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From: [James Gwilliam](#)

Sent: Thursday, October 15, 2020 3:53:12 PM

To: [Will Hall](#); [Keith Scully](#); [Susan Chang](#); [Doris McConnell](#); [Keith McGlashan](#); [Chris Roberts](#); [Betsy Robertson](#); [Clk](#)

Cc: [Clk Debbie Tarry](#); [Nathan Daum](#); [Colleen Kelly](#); [Clk](#); [Jessica Simulcik Smith](#); [Rachael Markle](#); [Nora Gierloff](#)

Subject: [EXTERNAL] Merlone Geier Comment Letter - Oct 15, 2020

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Attachments:

[MGP Comment Letter 15Oct20.pdf](#) 

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Dear Mayor, Councilmembers and Staff,

Please find attached our comment letter regarding the SEPA DNS and Interim Regulations for the Enhanced Shelter. This should also be considered our "public comment" for the October 26 public hearing.

Our intent here is to ensure the proper process is followed leading up to any decision and that appropriate operational requirements are in place in the event that the project moves forward. We offer these comments as a neighbor and in light of our current and ongoing significant investment in the area and our desire to see the Community Renewal Area and Shoreline Place a success.

Thank you in advance for taking our comments into consideration and implementation. We look forward to our continued partnership with the City of Shoreline.

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October 15, 2020

City of Shoreline City Council
Rachael Markle, SEPA Responsible Official
17500 Midvale Avenue N.
Shoreline, WA 98133-4905
Attn: City Clerk

RE: Comments on SEPA Review for Interim Regulations for Enhanced Shelter and on Interim Regulations – also to be considered as “public comment” for the October 26, 2020 City Council public hearing

Dear Mayor, Councilmembers, and Ms. Markle:

We offer comments on both the City’s environmental review of the proposed interim regulations which would allow an enhanced shelter in the R-48 zone and on the proposed regulations themselves.

Comments on SEPA Review

For the reasons discussed below, the Responsible Official should withdraw the Declaration of Nonsignificance (DNS) and reevaluate the proposal, properly defined, with information reasonably sufficient to evaluate its environmental impacts. This analysis must occur while the City’s options are open. Thus, a compliance threshold analysis must be completed before the City “commits to a particular course of action.” Until the Responsible Official issues a new threshold determination, the City should not take action on the interim regulations that would have an adverse environmental impact or limit the choice of reasonable alternatives. Richard L. Settle, *Washington State Environmental Policy Act: A Legal and Policy Analysis*, § 13.01[4][b].

1. The Proposal is not properly defined. The City’s SEPA review was lacking sufficient analysis in several respects. The sole reason the City is considering the interim regulations is to allow an enhanced shelter at the former The Oaks at Forest Bay Nursing Home (The Oaks), 16357 Aurora Avenue N. Yet the City’s environmental checklist did not review the impacts of developing an enhanced shelter at The Oaks. The City has, therefore, not fulfilled its responsibility under SEPA to make certain that the proposal that is the subject of environmental review is properly defined. WAC 197-11-060(3)(a). Proposals or parts of proposals that are related to each other closely enough to be, in effect, a single course of action must be evaluated in the same environmental document. WAC 197-11-060(3)(b). Proposals are closely related if one proposal cannot or will not proceed unless the other proposal is implemented simultaneously. WAC 197-11-060(3)(b)(i). As the Court of Appeals explained in an unreported decision, *City of E. Wenatchee v. Washington State Boundary Review Board*, 2000 Wash. App. LEXIS 291 (2009), where a development is the reason for a non-project proposal, such as the interim regulations in this case, the plan should have been considered along with

the non-project proposal. The enhanced shelter is the reason for the proposal to adopt interim regulations. The shelter should have been considered along with the interim regulations.

Moreover, the City's webpage for the North King County Enhanced Shelter (Webpage) plainly states that the long-term plan is to redevelop the property for permanent supportive housing. The long-term plan will require rezoning the property to MB. That, too, should have been evaluated in the environmental checklist. WAC 197-11-060(5)(d)(i) and (ii). The environmental checklist must describe what permanent supportive housing would look like, the density or intensity of such a use, and the demographic that would be housed.

The Responsible Official should withdraw the DNS and prepare an environmental checklist that examines the impacts of not only an enhanced shelter but also permanent supportive housing at The Oaks and the required rezone to MB in addition to the interim regulations.

2. The process does not comport with SEPA. The process the City has followed turns SEPA on its head. Environmental review should be conducted early enough so that it can serve practically as an important contribution to the decision-making process and a means of assessing the environmental impact of a proposed action rather than rationalizing or justifying a decision which is already made. WAC 197-11-402(10), 197-11-406. Clearly that has not occurred here.

3. Improper reliance on existing plans, laws and regulations to mitigate impacts. Throughout the environmental checklist, the City describes the proposal as a non-project action. In a number of responses, the environmental checklist relies on existing regulations to mitigate potential impacts of the proposal. It may not do so for non-project actions. *Heritage Baptist Church v. Central Puget Sound Growth Management Hearings Board*, 2 Wn. App. 2d 737, 413 P 3d 590 (2018).

4. The City did not base its threshold determination on information reasonably sufficient to evaluate the environmental impacts of the proposal. WAC 197-11-335 requires that the lead agency make its threshold determination based on information reasonably sufficient to evaluate the environmental impact of a proposal. The responses to questions regarding public services are a prime example of the failure to satisfy this requirement. In response to question B.15, the checklist simply states "The City's police and fire calls for service to the shelter site may increase, depending on the nature of the prior use. Individuals currently informally camping throughout the City currently generate police and aid calls." Although repeatedly requested by citizens, to our knowledge, the City has not gathered statistics from other communities or other shelters. We are aware that many of the services for homeless individuals, including overnight, daytime drop-in shelters, and 24/7 shelters can generate significant calls for service. This would seem to be particularly true given the fact that the proposed shelter will serve not only those currently "informally camping" in the City but all of North King County.

The FAQs on the Webpage state "Experience shows a relatively small number of emergency calls from enhanced shelters." Where are the referenced shelters located? Are they comparably staffed? If this remains the City's position, the checklist should identify the referenced shelters, evaluate their impacts and provide data.

Similarly, the document entitled “Questions and comments received at the meeting”, explains “The City believes that current police and first responder resources will be adequate to support the needs of the shelter and the community.” Again, this begs the question, based on what data and analysis?

As mitigation measures for impacts on public services, the environmental checklist notes that the proposed Index Criteria require safety inspections and a code of conduct. The City has posted on the Webpage documents entitled “North King County Shelter Resident Agreement” (Resident Agreement) and “NKC Shelter Residents Rights and Responsibilities” (Resident Responsibilities). These documents were not available - at least not publicly - at the time the Responsible Official reviewed the environmental checklist and issued the DNS. Did the Responsible Official review them? If the Responsible Official is relying on the Resident Agreement (also referred to as the “Code of Conduct” in other communications from the City) or either of these documents to mitigate impacts, why were they not made conditions of the DNS?

A Code of Conduct will mitigate impacts only to the extent that it contains the appropriate standards and is diligently enforced. A quick review of the Resident Agreement provides little assurance of enforcement. It simply provides that the resident “can be given” a “documented warning” or will need to submit to a “resolution process” which includes speaking with the case manager and program director about ways to resolve harm the resident may have caused. The Resident Responsibilities document contains no enforcement mechanism whatever.

Colleen Kelly’s August 31, 2020 letter to MGP states that “violations of established rules can be grounds for removal from the facility.” The Resident Agreement makes no mention of removal nor does it mention the protocol for where such an individual would be moved to.

Behavior off-site is another pertinent example. How will the operator address behaviors off-site? As discussed below, the FAQs make a commitment to a “Good Neighbor Agreement” which will include such things as zero tolerance for loitering in surrounding neighborhoods, only accessing the facility via Aurora, abiding by strict quiet hours, and respecting surrounding neighbors and businesses. Is the “Resident Agreement” intended to be this “Good Neighbor Agreement”? The Resident Agreement simply requires “a peaceful presence in the community, respecting neighborhood residents and their property” with no explanation of what this means. The use or possession of drugs is prohibited at the shelter but no mention is made of its use or possession outside of the shelter. It asks the resident to commit that there will be no camping or congregating in the neighboring residential or commercial area. There is no mention of loitering or noise. Similarly, the Resident Responsibilities document simply requires “the responsibility to be a good neighbor,” with no explanation of whether the neighbors referred to are those within the shelter or in the community and no definition of what constitutes being a good neighbor. There is no mention of noise, loitering, or quiet hours. Lastly, shouldn’t one of the Resident Responsibilities consist of adhering to the Resident Agreement and to comply with any required enforcement of said Agreement?

The question has also been raised of whether the Shelter Program Grant allows for this Agreement and the Rights and Responsibilities to be in place in the first place. Can these documents be provided to the Department of Commerce confirming that, following incorporation of community feedback,

the Resident Agreement and Resident Responsibilities are in conformance with the Shelter Program Grant requirements and that they can be enforced at the enhanced shelter?

Comments on Proposed Interim Regulations

1. The draft must incorporate commitments the City has made. As this proposal has rapidly developed, the City has made a number of commitments and/or representations to the community which must be incorporated into the interim regulations, including:
 - a. Maintenance of a telephone number for reporting problems. The FAQs state: “You will be able to contact the shelter directly 24/7 with any concerns. Additionally, the Program Manager will be available to listen to and work with the City of Shoreline and the community.” We suggest that you add these criteria to the Index Criteria.
 - b. The FAQs state “There will be a minimum of three Case management/shelter staff onsite and awake around the clock.” This requirement must be incorporated in the Index Criteria and revised to make clear that the reference to staff his professional staff, not volunteers.
 - c. The FAQs also state that the project will support a full time Program Manager, a Lead Case Manager, two Outreach/Housing Specialist positions, a full-time health specialist, and two facilities/housekeeping staff. All case management staff receive training in best practices, motivational interviewing, de-escalation techniques, and safety protocols. These representations, too, must be incorporated in the Index Criteria. Elsewhere they also explained that staff are trained in trauma-informed care, health/first aid, and person-centered relationships to help prevent security issues. These qualifications must be specified in the Index Criteria.
 - d. Colleen Kelly’s August 31, 2020 letter states that Lake City Partners will develop a Good Neighbor Plan that will include such things as zero tolerance for loitering in surrounding neighborhoods, only accessing the facility via Aurora, abiding by strict quiet hours, and respecting surrounding neighbors and businesses.” The Council should require the Good Neighbor Plan as one of the Index Criteria and make it available for public review and comment. If the Resident Agreement and Resident Responsibilities documents are intended to fulfill this commitment, they do not.
2. 20.40.355.A - Requirements for the Operator. 20.40.355.A. simply states that the operator must have the “capacity” to organize and manage the shelter. “Capacity” is a vague term as it could suggest having the right quantity of workers or volunteers. This criterion should be more specific to require experience operating the type of facility that the grant funding will require. It should also require that the appropriate amount of staff be trained professionals and not just volunteers – there

may need to be a certain requirement of trained vs. volunteers for each bed in the facility.

3. 20.40.355.B - Inspections. Code Enforcement related to these Interim Development Regulations and associated inspections by City staff should not only be allowed but should be required to ensure adequate staffing and operations are in place.

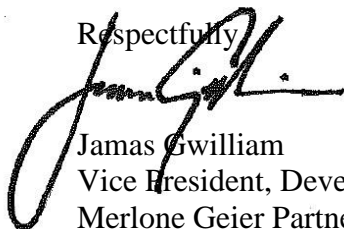
3. 20.40.355.C. - The Code of Conduct is a covenant with the community. The City is relying heavily on a code of conduct to mitigate impacts and begin to develop a partnership with the community. Prior to allowing an enhanced shelter to open, the code of conduct must be provided to the public for review and comment so that it may assess whether the code, in fact, will adequately address adverse impacts. The Resident Agreement and Resident Responsibilities documents fall far short of the commitments the City has made.

4. As drafted, the Index Criteria are insufficient. They simply require an unspecified number of City inspections, a code of conduct, location on a principal arterial near transit, a fence, and parking. They do not create the partnership with the community the City has espoused. At a minimum, the Index Criteria must incorporate:

- a. Separation and/or other critical safeguards from sensitive uses (e.g. schools, daycare, parks, community renewal areas) and incompatible uses (such as alcohol sales).
- b. Compliance metrics/outcomes assessments – The document entitled “Answers to questions received at the meeting” posted on the Webpage punts this responsibility to King County. At the October 12, 2020 Public Meeting it was mentioned that King County has told staff that if the operations of this facility are falling short and that there are negative impacts to the community, they will cease operations of the enhanced shelter. Simply leaving this to chance and choice will not be acceptable to the community – some assurances must come from the County and from the City as well.
- c. The Index criteria must include accountability mechanisms including such things as revocation of permits for violation of conditions.

Thank you for the opportunity to provide these observations and recommendations. We appreciate the magnitude of the task at hand and trust that you will do your duty to weigh all of the various priorities and responsibilities and do what is best for the City of Shoreline.

Respectfully



James Gwilliam
Vice President, Development and Partner
Merlone Geier Partners