

FILED
CLALLAM COUNTY

MAY 05 2020

NIKKI BOTNEN CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLALLAM

SAVE OUR SEQUIM, a Washington
501(c)(4) corporation; and

PARKWOOD MANUFACTURED
HOUSING COMMUNITY, LLC, a
Washington Limited Liability Company,

Plaintiffs,

vs.

CITY OF SEQUIM, a Washington Municipal
Corporation,

Defendant.

NO. 20 2 00304 05

COMPLAINT FOR DECLARATORY,
INJUNCTIVE, AND MANDAMUS RELIEF

COMES NOW the above-named Plaintiffs and allege as follows:

I. PARTIES

1.1 Plaintiff Save Our Sequim ("SOS") is a 501(c)(4) corporation in good standing in the State of Washington. SOS is supported by over 2,500 residents of Sequim and the surrounding area. As a party whose rights are presently affected by Defendant's interpretation and application of its municipal ordinances, SOS has standing to seek the relief requested in this Complaint.

1 1.2 Plaintiff Parkwood Manufactured Housing Community, LLC ("Parkwood"), is a
2 Washington Limited Liability Company located at 261520 Highway 101, Sequim, WA 98382.
3 Parkwood is a 55+ residential community providing affordable housing to approximately 360
4 residents in 209 homes. As a party whose rights are presently affected by Defendant's
5 interpretation and application of its municipal ordinances, Parkwood has standing to seek the
6 relief requested in this Complaint.

7 1.3 Defendant City of Sequim, a Washington municipal corporation, (the "City") is a
8 noncharter code city located in Clallam County, Washington.

9 **II. JURISDICTION AND VENUE**

10 2.1 This Court has subject matter jurisdiction over this action under RCW 2.08.010, RCW
11 4.12.020 and RCW 7.24 et. seq.

12 2.2 Venue is properly laid in this Court because the City of Sequim transacts business and
13 has its principal place of business in Clallam County, Washington, because all or a substantial
14 part of the events giving rise to the claims set forth in this Complaint occurred in this county and
15 because this dispute involves real property located in Clallam County, Washington.
16

17 **III. FACTS**

18 3.1 Sequim operates under a council-manager form of government, governed according to
19 Chapter 35A.13 RCW and the Sequim Municipal Code ("SMC").
20

21 3.2 The City's local ordinances are codified within the SMC, which consists of all the
22 regulatory, penal, and certain of the administrative ordinances adopted and published by Sequim
23 that are in addition to the regulations under Chapter 35A.13 RCW.
24
25
26

1 3.3 As a city with a population over 2,500 inhabitants, the affairs of the City are governed by
2 a City Council comprised of seven members, including one chosen as Mayor who presides over
3 council meetings.

4 3.4 The City Council appoints a City Manager ("Manager") who is the chief executive
5 officer of the City and who serves at the pleasure of the City Council. The City Manager has the
6 duties and powers listed under RCW 35A.13.080, including general supervision over Sequim's
7 administrative affairs and to see that all laws and ordinances are faithfully executed by the City.

8 3.5 The SMC creates a Department of Community Development ("Department") and
9 provides for the appointment of a Director ("Director") to oversee that department. The Director
10 is tasked with the performance of all functions and duties for the Department as specified in the
11 SMC and under Chapter 35A.63 RCW.

12 3.6 SMC Title 20 defines the administrative procedures for processing land use or zoning
13 applications in compliance, conformity and consistent with the City's comprehensive plan,
14 zoning code and development regulations.

15 3.7 SMC 20.01.020(T)-(W) describe the various classifications the City uses to process each
16 application submitted to the Department.

17 3.8 An application that is "subject to clear, objective and nondiscretionary standards"
18 requiring the exercise of professional judgment about technical issues and not requiring or
19 allowing for public participation is classified as an "A-1" process.

20 3.9 An application that is "subject to objective and subjective standards" and where there
21 may be limited public interest is classified as an "A-2" process.

22 3.10 An application requiring the exercise of "substantial discretion and where there is a
23 "broad public interest" is classified as a "C-1," "C-2" or "C-3" process.
24
25
26

1 3.11 SMC 20.01.040(B) requires the Director to determine the proper procedure for all
2 development applications submitted to the City. If there is a question as to a project's
3 classification, this section of the SMC requires the Director to resolve it in favor of the higher
4 procedure type.

5 3.12 SMC 20.01.040(A) provides that "The act of classifying an application shall be a Type
6 A-1 action. Classification of an application shall be subject to reconsideration and appeal at the
7 same time and in the same way as the merits of the application in question."

8 3.13 Table 1 of SMC 20.01.030(A) provides that the final decision-making body for a Type A-
9 1 Decision is the City Staff, with an appeal to the City Council, or to the Hearing Examiner
10 regarding "building and other construction permits", with a subsequent appeal to the Clallam
11 County Superior Court.

12 3.14 SMC 20.01.080 is the "process overview" for the City's A-1 process. Subsection (C) of
13 this Section provides that "the applicant may appeal the decision pursuant to SMC 20.01.240".
14 (emphasis added).

15 3.15 SMC 20.01.240 governs the City's appeal process in general. subsection (A) of this
16 Section provides in part that "Administrative interpretations and administrative Type A-1 and
17 Type A-2 decisions may be appealed, by applicants or parties of record, to the hearing
18 examiner." (emphasis added). The language of SCM 20.01.080(c) and SMC 20.01.240 (a) are
19 inconsistent and in conflict with one another.

20 3.16 The City's employment manual provides guidance on Employee Ethics, including that
21 employees are required to "uphold the City's policies in a clear and consistent manner at all
22 times" and that City employees "make unbiased decisions and use authority fairly and
23 responsibly." City employees must avoid actions and decisions that result or give the impression
24
25
26

1 that they are providing preferential treatment or privileged information to any person and
2 otherwise conduct City business impartially.

3 3.17 Under RCW 42.20 (Misconduct of Public Officers) and 42.23 (Code of Ethics for
4 Municipal Officers), no City employee may act in conflict, or in a way that gives the appearance
5 of conflict with, the performance of their official job duties.

6 3.18 As early as March 27, 2019, the City Manager and Director exchanged written
7 communications indicating they were aware that the Jamestown S'Klallam tribe was in the
8 process of acquiring property located at the premises commonly known as 526 S. 9th Ave.,
9 Sequim, Washington 98382, within Sequim's River Road economic opportunity area
10 ("RREOA") district. The RREOA district is intended as an economic zone providing for an
11 integrated group of business and buildings supporting a variety of uses "such as light
12 manufacturing, professional office buildings, retail, commercial, multifamily residential and
13 warehousing and distribution."
14

15 3.19 The Jamestown S'Klallam tribe has requested permission to develop the RREOA site into
16 the "Jamestown S'Klallam Healing Campus" to include outpatient treatment services and
17 supportive services in the first phase. The project also includes a second phase involving the
18 addition of a 16-bed psychiatric inpatient treatment facility to the site.
19

20 3.20 On March 29, 2019, more than a month before the tribe's purchase of the property was
21 completed, the Director emailed the Manager, stating the Director thought the project was
22 "super," and that it would bring "a great deal of benefit to the community." The Director
23 anticipated community concerns about the project and discussed a strategy for a public relations
24 campaign to encourage support for the project and combat any resistance. His email also
25
26

1 acknowledged the developer's intent to construct the inpatient hospital in the project's second
2 phase.

3 3.21 On April 28, 2019, the Washington State Legislature appropriated to the Department of
4 Commerce \$7,200,000.00 for the tribe's behavioral health center. A local newspaper first
5 informed the general public about the budget appropriation on May 6, 2019. A subsequent
6 article on May 31, 2019 announced the purchase of the property and plan for the development of
7 a \$20,000,000.00 behavioral health center to include a Medically Assisted Treatment (MAT)
8 outpatient facility in Phase 1, to begin construction in 2020, and an in-patient facility in Phase 2,
9 to begin construction in 2021.

10
11 3.22 On October 3, 2019, the tribe's attorney wrote a letter to the Director claiming that the
12 project was an "outpatient clinic" that was subject to administrative review under SMC
13 18.33.031, and that there was "no basis to subject this application any kind of conditional or
14 special use review."

15 3.23 By January 10, 2020, the date the tribe formally submitted its application for this
16 development project, the Jamestown S'Klallam Healing "Campus" had been rebranded as a
17 "Clinic" and all overt references to the second phase of the project were removed. The
18 documentation submitted by the developer continues to include the location for siting the Phase 2
19 inpatient facility. Additionally, the tribe's representations in the application's supporting
20 documents preserve the possibility for development of the nonconforming inpatient facility as
21 originally intended.

22
23 3.24 On Jan 24 2020, the Director issued a Notice of Determination of Procedure type for the
24 Jamestown S'Klallam Tribe MAT Clinic Building Permit for application File No. CDR20-001
25 (the "Procedural Determination"). In that Notice, the Director found that there was "no
26

1 question” that the permit should fall under the City’s A-2 process classification. In the
2 Director’s analysis, he found that the other processes are inapplicable unless the project requires
3 a special use permit, which would then make the application subject to the C-2 process. The
4 Director’s determination parrots the legal advice provided from the applicant’s attorneys as
5 written in the October 3, 2019 letter, and states that a C-2 process isn’t appropriate claiming it
6 would run afoul of federal guidance in jurisdictions around the country for discriminating against
7 drug rehabilitation centers, which has no rational relationship to determining the application’s
8 classification.

9
10 3.25 The Plaintiffs and others believe that the proposed project is more accurately described as
11 an “essential public facility”, and that as such, the project should be reviewed under the City’s C-
12 2 process, which is quasi-judicial in nature. Plaintiffs have each separately appealed that
13 decision.

14 3.26 Under the regulatory scheme described above, the Plaintiffs must wait until the
15 substantive decision on the permit is approved before challenging the underlying procedural
16 determination on which process is appropriate, in effect doubling the burden of proof they must
17 meet and depriving them of their procedural due process rights to mount a timely challenge to
18 the Procedural Determination.

19
20 3.27 Further, the lack of meaningful standards in the Code constitutes an unlawful delegation
21 of authority to the Director to decide which permitting process to follow and fails to provide the
22 Director with adequate guidance to interpret and apply the Code uniformly and objectively.

23 3.28 The Plaintiffs are prejudiced by the inability to challenge the Procedural Determination
24 made by the Director without meaningful guidance in an amount to be proven at trial.
25
26

1 3.29 The ordinances describing the Director's responsibilities on land use decisions are vague
2 and overbroad and therefore deny the Plaintiffs their constitutional right to due process in this
3 matter.

4 3.30 The Plaintiffs and others are unfairly prejudiced by the inability to challenge the Process
5 Determination in a timely fashion.

6 **IV. CLAIM FOR RELIEF**

7 4.1 There is an actual, present, and existing dispute between the parties as to the legality and
8 constitutionality of the relevant provisions of Title 20 of the SMC.

9 4.2 The Plaintiffs have a legally cognizable interest in code language that allows the city to
10 process land use decisions objectively, neutrally and constitutionally. The Plaintiffs are
11 prejudiced in that they are being forced to wait until the substantive permit is approved before
12 challenging the Director's Procedural Determination, which is in turn based on an unlawful
13 delegation of discretion to the Director, and which potentially constitutes a waste of judicial and
14 administrative resources if the Procedural Determination is reversed after the substantive
15 decision is approved by the Director.
16

17 4.3 The Plaintiffs are without a timely and adequate remedy at law to challenge the
18 Procedural Determination on a level playing field, and are entitled to declaratory, injunctive and
19 mandamus relief (i) declaring that the City erred by classifying this project as befitting the A-2
20 process, (ii) declaring that forcing the Plaintiffs and others to wait until the substantive permit is
21 approved before challenging the Procedural Determination deprives the Plaintiffs of their
22 procedural due process rights; (iii) alternatively, that the above-referenced provisions of the
23 SMC are unconstitutionally vague and overbroad and unlawfully delegate authority to the
24 Director to make procedural determinations, (iv) staying further substantive review of the
25
26

1 application until the Plaintiffs have had an opportunity to timely challenge the Procedural
2 Determination, (v) imposing a moratorium on all land use decisions under SMC Title 20 until the
3 unconstitutional provisions are revised, removed, or replaced with constitutional language that
4 properly delegates authority with guidance for the objective processing of land use development
5 applications.

6 4.4 Plaintiffs have incurred significant legal and other financial costs necessary to preserve
7 and protect their rights under the constitution and SMC while attempting to correct the unlawful
8 actions or omissions by the City on this project. The City has willfully disregarded Plaintiff's
9 many objections and continues to process the project based upon its incorrect interpretation and
10 application of the SMC on land use applications. Accordingly, Plaintiffs are entitled to an award
11 of attorneys' fees against the City, to be taxed and collected as part of the costs in this case.

12 4.5 Plaintiffs are also entitled to an award of attorneys' fees under the common fund theory
13 to be paid from any legal costs or other funds preserved, protected or enhanced by this action.

14 V. PRAYER FOR RELIEF

15 WHEREFORE, Plaintiffs pray for judgment against the City as follows:

- 16 1. Declaring that the city acted improperly and in violation of the SMC's guidance when it
17 used the SMC 20.01.020 process definitions and erroneously classified the project as a A-2 process;
- 18 2. Declaring that the Plaintiffs' inability to challenge the Procedural Determination until the
19 underlying substantive decision is made deprives the Plaintiffs and others of their procedural due
20 process rights under the United States and Washington State Constitutions.
- 21 3. Declaring alternatively that the SMC provisions guiding the director are unconstitutional for
22 vagueness and overbreadth, and that a moratorium should be imposed on all land use actions falling
23
24
25
26

1 under SMC Title 20 until the unconstitutional provisions are removed and replaced and properly
2 delegate authority to the city to render threshold determinations and land use decisions;

3 4. Enjoining and prohibiting by Order Defendant from continuing the application review
4 process for the Sequim Mat Clinic project specifically, including application file Nos. CDR20-001
5 and CBP20.001;

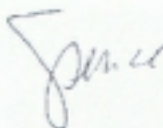
6 5. Enjoining and prohibiting by Order the city of Sequim from processing all land use
7 decisions until the unconstitutional provisions of SMC Title 20 are removed and replaced with
8 constitutional language properly delegating authority to the City to evaluate zoning and land use
9 applications under objective standards;

10 6. Awarding reasonable attorneys' fees and legal costs as provided by for under RCW
11 7.24.100 and under the common fund theory, and;

12 7. For such other and further relief as the Court deems just, equitable and proper under the
13 circumstances.
14

15 DATED this 5th day of May 2020.

16 Helsell Fetterman LLP



17
18
19
20
21 Michael A. Spence, WSBA #15885
Attorney for Save our Sequim

McMahon Law Group, PLLC



22 Michael D. McLaughlin, WSBA #47041
23 Attorney for Parkwood Manufactured
24 Housing Community, LLC
25
26