

**BEFORE THE HEARING EXAMINER
CITY OF SEATTLE**

In the Matter of the Appeal of

FREDERICA MERRILL

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

Hearing Examiner File:
W-10-001

**ORDER ON MOTIONS
TO DISMISS AND FOR
CLARIFICATION, AND
ESTABLISHING A NEW
CASE SCHEDULE**

The Department of Planning and Development (Department) moved for an order dismissing this appeal. The Intervenor, El Centro De La Raza (Intervenor), filed a Consolidated Motion to Dismiss and Motion for Clarification seeking dismissal of three appeal issues and dismissal or clarification of the remaining issues. The Appellant, Frederica Merrill, filed a response to each of the motions opposing dismissal and arguing that she was unable to clarify her appeal issues prior to reviewing materials received in discovery. The Department and Intervenor each filed reply memoranda to the Appellant's response.

The Department decision to issue a Determination of Nonsignificance (DNS) for the North Beacon Hill Residential Urban Village Neighborhood Plan Update (Comprehensive Plan amendment) is the only decision at issue in this appeal. The Hearing Examiner has jurisdiction to hear an appeal of the DNS. SMC 25.05.680 B. The Seattle Municipal Code (Code) does not give the Examiner jurisdiction to consider an appeal of the Comprehensive Plan amendment. For this reason, the Department and Intervenor seek dismissal of appeal issues 1 and 2, which allege that the Department failed to comply with various City and State requirements "concerning the neighborhood plan update process" and "comprehensive plan amendment process". The Appellant argues that SEPA requires the Examiner to consider both the DNS and the Comprehensive Plan amendment in a consolidated hearing. That is the general rule under SEPA. However, again, the Examiner lacks jurisdiction to consider an appeal of a Comprehensive Plan amendment. Therefore, a SEPA determination is made, and any appeals of it are resolved, before the City Council considers the Comprehensive Plan amendment. *See* SMC 25.05.680 B. The motions to dismiss appeal issues 1 and 2 are **GRANTED**, and those issues are **DISMISSED**.

The Department and Intervenor also seek dismissal of issue 8, which states that the Department failed to use notice procedures reasonably calculated to provide notice of proposed comprehensive plan amendments to those potentially interested and/or affected. In her response to the motion, however, the Appellant clarifies that the notice issue concerns the changes, alleged to be substantive, that the Department made while

consolidating goals and policies after public notice of the DNS. Although not clearly stated at the outset, issue 8 as clarified is within the Examiner's jurisdiction. The motions to dismiss issue 8 are therefore **DENIED**.

The Appellant argues that the remaining issues in the case should not be dismissed because she was unable to review discovery received from the Department before the date required for a response to the motions to dismiss. Although the Appellant may have been involved in the public process concerning the Comprehensive Plan amendment and SEPA threshold determination, it is also true that she requested specific discovery from the Department at the prehearing conference in this matter and should have an opportunity to review it before responding to the remaining issues in the motions to dismiss. Therefore, the Examiner reserves ruling on the remainder of the motions to dismiss and revises the schedule in this case as follows:

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| March 22 | The Appellant may file with the Office of Hearing Examiner and serve on all other parties a second response to the motions filed by the Department and Intervenor except for those parts of the motion addressing appeal issues 1 and 2 on which the Examiner has ruled. |
| April 1 | The Department and Intervenor may file and serve a reply to the Appellant's second response to their motions. |
| April 13 | All parties shall file and serve their preliminary witness ¹ and exhibit lists. |
| April 20 | All parties shall file their final witness ^{1,2} and exhibit lists with the Office of Hearing Examiner and shall serve a copy of the lists and a copy of each exhibit on the other parties. |
| April 26
at 9:00 a.m. | Hearing on the merits of the appeal |


¹ Witness lists must include the names of witnesses and a brief summary of their expected testimony. If a witness will be testifying as an expert, a statement of qualifications must be included.

² Except for purposes of impeachment or rebuttal, only those witnesses and exhibits listed by the parties may be offered at the hearing.

NOTE: The parties are reminded that under the Hearing Examiner Rules (HER), documents filed with the Office of Hearing Examiner must be delivered by personal service, United States mail, or electronic facsimile (no more than 15 pages without prior

permission of the Hearing Examiner), with telephone confirmation of receipt. Further, documents are deemed filed with the Office of Hearing Examiner on receipt at the Office on business days between the hours of 8:00 a.m. and 5:00 p.m. HER 2.05.

Entered this 11th day of March, 2010.


Sue A. Tanner, Hearing Examiner
Office of Hearing Examiner
P.O. Box 94729
Seattle, Washington 98124-4729
Phone: (206) 684-0521
FAX: (206) 684-0536
