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BEFORE THE HEARING EXAMINER
FOR THE CITY OF SEATTLE

In the Matter of the Appeals of
**WALLINGFORD COMMUNITY COUNCIL, ET
AL.,**
of the City of Seattle Citywide Implementation of
Mandatory Housing Affordability (MHA) Final
Environmental Impact Statement,

Hearing Examiner Consolidated File:
W-17-006 through
W-17-014

APPELLANT FRIENDS OF NORTH
RAINIER NEIGHORHOOD PLAN’S
REPLY IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

(Appellant in No. W-17-014)

Appellant Friends of North Rainier Neighborhood Plan (“FNR”) hereby submits its Reply In Support Of Motion For Summary Judgment. This Reply is filed early to facilitate a timely and necessary ruling at the summary judgment hearing that was originally set for these appeals.

I. INTRODUCTION

The Friends of North Rainier Neighborhood Plan (FNR) has provided a clear and detailed picture of the existing physical conditions and challenges in North Rainier’s Town Center, and the City’s own continuous assessment of an open space gap that has historically been referred to as the “worst open space gap” in Southeast Seattle. The photo of the preschool play area reflects the existing conditions. See Decl. of Abolins Supporting FNR’s Motion, Exhibit A (photo of play area).

1 FNR’s motion also identifies the City’s own specific plan to bridge this continuing gap,
2 through the North Rainier Town Center Park acquisition project. *Id.* - Decl. of Abolins, Exhibit B
3 (Potential Buildout Under *Prior* Overlay District Zoning). FNR’s motion explains, without dispute,
4 how the City ultimately launched this important project in coordination with the King County
5 Conservation Future’s program, with the support of multiple City departments, as well as community
6 stakeholders and nonprofits.

7 Finally, FNR’s motion holds up to the light of this summary judgment hearing, the City’s
8 environmental analysis of open space as it relates to the MHA proposal for the North Rainier Town
9 Center. A comparison of the City’s open space planning and project with the City OPCD’s MHA
10 proposal and open space analysis leads to one inescapable conclusion: The City’s FEIS offers up an
11 open space analysis that fails to disclose that the MHA proposal is manifestly inconsistent with its
12 own open space plans, policies and project. This lack of environmental review is absurd.¹ This lack
13 of review is also frightening for the current and future children of the North Rainier Town Center.
14 The fact that OPCD’s open space analysis does not even mention its upzone to the proposed North
15 Rainier Town Center Park is a frightening reflection of what can happen when a Grand Bargain of
16 Citywide upzones is rushed through a SEPA process without even mentioning that, with regard to the
17 environmental “livability” of the citizens in North Rainier, the City’s long-awaited parks project has
18 been upzoned to 95-feet high. The City’s Council and its Citizens deserve more. And SEPA requires
19 more. Summary judgment should be granted.

20 To avoid summary judgment, the City was obligated to identify genuine disputes of material
21 fact. However, in this case, the City acknowledges that the compelling facts are beyond dispute.

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23 ¹ “ABSURDITY, n. A statement or belief manifestly inconsistent with one’s own opinion.” Ambrose
Bierce, *The Devil’s Dictionary* (1911)

1 The City in effect admits that every single fact set forth in FNR’s Statement of the Case is true. See
2 City Response, page 2 and footnote 2 (acknowledging that the response does not disagree with FNR’s
3 Statement of the Case). Summary judgment is proper.

4 II. ARGUMENT

5 A. It Does Not Take An Expert To Reveal The Patently Inadequate Nature Of The City’s 6 Open Space Analysis With Regard To The North Rainier Town Center.

7 In its response, the City argues that summary judgment is not proper because FNR needed an
8 expert witness to help analyze the adequacy of the open space analysis in its FEIS. This hearing
9 examiner is fully qualified to read and assess the adequacy of the City OPCD’s “Open Space”
10 analysis with regard to the MHA’s proposal to upzone the City’s North Rainier Town Center Park
11 project to 95 feet high. It doesn’t take an expert to see that the City’s environmental review of Open
12 Space: (1) fails to identify the location of the North Rainier Urban Village open space gap (undisputed
13 fact); (2) does not identify what parcels within the North Rainier Urban Village open space gap may
14 still be available to bridge the open space gap (undisputed fact); (3) does not mention the nature or
15 existence of the North Rainier Town Center Park project (undisputed fact); (4) does not call attention
16 to the fact that the parcels identified for acquisition by the City’s North Rainier Town Center Park
17 project are proposed for upzones to 95-feet high (undisputed fact); (5) does not explain how a 95-foot
18 high upzone to the only proposed park project will or will not impact the open space needs for the
19 citizens who will live in the North Rainier Town Center (undisputed fact); (6) fails to identify the
20 relationship of alternative proposals to either the open space gap, or the existing park acquisition
21 project (undisputed fact); (7) does not offer any explanation of how the unidentified impact of
22 upzoning the City’s park acquisition project to 95-feet high might reasonably be mitigated through
23 any of the alternative proposals, or through an alternative park location where acquisition would still

1 be feasible (undisputed fact); and (8) fails to offer any explanation of how a 95-foot high upzone of
2 proposed park parcels within the Town Center’s open space gap will or will not impact the feasibility
3 of acquisition for open space (undisputed fact). See FEIS App. H, Exhibit H-56, H-57, and H-58.

4 Given its inability to dispute these key facts, the City attempts to hide the brutal inadequacies of
5 its environmental analysis for North Rainier’s livability behind an “expert” opinion of Sharese
6 Graham. Ms. Graham was originally hired by the City to conduct the 95,000 foot high review of open
7 space issues set forth in the FEIS. The City explains how Ms. Graham’s analysis used “the proper
8 citywide LOS standard” from 2017, and then “converted to a neighborhood-appropriate scale of .8
9 acres of parkland per 100 residents” – which is an increase from the .33 acres per 100 residents
10 documented in the 2001 and 2011 gap analyses. City Response, p. 3, *citing* Decl. of Graham, par. 6-
11 7. Based on this review of the “proper” standard, Ms. Graham concludes that the North Rainier
12 Urban Village still continues to suffer from an open space gap, and that North Rainier is recognized in
13 the FEIS as an “Underserved Urban Village”. See EIS, p. 3.345; Decl. of Graham.²

14 Thus, rather than dispute the open space gap in North Rainier, the City’s OPCD is compelled
15 to acknowledge its continuing existence through three sets of gap analyses. The City’s failure to even
16 mention the 95-foot high upzone to the City’s own open space project is undisputed. Accordingly, the
17 City’s response resorts to conclusory and illogical arguments. For example, unable to explain the
18 complete lack of analysis, the City offers the existence of an updated gap analysis as a “material issue
19 of fact”, even though that analysis merely confirms that North Rainier’s open space gap continues to
20 exist in the Town Center:

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23 ² The persistence of this sad conclusion should not be surprising, given the City’s failure to
address this essential element of livability. Surprising is the FEIS’ failure to acknowledge the 95-foot
upzone to the park project when, years before, the GMA Board discussed the important role of

1 Both the plain text of the EIS together with the Graham Declaration make clear that the
2 EIS adequately discussed the 2017 gap analysis from the recent parks and Open Space
3 Plan. At the very least, the City has presented sufficient evidence to show there is a
material issue of fact that supports the Hearing Examiner denying FNR’s motion.

4 City’s Response, p. 3-4. Ironically, this “material issue of fact” actually supports summary judgment.
5 This is a confirmation that every gap analysis for the past 20 years has confirmed the continuing
6 unmet need for the North Rainier Town Center Park. From the standpoint of environmental review,
7 the City’s FEIS should have addressed the implications of a series of proposed upzones to the first and
8 only park project to have materialized in North Rainier Town Center after decades of planning and
9 advocacy. As the FEIS now stands, a City Council member has not even a mention of the fact that
10 the “preferred” alternative has the highest upzone to the park parcels. This FEIS cannot stand.

11 **B. The Need For Environmental Review Of Open Space Implications Of A Second North
12 Rainier Upzone To The City’s Park Plan Is Not “Conceptual”.**

13 Next, the City attempts to convince the hearing examiner that it was “simply inappropriate”
14 for the EIS to discuss the upzone of a critical park acquisition project. The reason OPCD feels the
15 City Council should not know about this, is because this project – the same one that had been so
16 carefully developed over the preceding years – was not a “real” project. Despite assuming the truth
17 of FNR’s entire Statement of the Case, the City hires an expert to opine that the best laid plans to
18 achieve equity in the blighted North Rainier can suddenly be ignored as an ephemeral “concept” not
19 worthy of Council consideration. See City’s Response, p. 3. Before the City is relegated to this badly
20 needed parks project to the trash heap of wishful community thinking, it should do so with its eyes
21 open and not shut. That is the fundamental purpose of the environmental policy set forth in SEPA. It
22 shouldn’t take another appeal to the Growth Management Act Hearings Board to alert the City

23 incentive zoning provisions for an open space solution in the already upzoned North Rainier Urban
Village. A 95-foot upzone to a park parcel was not what they had in mind.

1 Council to the fact that, once again, North Rainier is confronted with an upzone that will actually
2 worsen on the ground Livability for its current and future inhabitants. If the City’s plan to bridge the
3 North Rainier open space with the carefully developed North Rainier Town Center Park is a
4 meaningless “concept” unworthy of acknowledgement, then so is the City’s commitment to live up to
5 the values of Livability and Equity that gets so much lip service in the FEIS. Fortunately, SEPA
6 exists to correct such oversights.

7 Finally, the City suggests (against all logic) that upzoning a parcel to 95-foot high will have no
8 practical impact on the City’s ability to acquire those same parcels. If this explanation were offered in
9 the FEIS, it would be misleading, deceptive, and contradicted by the FEIS itself – which recognizes
10 that increasing the development capacity on property can have significant impacts to valuation and
11 feasibility of acquiring properties. The FEIS open space section does not attempt to address these
12 impacts at the neighborhood level in any meaningful way. If the City’s late suggestion that a dramatic
13 increase in development capacity for a proposed open space is meaningless for North Rainier had
14 been in the FEIS, it would have at least been subject to review, comment and correction as an
15 obviously flawed assumption. But, as with so many other environmental features and comprehensive
16 plan policies, the City’s approach to the “programmatic” EIS has not even attempt the meaningful
17 neighborhood level environmental review required by SEPA. The saga of open space gaps in North
18 Rainier is just one example of inadequacy. FNR incorporates the Reply brief of SCALE, and
19 respectfully asks for summary judgment in its favor.

20 DATED this 30th day of May, 2018.

21 FRIENDS OF THE NORTH RAINIER NEIGHBORHOOD PLAN

22 By */s/ Talis Abolins*
23 Talis Abolins, Co-Representative with
Marla Steinhoff

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Declaration of Service

Talis Abolins declares that on the 30th day of May, 2018, I filed with the Hearing Examiner and delivered by email as allowed by the Second pre-hearing order of February 16, 2018, Appellant FNR's Reply In Support Of Motion For Summary Judgment to the following email addresses:

Geoffrey Wentlandt <Geoffrey.wentlandt@seattle.gov>
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Copies were also sent to co-appellants at the following email addresses:

Wallingford Community Council (W-17-006): Lee Raaen <lee@lraaen.com>
Morgan Community Association (W-17-007): Deb Barker <djb124@earthlink.net>
Friends of Ravenna Cowen (W-17-008): Judith Bendich <jebendich@comcast.net>
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Seattle Coalition for Affordability, Livability, and Equity (W-17-010): Claudia Newman
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I declare under penalty of perjury under the laws of the state of Washington that the foregoing information is true and correct.

DATED this 30th day of May, 2018, at Seattle, Washington.

/S/ Talis Abolins

Talis Abolins, Friends of North Rainier Neighborhood Plan