

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
27
28

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

APPEAL OF MDNS IN RE: Deluxe Recycling and Disposal LLC	NO. BP-111-07 DELUXE RECYCLING AND DISPOSAL LLC'S REPLY BRIEF
----------------------------------------------------------------	--------------------------------------------------------------------------------------------

**I.
INTRODUCTION**

COMES NOW, Deluxe Recycling and Disposal LLC by and through their attorneys, Adelstein, Sharpe & Serka LLP, reply to Annie Janicki's response as follows:

**II.
ARGUMENT**

Annie Janicki provides no defense to Deluxe's Motion to Dismiss. SWMC Section 2.88.170(b) is clear and unambiguous and requires that "An appeal must be filed in writing with the responsible official within fourteen calendar days of the decision."

Appellant's argument that the appeal period begins to run fourteen days after publication is unfounded and conflicts with the clear, unambiguous language of the ordinance. Appellant had the same access to the ordinance that we have had and could have educated themselves on the applicable and correct

1 appeal period. Appeal periods cannot be extended by implication or because of
2 the error committed by another party. There is no defense for failing to file a
3 timely appeal. These periods are established to protect my client as well as
4 other members of the public.

5 Citing the old appeal ordinance is not relevant to this case. The
6 amendment requiring that an appeal be filed within fourteen calendar days was
7 effective as of March 5, 2008. It applies to any appeals that were required to be
8 filed thereafter, such as Ms. Janicki's appeal.

9 **III.**
CONCLUSION

10 Based on the aforementioned reasons, the Hearing Examiner has no
11 jurisdiction to hear this appeal as the Janicki appeal was filed untimely and
12 contrary to the ordinance. Accordingly, the appeal should be dismissed with
13 prejudice.

14 DATED this 2 day MAY, 2008.

15 Respectfully submitted,

16 **ADELSTEIN, SHARPE & SERKA LLP**

17
18 BY: 
19 **PHILIP A. SERKA, WSBA #6814**
20 Attorney for Deluxe Recycling and Disposal
21 LLC

22 R:\PAS-ARCHIVES\MCCARTER, LARRYSKAGIT GARBAGE-SEPA APPEAL\Reply Brief 5-2-08.doc