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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of:)
)
WALLINGFORD COMMUNITY COUNCIL, ET) Hearing Examiner File
AL.) W-17-006 through W-17-014
)
of adequacy of the FEIS issued by the Director,) CITY OF SEATTLE’S RESPONSE
Office of Planning and Community Development) TO FRIENDS OF NORTH
) RAINIER NEIGHBORHOOD
) PLAN’S MOTION FOR
) SUMMARY JUDGMENT

I. INTRODUCTION

The Hearing Examiner should deny Friends of North Rainier Neighborhood Plan’s (“FNR’s”) Motion for Summary Judgment (“Motion”). The legal claims asserted in FNR’s Motion have no basis in fact, lack any supporting expert opinion, and lack any legal authority in support of its claims. For these reasons, FNR has failed to demonstrate that it is entitled to summary judgment in its challenges to the adequacy of the City of Seattle (“City’s”) impact analysis of open space and recreation in the Final Environmental Impact Statement (“EIS”).

FNR joined SCALE’s Motion for Summary Judgment and incorporated by reference SCALE’s “legal authorities and standards” into FNR’s Motion as well as some of SCALE’s arguments.¹ To avoid duplication, the City incorporates herein by reference its Response to SCALEs Motion for Summary Judgment and relies on the legal authorities, legal standards and

1 arguments in the City’s Response to address those arguments FNR incorporated by reference
2 into FNR’s Motion. This Response is focused on FNR’s legal challenges to the open space and
3 recreation analysis that were beyond the scope of SCALE’s Motion.

4 **II. ARGUMENT**

5 FNR’s arguments regarding the EIS’s discussion of open space and recreation impacts
6 are unsupported and fail to justify granting summary judgment to FNR.

7 The EIS Chapter 3.7 Open Space and Recreation provides an analysis of the proposed
8 alternatives as to their impacts on the availability of the City’s parks and open space (“Parks and
9 Open Space Analysis”). The Parks and Open Space Analysis identified the baseline condition of
10 the City’s parks and open space availability based on the most current level-of-service (“LOS”)
11 standard, identified and discussed the impacts of each alternative according to its respective
12 projected growth, and included mitigation measures to address and reduce those impacts. *See*
13 Declaration of Sharese Graham in Support of City’s Response to FNR’s Motion for Summary
14 Judgment (“Graham Decl.”), ¶ 3-6. The City’s expert opined that the approach and level of detail
15 of the Parks and Open Space Analysis, and Section 3.7’s overall discussion of parks and open
16 space impacts and mitigation measures, were appropriate and reasonable. Graham Decl., ¶ 7.

17 FNR’s Motion is not supported by any expert opinion and the claims made by FNR are
18 not supported by any legal authority. On the fourteenth page of its 15-page Motion, FNR asserts
19 erroneous claims that are addressed below.²

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¹ FNR’s Motion, p. 13, lines 19-23 and p. 14, lines 1-8

23 ² On the first thirteen pages of its Motion, FNR asserts its “Statement of the Case.” This Response does not agree
nor disagree with FNR’s “Statement of the Case” as it is not relevant to the legal arguments it raised on page 14.

1 **A. The EIS adequately discussed the 2017 Parks and Open Space Plan Gap**
2 **Analysis and Identified North Rainier as an Underserved Urban Village.**

3 FNR erroneously asserts that the EIS failed to discuss the “nature and extent of the open
4 space gap” within the urban village boundaries. FNR’s Motion at 14. To the contrary, the EIS
5 states on p. 3.345:

6 The Parks and Open Space Plan takes a slightly different approach to identifying
7 open space gaps and prioritizing areas for acquisition than previous park
8 development plans by considering a broader range of public resources as parks
9 and open spaces (including public school property, major institutions and
10 universities, and other non-park owned property,) and considering equity,
11 walkability, and socio-economic factors in addition to population density. Under
12 the proposed walkability guidelines, it is suggested that parks and open space be
13 within a 5-minute walk within urban villages and be within a 10-minute walk
14 outside of urban villages.

15 The EIS then discusses that fifteen specific urban villages were identified to have been
16 underserved in parklands compared to other areas of the city based on the 2017 Parks and Open
17 Space Plan gap analysis. The North Rainier urban village was specifically identified to be an
18 “Underserved Urban Village.” EIS, p. 3.345.

19 Exhibit 3.7-5 of the EIS is central to the Parks and Open Space Analysis as it identifies,
20 at the neighborhood level, the potential adverse impacts to availability of parkland based on the
21 projected growth pattern of each of the four alternatives studied in the proposal using the proper
22 citywide LOS standard, i.e. eight acres of parkland per 1,000 residents, converted to a
23 neighborhood-appropriate scale of .8 acres of parkland per 100 residents. Exhibit 3.7-5 identifies
the 15 urban villages identified as “Underserved Urban Villages,” including the North Rainier
Urban Village. Graham Decl., ¶ 6-7.

 Both the plain text of the EIS together with the Graham Declaration make clear that the
EIS adequately discussed the 2017 gap analysis from the recent Parks and Open Space Plan. At

1 the very least, the City has presented sufficient evidence to show there is a material issue of fact
2 that supports the Hearing Examiner denying FNR's Motion.

3 FNR provides no legal analysis or factual analysis to support its claim. FNR introduces
4 as exhibits two gap analysis studies from 2001 and 2011, respectively. Those earlier studies
5 relied on what is now an outdated acceptable level of service standard (.33 acres per 100
6 residents) and so the findings from those earlier studies would not necessarily translate using the
7 City's current LOS standard.

8 **B. The EIS was not required to discuss potential future park projects in its park
9 and open space analysis, nor make special mention that possible park
acquisition sites were proposed to be rezoned.**

10 FNR erroneously asserts that the EIS failed to include a discussion of "any project
11 underway" that would help serve the North Rainier neighborhood. On the contrary, the EIS
12 discussed the availability of parklands and the impacts to the availability of those parklands
13 based on the alternatives and their respective growth projections. It is simply inappropriate for a
14 parks and open space impacts analysis to include a discussion of a prospective park project when
15 the project is at the concept level. Graham Decl., ¶ 7. It would only have been appropriate to
16 include a prospective park project within the calculation of acreage of parklands if there was an
17 identified funding source and a planned date of completion within the 2035 planning horizon.
18 Graham Decl., ¶ 7. By leaving parcels out of the calculation of available parklands that may
19 potentially become parkland and are planned for at a concept level, the conclusions from the
20 impact analysis are more conservative. Graham Decl., ¶ 7.

21 The EIS did not need to make special mention within the Parks and Open Space Analysis
22 that potential future parkland being considered at the concept level was included in the proposed
23

1 rezones. This is because the proposed change in zoning would not preclude such parcels from
2 becoming parkland in the future. Graham Decl., ¶ 7.

3 The Seattle Municipal Code (“SMC”) establishes the City’s zoning designations. SMC
4 23.30.010. There is no zone for “open space” or “parks.” It is common for park property to have
5 an underlying zoning designation that is residential, including multi-family. Nothing about the
6 rezone would preclude such property from one day being acquired and used as parkland, in part
7 or in full.

8 FNR fails to support its claims with any expert opinion or legal authority. FNR also fails
9 to provide any factual information to support its argument. FNR fails to identify what projects, if
10 any, it thinks were “underway” and should have been included as part of the Parks and Open
11 Space Analysis. Importantly, at the time that the Parks and Open Space Analysis was prepared,
12 there were no known prospective park projects in the North Rainier neighborhood with both an
13 identified funding source and a planned date of completion within the 2035 planning horizon.
14 Graham Decl. ¶ 7. Though there may be an effort ongoing involving the consideration of
15 potential sites at a concept level to eventually acquire more parkland in the North Rainier
16 neighborhood, this is still at a concept level.

17 The City’s EIS’s Parks and Open Space Analysis is adequate and it was entirely
18 reasonable for the City not to have included such concept level potential parklands into its
19 impact analysis. At the very least, there are material issues of fact that necessitate the Hearing
20 Examiner denying FNR’s Motion.

1 **C. The EIS does include maps that show how the alternatives relate to and**
2 **impact open space, but even if it did not the EIS is adequate nonetheless.**

3 FNR erroneously asserts that the EIS did not include mapping to show how the
4 alternatives relate to and impact open space. FNR is wrong on both its factual assertion and its
5 legal premise that the absence of mapping would preclude a finding of adequacy.

6 To the contrary, the proposed zoning maps in FEIS Appendix H do in fact provide
7 mapping that shows the proposed zoning and the proposed urban village boundaries for each
8 urban village within the study area and under each alternative. These proposed zoning maps
9 included a category titled “open space” identified by a unique color classification that showed all
10 the parks and open space, i.e. parklands both within and outside of the urban villages in the study
11 area. FEIS H. 9 – H. 113.³ Accordingly, the EIS did in fact include mapping that showed how
12 the action alternatives related to and impacted open space. Also, the Parks and Open Space
13 Analysis references the 2017 Parks and Open Space Plan throughout in which there is mapped
14 information available on the City’s parks and open spaces. Further, the City’s GIS data, which
15 includes a data layer on parks and open space, is available to view on the City’s website.

16 More importantly, FNR erroneously implies that the EIS would have been inadequate but
17 for such mapping. This flies in the face of established law. Under the appropriate standard, an
18 EIS is adequate when it presents the decisionmakers with “a reasonably thorough discussion of
19 the significant aspects of the probable environmental consequences of the agency’s decision.”
20 *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d 619, 633, 860
21 P.2d 390 (1993). FNR provides no evidence and no legal authority to support its implication that
22 a reasonably thorough discussion could not be presented without mapping, or some other visual
23 aid. The Declaration of Sharese Graham and the plain text of the EIS firmly establish that the

1 Parks and Open Space Analysis was adequate and reasonable. At the very least the City has
2 presented sufficient evidence to create a material issue of fact necessitating the Hearing
3 Examiner denying FNR's Motion.

4 **III. CONCLUSION**

5 For all the reasons above, the City requests that the Hearing Examiner deny FNR's
6 Motion.

7 DATED this 25th day of May 2018.

8 PETER S. HOLMES
9 Seattle City Attorney

10 By: s/Jeff Weber, WSBA #24496
11 s/Daniel B. Mitchell, WSBA #38341
12 Assistant City Attorneys

13 *Attorneys for Respondent*
14 *Seattle Office of Planning and Community*
15 *Development*

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23 ³ The proposed zoning maps displaying the open space area in the North Rainier Urban Village are at H. 57 – H. 59.

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of:

Hearing Examiner File

**WALLINGFORD COMMUNITY
COUCIL, ET AL.,**

W-17-006 through W-17-014

CERTIFICATE OF SERVICE

of the adequacy of the FEIS issued by the
Director, Office of Planning and Community
Development.

I, Amanda Kleiss, declare as follows:

That I am over the age of 18 years, not a party to this action, and competent to be a
witness herein;

That I, as a legal assistant with the office of Van Ness Feldman LLP, on May 25, 2018,
filed the City’s Response to Friends of North Rainier Neighborhood Plan’s Motion for Summary
Judgment; Declaration of Sharese Graham with Exhibits A-C; and this Certificate of Service
with the Seattle Hearing Examiner using its e-filing system and that on May 25, 2018, I
addressed said documents and deposited them for delivery as follows:

Seattle Hearing Examiner
Ryan Vancil
Deputy Hearing Examiner
700 Fifth Avenue, Suite 4000
Seattle, WA 98104

- By U.S. Mail
- By Messenger
- By E-file

Wallingford Community Council
G. Lee Raaen
Attorney-at-Law

- E-mail
Lee@LRaaen.com

Morgan Community Association (MoCa)
Deb Barker, President
Phillip Alden Tavel

- E-mail
djb124@earthlink.net
ptavel@gmail.com

Friends of Ravenna-Cowen
Judith E. Bendich
Board Member

- E-mail
jebendich@comcast.net

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West Seattle Junction Neighborhood Organization (JuNo)

Rich Koehler
Representative

E-mail
rkoehler@cool-studio.net;
admin@wsjuno.org

Seattle Coalition for Affordability, Livability, and Equity (SCALE)

Claudia M. Newman
David Bricklin
Bricklin & Newman LLP

E-mail
newman@bnd-law.com
cahill@bnd-law.com
telegin@bnd-law.com
Bricklin@bnd-law.com
Talis.abolins@gmail.com

Seniors United for Neighborhoods (SUN)

David Ward
Representative

E-mail
booksgalore22@gmail.com

Beacon Hill Council of Seattle

Mira Latoszek
Vice-Chair

E-mail
mira.latoszek@gmail.com

Friends of North Rainier Neighborhood Plan

Marla Steinhoff
Representative

E-mail
masteinhoff@gmail.com

Fremont Neighborhood Council

Toby Thaler
Board President and Attorney-at-Law

E-mail
louplop@comcast.net

Seattle City Attorney's Office

Jeff Weber
Daniel Mitchel
Attorneys for Respondent Seattle Office of Planning
and Community Development

E-mail
jeff.weber@seattle.gov
daniel.mitchell@seattle.gov
Alicia.reise@seattle.gov
Geoffrey.wentlandt@seattle.gov
MHA.EIS@seattle.gov

1 I certify under penalty of perjury under the laws of the State of Washington that the
2 foregoing is true and correct.

3 EXECUTED at Seattle, Washington on this 25th day of May, 2018

4
5 /s/Amanda Kleiss

6 Declarant
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