

May 25, 2018

Joe Turner, Hearing Examiner
c/o City of Camas SEPA Official
Community Development Department
616 NE 4th Avenue
Camas, WA 98607

Re: Memorandum re Procedural Issues
SEPA 18-05 Larkspur/Camas Meadows Drive Street Improvements

Dear Mr. Turner:

On behalf of the applicant, City of Camas, I am providing supplemental information relating to issues which were raised at the hearing on the above-noted appeal held on May 24, 2018.

The Determination of Non-Significance (DNS) was issued on March 15, 2018, and indicated that the “lead agency will not act on this proposal until the close of the 14-day comment period, which ends March 29, 2018.” As will be discussed below, contrary to the assertion of the appellant, *State v. Grays Harbor County*, 122 Wn.2d 244 (1993), does not apply.

The City has adopted, under Camas Municipal Code 16.13.010, the provisions of WAC 197-11-680 relating to appeals. WAC 197-11-680(3)(D)(vii) provides as follows:

If a county/city to which RCW 36.70B.110 applies provides for an administrative appeal... for threshold determinations issued prior to a decision on a project action, any administrative appeal allowed by a county/city shall be filed within 14 days after notice of the determination has been made and is appealable.
(Emphasis added.)

As noted herein, the DNS notice issued by the City provided that the City would not act on the determination until March 29, 2018. The Notice of Appeal filed by appellant erroneously claims that there was no receipt of a Notice of Final Decision, despite the clear language within the notice itself (and consistent with WAC 197-11-340 discussed below). The appellant does correctly note that the “earliest date that SEPA 18-05 could have become final was March 29, 2018,” which mirrors the language within the DNS notice. Further, the Notice of Appeal does correctly relate that the 14-day appeal period expired as of the close of business April 12, 2018, and, of course, this appeal was timely filed on April 11, 2018.

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It therefore begs the question as to the supposed objections noted by the appellant. The *Grays Harbor County* case related to a judicial appeal which was dismissed as untimely by the Superior Court. In this case, pending the determination by the Hearing Examiner on this administrative SEPA appeal, the appellant will reserve all rights of judicial review.

In sum, *State v. Grays Harbor County* explicitly applied to situations where the SEPA rules of a jurisdiction act to foreclose opportunity for a party to timely seek judicial review, which is clearly not the case here. The notice issued by the responsible official dated March 15, 2018, was appealed, and a determination will be made on the record as established.

The appellant also argued that the “City failed to consolidate procedural and substantive decisions”. However, Camas Municipal Code 18.55.165 relates that SEPA related appeals are to be consolidated with the “open record hearing or appeal, if any, on the underlying project application.” There is no open record hearing on an underlying project application to consolidate, and therefore this provision does not apply. Further, it is worth noting the provisions of WAC 197-11-680(vi)(B), which provides that consolidated hearings or appeals are not required when an agency is a “project proponent, or is funding a project, and chooses to conduct its review under SEPA...”. The consolidation objection made by the appellant does not apply in this matter. Further support is found under WAC 197-11-680(3)(a)(iii), which provides that “Appeals on SEPA procedures shall be limited to review of a final threshold determination and final EIS. These appeals may occur prior to an agency’s final decision on a proposed action.” [Emphasis added.]

Finally, the appellant purports to indicate that there was a procedural error relating to the timing of the decision in relation to the comment period. A Determination of Non-Significance was issued by the SEPA official pursuant to Camas Municipal Code 16.11.020(A)(2), which provides that whenever the City issues a DNS under WAC 197-11-340(2), the City is to give public notice by publishing the notice in a newspaper of general circulation. This procedure was followed and was provided for in the Notice of Decision submitted by the SEPA official. Under WAC 197-11-340 (adopted by the City pursuant to Camas Municipal Code 16.07.010), “any person, affected tribe, or agency may submit comments to the lead agency within 14 days of the date of issuance of a DNS.” WAC 197-11-340(2)(c). The date of issuance of the DNS is the date the DNS is made publicly available. WAC 197-11-340(d). Finally, the responsible official, during the 14-day comment period, is to reconsider the DNS based on timely comments and “may retain or modify the DNS” as an option.

There was accordingly no procedural error relating to the process which was utilized to issue the Determination of Non Significance. Further, the record will reflect that, in fact, the responsible official did consider comments and acted accordingly pursuant to the adopted administrative regulations.

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For the reasons as set forth within the hearing of May 24, 2018, and based upon the above argument, the City respectfully requests that the appeal be denied. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Shawn R. MacPherson', with a long horizontal flourish extending to the right.

Shawn R. MacPherson
City Attorney

SRM/gg

cc: Mark A. Erikson – VIA EMAIL