

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

IN RE: THE APPEAL of the
WALLINGFORD COMMUNITY COUNCIL of
the

FINAL ENVIRONMENTAL IMPACT
STATEMENT for the CITYWIDE
IMPLEMENTATION OF MANDATORY
HOUSING AFFORDABILITY (MHA)

NOTICE OF APPEAL OF MHA FINAL
ENVIRONMENTAL IMPACT
STATEMENT

The Wallingford Community Council files the following Notice of Appeal of the Final Environmental Impact Statement for the Citywide Implementation of Mandatory Housing Affordability (MHA) dated November 9, 2017.

A. APPELLANT INFORMATION

- 1. Appellant:**
Wallingford Community Council
PO Box 31698
Seattle, WA 98103-1698
pres@wallingfordcc.org
(Contact through authorized representative)

- 2. Authorized Representative**
G. Lee Raaen
Lawyer
3301 Burke Ave. N., #340
Seattle, WA 98103
206-682-9580 Fax: 206-237-9043 Lee@LRaaen.com

Email attachment is the preferred format to receive documents from the Office of the Hearing Examiner.

B. DECISION BEING APPEALED

- 1. Decision:** The Final Environmental Impact Statement dated November 9, 2017 of the Citywide Implementation of Mandatory Housing Affordability (MHA).
- 2. Property Address:** City wide
- 3. Elements of Decision being appealed.** (Also see discussion below re objections to decision)
 - a. Adequacy of EIS
 - b. Lack of required environmental review
 - c. Violations of SEPA
 - d. Violations of the Constitutions of the United States and the State of Washington, and the civil rights guaranteed by law to the citizens of the City of Seattle.

C. APPEAL INFORMATION

1. Interest of Appellant in the decision (Standing)

The Wallingford Community Council (WCC) is a Washington Non-Profit Corporation existing since 1969. WCC represents the interests of residents and business owners in the Wallingford Neighborhood of Seattle. WCC was formed, in part, *“to promote the orderly comprehensive development, upgrading, beautification and improvement of the Wallingford Community”* and *“to encourage cooperative and democratic processes.”*¹ Its members include *“those persons who reside within, own property within, or manage businesses within the boundaries.”*²

¹ Article II of WCC Bylaws, adopted 1969.

² Article IV of WCC Bylaws.

Members of WCC have long been active in development of comprehensive plans for the neighborhood and implementation of those plans. The Final Environmental Impact Statement dated November 9, 2017 (MHA EIS) for the Citywide Implementation of Mandatory Housing Affordability (MHA) is of concern to WCC, its members and the residents of the Wallingford community. The implementation of MHA through the Final Environmental Impact Statement (FEIS) would negatively impact the neighborhood, its residents and businesses.

The Wallingford Community Council supports the goals of increasing the affordability, diversity and equity of housing in Seattle and the Wallingford neighborhood. However, because of a lack of the consideration of reasonable alternatives to current MHA proposals in the FEIS as required by SEPA, those goals will be undermined with serious negative consequences to Wallingford residents. The harms caused to Wallingford residents and businesses will include, but are not limited to: reductions in currently available affordable housing, an increase in housing costs with a corresponding reduction in diversity and equity for residents, increases in housing costs for existing residents penalizing those with low and fixed incomes including seniors, increases in density and its impacts without appropriate mitigation and supporting infrastructure, and a decline in quality of life and livability for current and future residents.

A primary mission of WCC is to promote public involvement in democratic processes. The City of Seattle and the State of Washington guarantee rights and opportunities to be involved in government processes, especially those involving environmental and land use decisions. The credibility and effectiveness of land use decisions depends upon a fair and open process. Adherence to a fair process is recognized in Washington and federal courts as requiring procedural due process. When due process is denied, courts have imposed liability on

government entities that fail to comply with constitutional requirements under 42 U.S.C. §1983. These rights were denied in the City's MHA SEPA process for the final MHA Environmental Impact Statement.

2. Objections to the decision and issues raised on appeal

The Wallingford Community Council is a participant in a broad appeal of the adequacy of the final MHA EIS brought under the name of the Seattle Coalition for Affordability, Livability and Equity. The issues raised in this appeal have been of special concern to WCC for some time, and therefore WCC considers it appropriate and advisable to bring this separate appeal. This appeal primarily concerns the lack of required consideration of alternatives to MHA dictates, and violations of citizen rights to meaningful participation in the environmental review procedure guaranteed by SEPA statutes and regulations, and constitutional rights to due process.

a. FEIS Alternatives.

An indispensable requirement of an environmental impact statement is that it adequately considers alternative ways to meet the stated goals of legislation.

The lead agency [the city] shall discuss impacts and alternatives in the level of detail appropriate to the scope of the nonproject proposal and to the level of planning for the proposal. Alternatives should be emphasized. In particular, agencies are encouraged to describe the proposal in terms of alternative means of accomplishing a stated objective (see WAC 197-11-060(3)). Alternatives including the proposed action should be analyzed at a roughly comparable level of detail, sufficient to evaluate their comparative merits (this does not require devoting the same number of pages in an EIS to each alternative). WAC § 197-11-442 (2).

Proposals should be described in ways that encourage considering and comparing alternatives. Agencies are encouraged to describe public or nonproject proposals in terms of objectives rather than preferred solutions. A proposal could be described, for example, as "reducing flood damage and achieving better flood control by one or a combination of the following

means: Building a new dam; maintenance dredging; use of shoreline and land use controls; purchase of floodprone areas; or relocation assistance."
WAC § 197-11-060.

The "Objectives of the Proposal" which is the subject of the EIS are listed in the Final Environmental Impact Statement at section 1.2 on page 1.3.

The City's objectives for this proposal are to:

- Address the pressing need for housing affordable and available to a broad range of households.*
- Increase overall production of housing to help meet current and projected high demand.*
- Leverage development to create at least 6,200 net new rent- and income-restricted housing units serving households at 60 percent of the area median income (AMI) in the study area over a 20-year period.*
- Distribute the benefits and burdens of growth equitably.*

The EIS fails to consider and present genuine alternatives as required by SEPA.

The "alternatives" presented in the EIS are not alternative ways to meet the housing objectives, but only alternative ways to implement a single alternative represented by the MHA framework. The only alternative considered for reaching the objectives of the EIS is broad up-zoning in neighborhoods across the city. Required alternatives were not considered or presented in the EIS as required by law. The only choices presented for consideration in the EIS were of how much and where to up-zone under MHA. As will be shown at the hearing of this matter, available alternatives were not considered in the EIS.

In spite of the laudable and broad objectives regarding affordable housing, the only consideration given for achieving those goals is the MHA legislation. The City admits the same. *The proposal addressed in this Final Environmental Impact Statement (FEIS) is to implement Mandatory Housing Affordability (MHA) requirements for multifamily*

residential and commercial development in certain areas of Seattle. (MHA EIS, pg. vii)

The only alternatives considered in the EIS were minor variations in how to implement MHA. No alternative ways to meet the City's housing goals were considered in the EIS. This is a significant deficiency and failure to fulfill the environmental review requirements of SEPA.

b. The City's attempted justification for circumvention of SEPA review requirements violates SEPA and due process of law.

The City seeks to justify its lack of environmental review of the MHA proposal through reliance on a 2015 Determination of Non-significance. (*See* City's response to Public Comment of WCC, EIS, pg. 4-353). However, the SEPA checklist for the 2015 proposal by DPD and the Department's Determination of Non-Significance of June 8, 2015 bear no relationship to the current proposal. Not only were the alternatives now contained in the MHA EIS not a part of the Director's analysis of the 2015 DNS, the MHA type of approach was disclaimed in City documents and the DNS as not being under consideration. The City's claimed lack of environmental impacts for its affordable housing proposals in the DNS was based on the absence of MHA type up-zones and consequent increase in density. The environmental review the City now invokes as underlying the MHA legislation was for a proposal not only different from the framework under consideration here, but contradictory to it. The City cannot rely on the 2015 DNS for environmental review of MHA. To do so, would be a violation of SEPA and due process.

No notice of environmental review of MHA proposals was contained in the DNS process the City now attempts to invoke. No notice of any MHA type proposals was provided to the

public as required by law. The lack of appropriate notice not only violates SEPA requirements, but also constitutes constitutional violations and a denial of due process of law. As an illustration, see *Barrie v. Kitsap Cty.*, 84 Wash. 2d 579, 584-86, 527 P.2d 1377, 1380-81 (1974) in which the Washington State Supreme Court said:

The purpose of the notice required by this statute is to fairly and sufficiently apprise those who may be affected by the proposed action of the nature and character of the amendment so that they may intelligently prepare for the hearing. Glaspey & Sons, Inc. v. Conrad, 83 Wn.2d, 707, 711, 521 P.2d 1173 (1974).

...
Our holding that the notice in this case is deficient is mandated by the constitutional requirement calling for procedural due process of law. One of the basic touchstones of due process in any proceeding is notice reasonably calculated under all the circumstances to apprise affected parties of the pending action and afford them an opportunity to present their objections. Armstrong v. Manzo, 380 U.S. 545, 14 L. Ed. 2d 62, 85 S. Ct. 1187 (1965).

We hold that the notice provided by the defendants was defective in that it conceivably deprived the plaintiffs, and all other affected parties, of their opportunity to be heard, by misleading them into believing that the proposed PUD and the rezone would be treated as one action. Therefore, the initial rezone was invalid, and is hereby declared void.

3. Relief Sought.

Appellant seeks a determination that the MHA EIS is inadequate, contrary to law and invalid. The EIS should be remanded to the City to bring it into compliance with the State Environmental Policy Act, including a description and analysis of alternatives to the MHA program promoted by the City. WCC reserves the right to seek such other relief as may be appropriate under the law including an award of damages, attorney's fees and costs in an appropriate forum.

Respectfully submitted this 27th day of November, 2017.



G. Lee Raaen, WSBA #6258
Attorney for Wallingford Community Council