

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

BEFORE THE HEARING EXAMINER OF  
THE CITY OF SEDRO-WOOLLEY, WASHINGTON

APPEAL OF MDNS IN RE:	)	
	)	
DELUXE RECYCLING AND DISPOSAL, LLC.	)	No: BP-111-07
	)	
ANNIE JANICKI,	)	<b>APPELLANT’S RESPONSE TO</b>
	)	<b>APPLICANT’S MOTION TO DISMISS</b>
	)	
Appellant.	)	

---

COMES NOW APPELLANT, by and through her attorney C. Thomas Moser, and does now respond to the Applicant’s Motion To Dismiss the SEPA appeal. This response is limited to the motion and is not a reply to the Response portion of the Applicant’s submittal.

**Motions Are Inconsistent Theories:**

Applicant argues two inconsistent theories: The appeal is untimely; the appeal is premature. Both arguments are an attack on the City’s MDNS. The MDNS clearly advises the public of when the appeal must be filed. The published MDNS is the only notice the public receives of the action by the City. Without the publication of the MDNS it becomes nothing more than a piece of paper tucked away in a file in the planning department. For the MDNS to have any meaning to anyone other than the author and the Applicant it must be published. That publication date becomes the relevant date, not the day it was signed and put in a file.



1 The MDNS states (in bold type and underlined) that appeals must be filed by March 26,  
2 2008. Now Deluxe has waited until just two court days before the public hearing on the Appeal  
3 to attack the MDNS by stating that this published notice was wrong. At the same time Deluxe is  
4 arguing that the MDNS is wrong because it should have had no date for an appeal. The second  
5 argument is based on the theory that the SEPA appeal should have been made in conjunction  
6 with the underlying permit issuance by the City.

7  
8 **No Authority Cited For An Appeal of A Building Permit:**

9 One problem with the second argument by Deluxe is that there is no authority cited to  
10 support the theory that a building permit can be appealed by the public. The other problem is that  
11 the City picked the decision and the date for appeal of that decision, not the Appellant. If the  
12 MDNS is not appealable, it is a problem created by the City. The City's position is that there will  
13 only be one public hearing and no opportunity to appeal any action related to the Deluxe  
14 proposal. The only appeal is the one filed by Annie Janicki.

15 **City Code Amended During Process:**

16 The City changed the SWMC after the Applicant filed its permit application and after the  
17 date of vesting as determined by the City. The old code on SEPA appeals stated as follows:

18  
19 **2.88.170 Appeals.**

- 20 A. Any person may appeal the issuance of:  
21 1. A determination of nonsignificance; and  
22 2. A final environmental impact statement.

23 **B. An appeal must be filed in writing with the responsible official within**  
24 **fifteen calendar days of the date the decision becomes final.** The appeal shall  
25 identify the decision, contain a summary of the grounds for the appeal and be  
accompanied by an appeal fee in an amount established by resolution of the city  
council. Following receipt of the appeal and the fee, the responsible official shall  
transmit a copy of the appeal to the hearing body for a Type III application open  
record hearing pursuant to SWMC Ch. 2.90. Any party with standing may file a

1 closed record appeal from the decision of the hearing body to the city council for  
2 a Type III application appeal pursuant to SWMC Ch. 2.90.

3 The change in the new City code is cited by Deluxe and is quoted in part. The difference  
4 is that the appeal period was shortened to 14 days and the words “becomes final” were removed  
5 in the revisions to the SWMC. The only meaning that can be attached to the words “becomes  
6 final” is that it means publication for the SEPA notice.

7 **Conclusion:**

8 The motion should be denied and the appeal should be decided by the Hearing Examiner  
9 on the merits.

10  
11 DATED this \_\_\_\_\_ day of May, 2008.

12  
13  
14 \_\_\_\_\_  
15 C. Thomas Moser, WSBA #7287  
16 Attorney for Appellant  
17  
18  
19  
20  
21  
22  
23  
24  
25