

**FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE**

In the Matter of the Appeal of

Hearing Examiner File:
W-10-001

FREDERICA MERRELL

from a Determination of Non-significance
issued by the Director of the Department
of Planning and Development

Introduction

The Director of the Department of Planning and Development issued a Determination of Nonsignificance pursuant to SEPA for the North Beacon Hill Residential Urban Village Neighborhood Plan Update. The Appellant exercised the right to appeal pursuant to Chapter 25.05 Seattle Municipal Code.

The appeal hearing was held before the Hearing Examiner (Examiner) on April 26, 2010. The Appellant represented herself. The Director of the Department of Planning and Development (Director or Department) was represented by William K. Mills, Senior Planner. The Intervenor, El Centro de la Raza, was represented by Jessica M. Clawson, attorney-at-law.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code (SMC or Code) unless otherwise indicated. After considering the evidence in the record, the Examiner enters the following findings of fact, conclusions and decision on the appeal.

Findings of Fact

1. The City's existing Comprehensive Plan (2004, as amended) (Comprehensive Plan), includes growth targets for designated residential urban villages. The 2024 growth target for the North Beacon Hill Residential Urban Village is 490 households, with an estimated density of 13 households per acre. Exhibit 13, Urban Village Appendix.
2. Development within the North Beacon Hill Residential Urban Village has not exceeded the existing growth targets.
3. The 2004 amendments to the Comprehensive Plan, including the updated growth targets for 2004 through 2024, underwent SEPA review prior to their adoption by the City Council.

4. The Comprehensive Plan includes a Neighborhood Planning Element, which consists of adopted goals and policies for identified neighborhoods within the City, including North Beacon Hill.

5. In September of 2008, the City Council adopted an ordinance authorizing the Director and the Department of Neighborhoods to work with City neighborhoods in a planning process to update neighborhood plans.

6. The North Beacon Hill Neighborhood Plan was one of three plans slated for an update in 2009. The resulting year-long planning process led to a proposed update for the North Beacon Hill Residential Urban Village Neighborhood Plan (Plan Update).

7. The Plan Update would amend the Comprehensive Plan's Future Land Use Map to designate as multifamily residential a small area that is presently designated for single-family residential development but improved with multifamily development. It would also change the designation of the El Centro de la Raza site from single-family residential to commercial/mixed-use. In addition, the Plan Update would revise certain goals and policies that foster a vibrant business district that includes an expansion of El Centro de la Raza, preserve the area's ethnic and cultural heritage, improve the pedestrian environment, and encourage density within the town center and near the Beacon Hill Link Light Rail Station.

8. The planning process also included consideration of several different building height concepts for the Urban Village. Structure height and bulk, preferred use locations and other concepts will be further explored and refined through additional planning processes involving the neighborhood to develop an urban design framework plan and implementation strategies, such as rezones.

9. The Plan Update would not amend the established growth targets for the North Beacon Hill Residential Urban Village.

10. At the conclusion of the recent planning process, the new goals and policies were made available for public review.

11. The Director reviewed the probable impacts of the Plan Update pursuant to SEPA. The review included consideration of the Comprehensive Plan's growth targets for the North Beacon Hill Residential Urban Village and Comprehensive Plan appendices addressing transportation inventories and forecasts, and Capital Facilities inventories and potential projects.

12. The Director determined that the Plan Update would not have any probable significant adverse environmental impacts and issued a Determination of Non-significance (DNS) for it.

13. After publication of the DNS, the Director prepared a document that merged the proposed new language for the goals and policies with the language of the goals and

policies in the adopted North Beacon Hill Neighborhood Plan. The document was prepared in anticipation of City Council review of the Plan Update and was done in standard legislative format, with new text shown as underlined and text to be deleted shown stricken through. The Director did not give public notice of the merged document.

14. The Appellant timely appealed the Director's DNS. Following briefing on prehearing motions to dismiss, two appeal issues remained for hearing and decision: 1) whether the DNS was clearly erroneous for failure to consider probable significant adverse impacts on transportation and public services attributable to increased density that would result from the Plan Update; and 2) whether the DNS was clearly erroneous because the Director failed to provide an opportunity for public comment on the changes made to the Plan Update when the Director merged the new goal and policy language with the existing goals and policies in the North Beacon Hill Neighborhood Plan.

Applicable Law

15. "Actions" under SEPA include "nonproject actions," which include the "adoption or amendment of comprehensive land use plans or zoning ordinances". SMC 25.05.704.B.2.b.

16. SMC 25.05.752 defines "Impacts" as "the effects or consequences of actions. "A proposal's effects include direct and indirect impacts caused by a proposal. Impacts include those effects resulting from growth *cause by a proposal*" SMC 25.05.060.D (emphasis added).

17. "Probable" is defined in SMC 25.05.782 as "likely or reasonably likely to occur" "Significant" is defined as "a reasonable likelihood of more than a moderate adverse impact on environmental quality." SMC 25.05.794.

18. SMC 25.05.330 directs that in making a SEPA threshold determination, the responsible official is to determine "if the proposal is likely to have a probable significant adverse environmental impact" If the responsible official determines that there will be no such impact from the proposal, a DNS is to be issued. SMC 25.05.340.A.

Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to SMC 25.05.680. The Director's DNS is to be accorded substantial weight, and the party appealing it bears the burden of proving that it is "clearly erroneous". SMC 25.05.680 B.3. A decision is clearly erroneous if the Examiner is "left with a definite and firm conviction that a mistake has been committed." *Moss Bellingham*, 109 Wn. App 6, 13, 31 P.3d 703 (2001)(citations omitted).

2. When the existing growth targets for the North Beacon Hill Residential Urban Village Plan were proposed for inclusion in the Comprehensive Plan, they were part of a set of

amendments that were reviewed pursuant to SEPA. The time for challenging those 2004 Plan amendments and related SEPA documents has passed.

3. There is no evidence in the record that the Plan Update would result in increased density within the North Beacon Hill Residential Urban Village beyond that anticipated in the Comprehensive Plan. The proposed goals and policies in the Plan Update and those in the existing Neighborhood Plan both anticipate greater density in the town center area and near the light rail station. The Plan Update is a document that begins the process of determining how the growth that is already anticipated by the Comprehensive Plan's existing growth targets for the Residential Urban Village will be accommodated and shaped.

4. The Appellant argued that the DNS should have included information on the impacts of full build-out under all available alternative height scenarios for the Urban Village. From the record, it appears that this is the type of information that will be considered during the additional planning processes slated for the North Beacon Hill neighborhood. But, again, there is no evidence in this record that any of the alternative height scenarios would produce density not already contemplated by the Comprehensive Plan. Further, strategies for implementing the Plan Update, such as area-wide or project rezones, would be "actions" under SEPA that would be subject to additional environmental review.


5. The Appellant stated that members of the public would have benefited from reviewing the Director's document that merged the existing goals and policies with the proposed new ones. This may be true. However, the Director was not legally required to distribute the document to the public, and both the Plan Update and the existing Comprehensive Plan were available for those who wished to compare the new to the existing language. Further, there is no evidence in the record that the merger resulted in any substantive changes to the Plan Update that would have required additional public notice and further review under SEPA.

6. The Appellant has not met her burden of demonstrating that the Director's DNS was clearly erroneous, and it should be affirmed.

Decision

The Director's Determination of Nonsignificance is **AFFIRMED**.

Entered this 3rd day of May, 2010.


Sue A. Tanner
Hearing Examiner

Concerning Further Review

NOTE: It is the responsibility of the person seeking to appeal a Hearing Examiner decision to consult Code sections and other appropriate sources, to determine applicable rights and responsibilities.

The decision of the Hearing Examiner in this case is the final decision for the City of Seattle. A request for judicial review of the decision must be commenced within twenty-one (21) days of the date the decision is issued, as provided by RCW 36.70C.040.

The person seeking review must arrange for and initially bear the cost of preparing a verbatim transcript of the hearing. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, PO Box 94729, Seattle, Washington 98124-4729, (206) 684-0521.

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