

RECEIVED

OCT 15 2020

HEARING EXAMINER CLERK
CITY OF SHORELINE

1:14 pm
AT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

BEFORE THE CITY OF SHORELINE
HEARING EXAMINER

IN RE
APPEAL OF SHORELINE
NEIGHBORS ADVOCATING FOR
PROPER PLACEMENT OF SHELTERS
(SNAPPS)

NO. PLN20-0138

NOTICE OF APPEAL

Appellant,

v.

CITY OF SHORELINE DEPARTMENT
OF PLANNING AND COMMUNITY
DEVELOPMENT

Respondent.

Pursuant to SMC 20.30.680.A (SEPA Appeals) and 20.30.200.A (General Description of Appeals), appellant Shoreline Neighbors Advocating for Proper Placement of Shelters (SNAPPS) appeals the October 1, 2020 determination of non-significance (DNS) no. PLN20-0138.

I. Identity of Appellant and Representative

SNAPPS is an unincorporated group of Shoreline citizens who reside throughout Shoreline, including near the property formerly known as The Oaks at Forest Bay Nursing Home.

SNAPPS is represented in this appeal by attorneys David Bricklin and Alex Sidles of Bricklin and Newman, LLP. Mr. Sidles may be reached at:

1 1424 4th Ave, Ste 500, Seattle, WA 98101

2 Email: sidles@bnd-law.com; bricklin@bnd-law.com

3 Phone: (206) 264-8600.

4 **II. Decision Being Appealed**

5
6 SNAPPS appeals the determination of non-significance (DNS) (PLN20-0138) issued by the
7 Department of Planning and Community Development (“Department”) on October 1, 2020. A copy
8 of the decision is attached.

9 **III. Standing of Appellant**

10 The DNS is a determination that the environmental impacts of a proposed ordinance
11 currently under consideration by the Shoreline City Council will be insignificant. The proposed
12 ordinance consists of an interim zoning regulation that would allow a new type of homeless shelter,
13 a so-called “enhanced shelter,” in the R-48 zone. Under existing law, no such shelters are allowed in
14 the R-48 zone.
15

16 The City is interested in adopting the interim regulation to facilitate the development of a
17 proposed new homeless services shelter at the site of the now-shuttered The Oaks at Forest Bay
18 Nursing Home, at 16357 Aurora Ave. N. The City is aware that development of such a shelter is not
19 currently allowed under the use tables for the R-48 zone. *See* SMC 20.40.120, .130 (residential and
20 non-residential uses).
21

22 SNAPPS is a group of neighbors who reside in the residential neighborhood surrounding
23 The Oaks, as well as elsewhere throughout the City. SNAPPS’s members will be directly and
24 adversely affected by the interim regulations, because the regulations will allow a new type of
25 homeless shelter at The Oaks. The shelter will result in increased traffic and foot traffic in the
26 neighborhood, increased noise, increased strain on public transit, increased use of nearby public

1 parks, increased impacts to soils, increased use of police resources, loss of residential character,
2 decreased views and open space, and incompatibility with existing land use plans, all of which will
3 be most keenly felt by SNAPP's members at their nearby properties, as well as SNAPP's members
4 who use parks and schools nearby.

5 **IV. Statement of Errors**

6 **1. Failure to Consider Environmental Impacts at Earliest Reasonable Stage.**

7
8 Under SEPA, a government action such as the adoption of a new land use regulation requires
9 a threshold determination of the action's probable environmental impacts as soon as those impacts
10 can reasonably be identified. *See* RCW 43.21C.110; WAC 197-11-055(2).¹

11 "The fact that proposals may require future agency approvals or environmental review shall
12 not preclude current consideration, as long as proposed future activities are specific enough to allow
13 some evaluation of their probable environmental impacts." WAC 197-11-055(2)(a)(i).

14
15 Non-project actions, such as the proposed interim regulations at issue here, must be
16 accompanied by environmental analysis. *See Alpine Lakes Protection Society v. DNR*, 102 Wn. App.
17 1, 16, 979 P.2d 929 (1999).

18 As part of the threshold determination process, a SEPA checklist must be prepared. *See*
19 RCW 43.21C.460; SMC 20.30.580.A.

20
21 Using the information in the SEPA checklist, as well as other information at its disposal, the
22 City must consider an action's environmental impacts and prepare a threshold determination. *See*
23 SMC 20.30.580.F.

24
25
26 ¹ Incorporated by reference in the municipal code. SMC 20.30.490 ("The SEPA Rules, Chapter 197-11 WAC, must be used in conjunction with this subchapter").

1 In the zoning context specifically, the Growth Management Hearings Board has found that
2 “The impacts that must be considered for this non-project action are the impacts that are allowed by
3 virtue of the change in designation itself. While project-level impacts may properly be deferred to
4 the permitting stage, the County **must evaluate the impacts allowed under the changed**
5 **designation at the time of that non-project action.”** *Whidbey Environmental Action Council v.*
6 *Island Cty.*, WWGMHB No. 03-2-0008, Final Decision and Order (Aug. 25, 2003), at 39 (emphasis
7 added).
8

9 Here, the Department impermissibly deferred consideration of the interim regulations’
10 impacts to the project stage. Even though the City has already narrowed down the number of
11 affected parcels to a manageable number, such that parcel-specific environmental analysis could be
12 conducted now at the non-project stage, the SEPA checklist repeats dozens of variations of the
13 following:
14

15 Q: Check the Types of vegetation found on the site:

16 A: N/A — Non Project Action. This legislative proposal applies to the R-48
17 zoning district which is distributed throughout the City of Shoreline,
18 including the following neighborhoods...The type of vegetation varies from
19 parcel to parcel and by the level of impervious surfaces.

19 ...

20 Q: What is the current use of the site and adjacent properties? Will the proposal
21 affect land uses on nearby or adjacent properties? If so, describe.

22 A: N/A Non project action. The proposal authorizes the establishment of
23 Enhanced Shelters in the R-48 zoning district is primarily developed with
24 high-density residential and compatible structures.

24 ...

25 Q: Approximately how many units would be provided, if any? Indicate whether
26 high, middle, or low-income housing.

1 A: N/A — Non Project Action, dependent on the size/capacity of an individual
2 project.

3 ...

4 Q: What is the tallest height of any proposed structures, not including antennas;
5 what is the principal exterior building materials(s) proposed?

6 A: N/A — Non Project Action, dependent on the size/capacity of an individual
7 project and whether future development would modify height and exterior.

8 Q: What views in the immediate vicinity would be altered or obstructed?

9 A: N/A — Non Project Action, dependent on the size/capacity of an individual
10 project and the R-48 zoned parcel.

11 ...

12 Q: Proposed measures to reduce or control impacts on recreation, including
13 recreation opportunities to be provided by the project or application, if any:

14 A: N/A

15 The above list is meant to be illustrative, not exhaustive. The point is that the SEPA checklist
16 does not actually answer the questions regarding the project's environmental impacts. Instead, the
17 checklist simply describes the project and promises that future review will come. This kind of
18 deferred analysis does not constitute an examination of the interim regulations' impacts.

19 Even those sections of the checklist that specifically purport to analyze non-project impacts
20 fail to analyze this project's impacts. Instead, in answer after answer, the checklist simply describes
21 the project, as the following non-exhaustive example shows:

22 Q: How would the proposal be likely to affect land and shoreline use, including
23 whether it would allow or encourage land or shoreline uses incompatible
24 with existing plans?

25 A: The proposal would define a new use, enhanced shelter, and add it to the R-
26 48 zone where adjacent to required transit facilities. This may spur
development or redevelopment of sites within that zoning district to

1 accommodate that use. While primarily a residential use, as a group living
2 environment it is different in nature than the apartments or condominium
often developed in that zone.

3 Until recently relatively few zoning codes accommodates housing or
4 services for the indigent. A lack of such uses in our region has led to
5 widespread occupation of rights of way, parks, and private property by
6 persons experiencing homelessness. The development of enhanced shelters
7 near transit facilities aims to reduce the numbers of unhoused people and
increase access to services and resources that will assist with their return to
stable living situations.

8
9 Needless to say, simply describing the interim regulations and listing certain social
10 justifications for them does not in any way speak to the regulations' adverse impacts on the
11 environment.

12 The failure to analyze the interim regulations' impacts is particularly egregious here, where
13 the number of affected parcels is relatively small and is already known with certainty by the City.
14 (The City claims a total of nine affected parcels.) Indeed, the City is adopting the regulations as
15 interim regulations rather than permanent regulations for the specific purpose of changing the
16 allowed use at one parcel in particular, The Oaks. The contours of the proposal for a shelter at The
17 Oaks are already well known—indeed, the City Council agendas include a preliminary estimate of
18 the numbers of emergency beds (60) that will available. Compare this knowledge with the non-
19 answer in the SEPA checklist to the question of how many housing units would be provided.
20

21 In light of the known parcel locations and the known size of the proposed shelter at The
22 Oaks, the City could and should have evaluated the environmental impacts now of allowing
23 “enhanced shelters” at these nine parcels, or at the very least, The Oaks parcel.
24

25 **2. Failure to Identity Significant, Adverse Impacts.**
26

1 Contrary to the Department's determination that the impacts of the proposed interim
2 regulations will be non-significant, the impacts will actually be significant. Therefore, an
3 environmental impact statement should have been prepared. *See* WAC 197-11-360(1).

4 The foreseeable, significant, adverse impacts that will result from the interim regulations
5 include: increased traffic and foot traffic, increased noise, increased density, increased impacts to
6 soils, overburdening of public transit, overburdening of public parks, decreased views, loss of
7 residential character in the neighborhoods surrounding the affected parcels, increased strain on
8 police resources, and incompatibility with existing land use plans.

9
10 **V. Requested Relief**

11 For the foregoing reasons, the Hearing Examiner should reverse the DNS. The matter should
12 be remanded to the Department to evaluate the environmental impacts of the proposed interim
13 regulations and issue a new threshold determination following consideration of all impacts. The new
14 threshold determination should be a determination of significance, and an environmental impact
15 statement should be prepared.

16 Pursuant to SMC 20.30.230.B, the filing of this appeal automatically stays the effectiveness
17 of the City's threshold determination during the pendency of the appeal. The Hearing Examiner
18 should issue a pre-hearing order enjoining the City Council from taking action on the proposed
19 interim regulations until this appeal is resolved.
20
21

22
23 Respectfully submitted this 15th day of October, 2020.

24
25 **BRICKLIN & NEWMAN, LLP**
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

By: 

David A. Bricklin, WSBA No. 7583
Alex Sidles, WSBA No. 52832
1424 Fourth Avenue, Suite 500
Seattle, WA 98101
bricklin@bnd-law.com
sidles@bnd-law.com
Attorneys for SNAPPS



SEPA THRESHOLD DETERMINATION OF NONSIGNIFICANCE (DNS)

NONPROJECT INFORMATION

DATE OF ISSUANCE: **October 2, 2020**
PROPONENT: **City of Shoreline**
APPLICATION NO.: **PLN20-0138**

LOCATION OF PROPOSAL: **Citywide within the R-48 Zoning District**

DESCRIPTION OF PROPOSAL: **The City of Shoreline is proposing adoption of interim regulations within the Shoreline Development Code defining Enhanced Shelters and permitting them as a use in the R-48 zoning district subject to location and operational index criteria. Enhanced shelters are low-barrier, 24 hour a day facilities intended to provide adults experiencing homelessness with access to resources including, but not limited to, housing, basic needs, hygiene, case management and social programs as they transition to permanent housing.**

LEAD AGENCY: **City of Shoreline**

PUBLIC HEARING BEFORE THE CITY COUNCIL: **This is an interim ordinance, the public hearing will occur within 60 days of adoption**


SEPA THRESHOLD DETERMINATION OF NONSIGNIFICANCE (DNS)

The City of Shoreline, as lead agency for this proposal, has determined that the proposal, a non-project action (WAC 197-11-774), will not have a probable significant adverse impact(s) on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of the completed environmental checklist, the City of Shoreline Comprehensive Plan, the City of Shoreline Development Code, and other information on file with the Department. This information is available for public review upon request at no charge.

This Determination of Non-Significance (DNS) is issued in accordance with WAC 197-11-340(2). The City will not act on this proposal for 14 days after issuance.

RESPONSIBLE OFFICIAL: **Rachael Markle, AICP**
Planning & Community Development, Director and SEPA Responsible Official

ADDRESS: **17500 Midvale Avenue North** PHONE: **206-801-2531**
Shoreline, WA 98133-4905

DATE: 10-1-20 SIGNATURE: 

PUBLIC COMMENT INFORMATION

Comments on this proposal must be submitted by 5:00 pm by October 16, 2020.

APPEAL INFORMATION

Any aggrieved person may appeal this Threshold Determination as provided in SMC 20.30 Subchapter 4 and SMC 20.30.680 by filing an appeal no later than fourteen (14) calendar days after the date of issuance. Appeals must be submitted in writing to the City Clerk with the appropriate filing fee and received not later than 5:00 pm on the last day of the appeal period. The written appeal must contain specific factual objections related to the environmental impacts of the project.

PROJECT INFORMATION

For more information, including application, documents, plans, and all SEPA related materials, please contact **Nora Gierloff, Planning Manager** at ngierloff@shorelinewa.gov or by calling 206 801 2551