City of Valley Hearing Examiner

Re: Appeal of SEPA Determination for EGR-2018-0074/SEPA-2018-0019

File No.: APP-2019-0002

Robert Phelps, Appellant,

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City of Spokane Valley, Respondent

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Whipple Consulting Engineers, Applicant

Brief on behalf of Appellant and Respondent

Introduction

The following outlines the claims and arguments in the appellants case. At the hearing, the appellant shall show:

1. The SEPA checklist submitted by the applicant is insufficient to describe all aspects of the project in question. Without this crucial information, the application must be returned as incomplete and any permits resultant from such application must also be revoked.
2. The Applicant has a history of misstating facts and not successfully raising land out of flood plain status. The city should add additional substantive requirements to any approved plan to raise land out of the flood plain by applicant
3. The application at hand represents a piece of a larger project that should be considered as a total rather than in a piecemeal fashion.

Table of Authority

Death by SEPA: Substantive Denials Under Washington's State Environmental Policy Act, and all cases referenced therein.

https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&https redir=1&article=1318&context=sulr

Washington State's SEPA Handbook

https://fortress.wa.gov/ecy/publications/documents/98114.pdf

Hearing Examiner's Decision on APP-2018-0001

Shortplat SHP-09-10

Witnesses:

Dave Johnson, Expert on construction techniques, email showing breakdown of construction materials (attached)

Mike Reents, Neighbor, witness to dumping

Rudy Werle, Neighbor, witness to flooding

Shawn Johnson, Neighbor, witness to conduct

Statement of facts

1. Section 2.3.1 of WA State's Handbook clearly identifies the following pertinent example:

   "A large proposal involving actions in vastly different locations, such as material being mined at one site, then transported to and processed at another, is another example of defining the entire proposal. Appropriate environmental review would look at the impacts of all the related activities.
   It is important to remember that actions are related if they are dependent on each other, so that one will not happen without the other. Related actions may also be spread over time, such as the construction, operation, and closure phases of a proposal."
2. Applicant identifies within SEPA checklist SEP-2018-0019:
   a. B.1.e
      i. "Some Additional fill (approximately 29,000 cubic yards) will be added to the subject property in order to elevate the site and remove the property from SFHA."
   b. As per Mr. Johnson's calculation, this is equivalent of at least 1459 standard dump truck loads.
3. Flooding has been reported on sites in the vicinity of the current project
4. Applicant has not filed for change of zone
5. The R-2 Zone (zone of the parcel in question) only allows very specific development projects

Argument

1. The material being used as fill is substantial (witness Dave Johnson)
2. Using the clearly applicable example in the SEPA handbook, the SEPA checklist should have included information to evaluate the environmental circumstances at the site(s) from which the fill is taken as well as the dump site. The applicant did not include sufficient information for the agency to consider prior to issuing a determination to evaluate all environmental conditions, changes, and effects of work on both sites. There are many reasons why such information could provide environmental challenges, examples include contaminants in fill material if such material comes from construction sites, or non-native plants being transplanted.
3. Without materially evaluating both sites of this project, SEPA application should be rejected as incomplete, as the questions of environmental impact must be allowed to be evaluated as a

whole, including allowing the people to appeal again if environmental concerns are found with the combined evaluation.

4. Applicant's past behaviors reduce credibility in self certifications of SEPA, city should use Substantive authority to increase checks needed.
    a. The SEPA checklist includes many statements that should be considered self-certified, yet previous work by applicant in the vicinity of the site should lead the city to use more caution.
    b. Flooding is present in areas in direct vicinity of the site, making the area unsuitable for construction (question SEPA Checklist Question B.1. e) (witness, Mike Reents)
    c. Animals present in area despite certification to the contrary (witnesses)
    d. Applicant's statements to neighbors (Witnesses) show a possible history of false statements
5. As per Hearing Examiner's previous findings, only a very limited set of developments is allowed in the R-2 zone. This must have been discussed in the city's pre application meeting. (witness city planning department rep). since the preapplication hearing contents form part of the proposal, it can be concluded that the city has a proposal for specific development in front of it and should evaluate the whole proposal at the same time instead of piecemeal.

Conclusion

Without the crucial consideration of either the site from which fill will be taken or the other aspects of the project (ie the actual construction not considered due to piecemeal submission) the city and the people could not have possibly considered all aspects of the environmental impacts of the proposal. Since such impacts would inevitably change the substance of the proposal at hand, they would necessitate a complete reexamination by the city, and consequently the ability of eligible individuals to appeal any final decision. This can only be accomplished by rejecting the current proposal as incomplete and beginning the process again with a completed application, including invalidating all resultant permits issued. Appellant requests that the Hearing Examiner invalidate any such resultant permits and remand this application for reconsideration by the city once/if completed.

DATED this 3 of June 2020

Al Merkel, Representative for the Appellant