

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeals of:

FRIENDS OF MADISON PARK, et al.

from a Final Environmental Impact Statement
issued by the Office of Planning and
Community Development

Hearing Examiner File:

**W-25-001, -002, -003, -004, -005,
& -006**

**PRELIMINARY ORDER ON
MOTION TO DISMISS**

The Director of the Seattle Office of Planning and Community Development (“Department”) issued a Final Environmental Impact Statement (“FEIS”) for a proposed Comprehensive Plan amendment. Appellants Friends of Madison Park, Trevor Cox and Jake Wyerhaeuser, Hawthorne Hills Community Council, Chris R. Youtz, John M. Cary, and Jennifer Godfrey filed timely appeals of the FEIS. The Department filed a Motion to Dismiss (“Motion”) against the appeals. Of the Appellants, all but Hawthorne Hills Community Council filed responses to the Motion. The Department filed a reply to the Appellants’ responses.

The Hearing Examiner has reviewed the file in this matter, including the motion documents. For purposes of this decision, all section numbers refer to the Seattle Municipal Code (“SMC” or “Code”) unless otherwise indicated.

The Motion seeks dismissal of the appeals or in the alternative dismissal of issues raised in the appeals on various grounds.

First, the Department moves to dismiss all six appeals in full based on state law SEPA exemptions. The Department variously indicated that the FEIS is not subject to appeal under RCW 36.70A.070(2), RCW 36.70A.600(3), RCW 36.70A.680(3) and RCW 43.21C.095. The Department’s arguments are based, in part, on assertions of fact with regard to the proposed legislation that is the subject of the FEIS, and the FEIS itself. These assertions are not supported by any sworn declaration or affidavit and assume facts not in evidence.

Second, the Department moves for the dismissal of all appeals except that of Jennifer Godfrey (W-25-006), for failure of the appellants to comment on the Draft Environmental Impact Statement (“DEIS”). The Department’s arguments are based, in part, on assertions of fact with regard to comments submitted, or not, with regard to the DEIS. These assertions are not supported by any sworn declaration or affidavit and assume facts not in evidence.

Lastly, the Department moves for various items of issue preclusion.

For scheduling purposes, the Department should have informed the Examiner as to the nature of its Motion to dismiss for lack of jurisdiction at the prehearing conference. The Examiner shared at the outset some general comments about how the hearing would likely proceed with scheduling, but invited the parties to clarify how they would be specifically proceeding with their cases. The Department indicated it would file motions to dismiss issues from multiple Appellants, and the Examiner directly asked counsel for the Department if the prehearing motions would be for dismissal or clarification of *issues* which the Department affirmed. Properly identifying the basis of the Motion as including two jurisdictional questions that could, if decided in favor of the Department, result in the dismissal of some or all the appeals, may have resulted in a more appropriate briefing schedule to address a motion of this nature.

The Examiner may issue decisions based on evidence and law. Mere assertions as to fact by an attorney are neither of these. Therefore, the Motion is procedurally inadequate because facts asserted to support the Department's arguments concerning SEPA appeal exemptions, and the allegations that Appellants failed to comment on the DEIS are not in evidence. While this could be grounds for simply dismissing the Motion as inadequate, to proceed to hearing with these two jurisdictional questions unaddressed could result in the parties conducting multiple weeks of hearing at great expense of time and money only to face the potential dismissal of appeals on the argued jurisdictional grounds.

In an attempt to remedy this circumstance, the Examiner will convert the prehearing conference scheduled for this matter on April 2, 2025, to a hearing on the Motion. At the hearing on the Motion, parties should be prepared with supportive testimony or other evidence to support their arguments. The Examiner will only hear argument and presentation of evidence concerning the two jurisdictional questions (Issue 1) is the FEIS exempt from administrative appeals, and (Issue 2) did Appellants fail to comment on the DEIS.

As the moving party, the Department will proceed first. As to Issue 1, Appellants for case numbers W-25-001, W-25-002, W-25-004, W-25-005, and W-25-006 may testify and argue in response to the Motion. As to Issue 2 Appellants for case numbers W-25-001, W-25-002, W-25-004, and W-25-005 may testify and argue in response to the Motion.¹ Reference to and incorporation of motion briefing already filed and considered by the Examiner is welcome.

Appellant Hawthorne Hills Community Council (W-25-003) did not respond to the Motion. Pursuant to HER 3.17(b) “[f]ailure of a party to file a timely response may be considered as evidence of that party's consent to the motion.” The Hawthorne Hills Community Council appeal should be dismissed.

¹ Case number W-25-003 will be dismissed for failure to respond to the Motion, and the City stipulated that W-25-006 was not subject to Issue 2.

Entered March 27, 2025.

/s/Ryan Vancil
Ryan Vancil, Hearing Examiner