to Comment on the DEIS**

18 OPCD argues that the Examiner must dismiss all Appellants for failure to submit a comment on
19 the DEIS. To avoid duplication with other appellants, Cox will not repeat the same legal points
20 of the other appellants. However, Cox hereby incorporates by reference the relevant points on
21 this subject from all the other appellants, including but not limited to W-25-004.

22 As private citizens, Cox was not aware that they needed to follow the Seattle Services Portal, in
23 the LUIB, and in the DJC, and the State SEPA Register. Cox was notified of the DEIS by the
24 FOMP, once FOMP learned about relevant zoning plans and how it related to the FEIS. At this
25 time, Cox became involved and met the relevant deadlines for comments and appeals.

26 We have heard rumors that members of the City Council and other people at the City are upset
about the lack of notice with the One Seattle Plan. Cox has no first-hand knowledge of these
matters, but these seem like factual issues that should be explored at the hearing before deciding
if the failure to comment should bar many of these appeals.

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3. Claims Outside Examiner’s Jurisdiction

OPCD argues that numerous claims must be dismissed due to lack of Examiner jurisdiction, including over alleged noncompliance with GMA and other state statutes and constitutional provisions.

To avoid duplication with other appellants, Cox will not repeat the same legal points of the other appellants. However, Cox hereby incorporates by reference the relevant points on this subject from all the other appellants.

The FEIS has significant discussion of the Growth Management Act (GMA), electrical vehicles, tree protection, and other related issues brought up by the appellants. As the OPCD argues, the issue here is the adequacy of the FEIS to address the significant increase in housing in Seattle. The intention was not for the Examiner to rule that there have been violations of these laws. However, the GMA and other laws should be a guide to understanding what an adequate FEIS should look like.

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4. Constitutional Due Process

OPCD argues that the Examiner also lacks jurisdiction over constitutional due process claims and so any issues alleging a violation of Appellants’ due process rights must be dismissed.

The constitutional due process claims are rooted in how the One Seattle Plan communications have been handled by the OPCD, and specifically, adding the zoning to double the housing in Seattle very late in the process without sufficient notice to the public.

From an outsider’s perspective, the City is doing some clever political maneuvering to push through the One Seattle Plan. First, the City proposed zoning to double the size of Seattle late in the process. Now, with Cox’s request for changes to zoning, City Council members are suggesting there is nothing they can do currently, since the One Seattle Plan is not legislation in front of them. The OPCD is claiming that they cannot make changes, because they are not the legislature.

The constitutional due process issue may or may not be an issue for the Examiner. However, it seems like the City should take the “win” that there are so few appellants, settle with appellants now, and move to adopting the One Seattle Plan. The OPCD should not risk a further supplemental EIS, because it is unclear if any EIS could adequately analyze the doubling of an entire city like Seattle.

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5. Overlapping Cases

There appears to be overlap in W-25-001 and W-25-002, since Cox is a named in both appeals. W-25-001 was filed by an existing legal entity, Friends of Madison Park (FOMP), which is a 501c(3) non-profit. Cox is not a member, employee, offices or director in the FOMP. Cox lives in Madison Park and was made aware of Seattle One Plan by the FOMP. Cox and FOMP did work together to learn about various issues related to the FEIS. However, FOMP did not realize

1 that the group behind W-25-002 was filing separately. Nevertheless, W-25-002 does not object
2 to certain claims being consolidated with W-25-001.

3 **6. Clarifications**

4 Here are the responses to the City's request for clarification:

- 5 • Appeal issues B.1–.6 are limited to impacts that apply to the Madison Park
6 neighborhood
- 7 • Appeal issues C.1–.3 are limited to 42nd Ave E between East Blaine Street and East
8 Garfield Street
- 9 • No objection to Examiner to consolidate Cox's issues B.2 and B.3. Cox appeal at 6–7
- 10 • No objection to Cox issue A.1 is identical to FOMP's objection two. Cox appeal at 5;
11 FOMP appeal at 3. Like FOMP objection 2, but don't understand the limitation sought
- 12 • No objection to limit Cox issue B.4 to transit impacts
- 13 • No objection to limit Cox issue B.6 to an alleged lack of detail for water pollution, lack
14 of infrastructure, and transit in Madison Park

15 Dated this 21st of March 2025

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17 _____
18 Trevor Cox