



June 17, 2020

Submitted via email to

PRC@seattle.gov

Seattle Department of Construction and Inspections

ATTN: Public ResourceCetner

PO Box 34019

Seattle Washington 98121-4019

RE: SDCI PROJECT NUMBER 3033991-LU. 2224 2ND AVE

WRITTEN COMMENTS IN RESPONSE TO THE NOTICE OF APPLICATION FOR MASTER USE PERMIT (MUP), SEATTLE OF DEPARTMENT OF CONSTRUCTION AND INSPECTIONS (SDCI)

Friends of Historic Belltown (FHB) has already submitted SEPA comments in a letter dated January 19, 2020. The following comments are provided to supplement those comments and does not replace them.

THE CENTRAL QUESTION AT HAND

FHB previously submitted comments outlined multiple issues related to SDCI's statutory duties under SEPA. For this supplementary letter, FHB would like to reiterate the central regulatory question at hand:

Whether the Seattle Landmark Preservation Ordinance (LPO, SMC 25.12) can be used in lieu of SEPA to evaluate the destruction of historic properties

In answer to this central question, FHB makes the following assertions:

- 1. The City's use of the LPO in lieu of SEPA to address the destruction of historic properties is in error**
- 2. Destruction of the Wayne Apartments – a Designated City Landmark – constitutes a significant adverse impact under SEPA**
- 3. Under SEPA, SDCI has the discretionary authority to mitigate this impact**
- 4. SDCI has a duty to exercise this discretionary authority to serve the public interests that would be harmed should the Landmarked Wayne Apartments be Destroyed without mitigation.**

The following sections describe the key matters of fact and law that support these assertions.

THE CITY'S USE OF THE LANDMARK PRESERVATION ORDINANCE IN LIEU OF SEPA IS IN ERROR

Under the City's SEPA policy pertaining to Historic Preservation (SMC 25.05.675H):

It is the City's policy to maintain and preserve significant historic sites and structures.

For projects involving structures or sites, which have been designated as historic landmarks, compliance with the Landmarks Preservation Ordinance shall constitute compliance with the policy set forth above.

Based on past decisions, the City interprets these policies to mean that for historic properties, the Landscape Preservation Ordinance (LPO, SMC 25.12) is conducted *in lieu* of SEPA. Therefore, FHB expects that SDCI will dismiss the significant adverse impact of destroying a landmark because it is using the LPO to serve its statutory duties under SEPA.

However, FHB asserts that SDCI cannot substitute an ordinance for SEPA compliance unless that ordinance complies with all essential elements of SEPA, including the consideration of alternatives and mitigation. Specifically, under SMC 25.05.030, SEPA Policies, *Agencies shall **to the fullest extent possible**, identify, evaluate, and require or implement, where required by the act and these rules, **reasonable alternatives that would mitigate adverse effects of proposed actions on the environment.***

The term "*shall to the fullest extent possible*" means that this is not an option. The LPO fails to provide these essential SEPA elements. Specifically, the LPO it does not to any extent consider:

- **alternatives** that may be available under an actual proposed action (such as is the proposed mixed-use development involving multiple properties that was submitted to SDCI *after* the LPO process was completed).
- **mitigation** to compensate for the environmental values that would be lost through destruction of a designated city landmark.

The LPO does not in any way comply with these essential elements of SEPA. It did not address potential alternatives that may be available with the current proposed action, nor does it require any mitigation for the significant adverse impact of destroying a designated city landmark.

In addition, the City's use of the LPO in lieu of SEPA can be demonstrated to have already resulted in the unmitigated loss of historic properties, including most recently the Sullivan House and the Galbraith House. FHB asserts that an ordinance that is clearly failing to protect city landmarks and fails to meet the essential elements of SEPA – including consideration of alternatives and mitigation – cannot be used in lieu of SEPA. Therefore, we believe that the adverse impact of destroying the Wayne Apartments must be considered as part of SDCI's current SEPA review.

DESTRUCTION OF THE WAYNE APARTMENTS CONSTITUTES A SIGNIFICANT ADVERSE IMPACT UNDER SEPA

There is no question that the historic Wayne Apartment Building is a significant element of the environment. Under the City's SEPA Threshold Determination Process (25.05.330), loss or destruction of a historic resource is specifically listed as a category of significant adverse impacts to be considered (SMC 25.05.33), alongside other categories such as endangered species, wild and scenic rivers, and parks. The Threshold Determination Process in no way authorizes SDCI to dismiss the destruction of historic landmarks in making a threshold determination.

SEPA PROVIDES SDCI WITH THE DISCRETIONARY AUTHORITY TO MITIGATE THIS IMPACT

Because the LPO cannot be used in lieu of SEPA and because destruction of the Wayne Apartments constitutes a significant adverse impact, the City's SEPA ordinance provides SDCI with clear authority to condition the applicant's proposal under SMC 25.05.660 - Substantive authority and mitigation.

SDCI HAS A DUTY TO EXERCISE ITS SEPA DISCRETIONARY AUTHORITY TO SERVE THE PUBLIC INTEREST

SEPA's discretionary authority to condition the MUP to mitigate adverse impacts is, of course, discretionary. SDCI can comply with SEPA without requiring mitigation. However, FHB asserts that, under SEPA, SDCI has a statutory duty to either:

- consider alternatives that would avoid destruction of the landmark through a narrowly scoped Environmental Impact Statement (EIS) or
- mitigate for the loss of the historic landmark through a Mitigated Determination of Non-Significance, using its discretionary authority under SEPA

In addition, a fundamental duty of SDCI and all City agencies is to protect the public interest in taking actions under their jurisdiction. As stated in the City's own policies for historic preservation (SMC 25.12.020), historic properties such as the Wayne Apartments have tremendous public value and protecting them is clearly in the public interest:

The City's legislative authority finds that the protection, enhancement, perpetuation and use of sites, improvements and objects of historical, cultural, architectural, engineering or geographic significance, located within the City, are required in the interest of the prosperity, civic pride and general welfare of the people; and further finds that the economic, cultural and aesthetic standing of this City cannot be maintained or enhanced by disregarding the heritage of the City and by allowing the unnecessary destruction or defacement of such cultural assets.

Allowing the unmitigated destruction of a designated city landmark would be a clear violation of SDCI's duties under SEPA and in its overall duty to protect the public interest and values associated with historic properties.

CONCLUSIONS

As established in this letter and in FHB's previously submitted comments, SDCI cannot use the LPO in lieu of SEPA. SEPA clearly requires SDCI to either avoid the unnecessary destruction of a landmark through development of an alternative, such as allowing greater height in non-landmarked portions of the proposed MUP in exchange for preserving the landmark – or, in the absence of such an alternative – SEPA clearly provides SDCI with the authority to mitigate the significant impact through the application of compensatory mitigation (described in more detail in our previously submitted comments). Further, SDCI has the duty to exercise this authority to avoid the unmitigated impacts to the public interests and values associated with the designated city landmark, the Wayne Apartments.

We would be happy to meet with SDCI staff and the applicant or provide any other assistance that we can to clarify our comments, provide additional information, or otherwise help support informed SDCI decisions regarding this significant action.

We know that SDCI is very busy with many development applications and we thank you very much for your time and consideration of our comments.

Sincerely,

FRIENDS OF HISTORIC BELLTOWN, INC

<i>Tiffany Jorgensen</i>		PRESIDENT
<i>Steve Hall</i>		DESIGNATED SEPA REPRESENTATIVE
<i>Beck Keller</i>		ADVOCACY LEAD