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

ANNIE JANICKI,

Petitioner,

v.

CITY OF SEDRO-WOOLLEY, a municipal corporation; DELUXE RECYCLING AND DISPOSAL LLC, a Washington limited liability company; and FIRE RIDGE LLC, an Oregon limited liability company,

Respondents,

v.

SKAGIT COUNTY, a political subdivision of the State of Washington,

Intervenor.

No. 08-2-01130-8

ORDER GRANTING SKAGIT COUNTY'S MOTION TO CLARIFY RECORD AND REMAND PROCEEDINGS

~~PROPOSED~~ *TC*

THIS MATTER came before the Court on Skagit County's Motion to Clarify Record, Vacate the Hearing Examiner's Decision, and Remand the Proceedings. The Court heard oral argument on September 9, 2008, and has reviewed the following pleadings and declarations submitted by the parties in connection with this matter:

ORDER GRANTING SKAGIT COUNTY'S MOTION TO CLARIFY THE RECORD, VACATE THE HEARING EXAMINER DECISION AND REMAND THE PROCEEDINGS - 1 -

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1. "Skagit County's Motion to Clarify Record, Vacate the Hearing Examiner's Decision and Remand the Proceedings" dated September 3, 2008, *with all references to the Declaration of Rob Simpson dated August 29, 2008 stricken*;
2. "Declaration of William Honea" dated September 2, 2008;
3. "Respondent City of Sedro-Woolley's Response to Motion to Clarify the Record, Vacate the Hearing Examiner's Decision and Remand the Proceedings" dated September 8, 2008;
4. "Declaration of Eric Potash in Support of City's Response to County's Motion to Clarify the Record, Vacate the Hearing Examiner's Decision and Remand the Proceedings" dated September 4, 2008;
5. "Declaration of John Coleman in Support of City's Response to County's Motion to Clarify the Record, Vacate the Hearing Examiner's Decision and Remand the Proceedings" dated September 5, 2008;
6. "Declaration of Eron Berg in Support of City's Response to County's Motion to Clarify the Record, Vacate the Hearing Examiner's Decision and Remand the Proceedings" dated September 8, 2008;
7. "Declaration of John Coleman in Support of City's Response to County's Motion to Clarify the Record, Vacate the Hearing Examiner's Decision and Remand the Proceedings" dated September 5, 2008;
8. "Declaration of Simi Jain in Support of City's Response to County's Motion to Clarify the Record, Vacate the Hearing Examiner's Decision and Remand the Proceedings" dated September 8, 2008;
9. "Declaration of Jack Moore in Support of City's Response to County's Motion to Clarify the Record, Vacate the Hearing Examiner's Decision and Remand the Proceedings" dated September 5, 2008;
10. "Declaration of Julie Rosario in Support of City's Response to County's Motion to Clarify the Record, Vacate the Hearing Examiner's Decision and Remand the Proceedings" dated September 3, 2008;
11. "Deluxe Recycling and Disposal LLC's Objection to Skagit County's Motion to Clarify Record and Vacate Proceeding" dated September 8, 2008, *with all references to the Declaration of Phillip A. Serka dated September 8, 2008 stricken*;

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- 12. "Declaration of Steve Snell" dated September 5, 2008;
- 13. "Petitioner's Response in Support of Skagit County's Motion to Shorten Time and Motion Remand and Clarify Record" dated August 27, 2008;
- 14. "Skagit County's Reply to Deluxe and City Response in Opposition County Motion to Clarify Record and Remand Proceedings" dated September 8, 2008.

Having carefully considered the foregoing, the Court makes the following

FINDINGS:

1. The City has a process for receiving and maintaining documents relevant to SEPA processes. Maintenance of the SEPA record is the responsibility of the City Planning Department.

2. It is undisputed that the City of Sedro-Woolley's Solid Waste Division Manager Leo Jacobs submitted a letter dated February 5, 2008 to the City Planning Department, which letter was received, accepted and reviewed by City Assistant Planner John Coleman, and was later removed from the SEPA file.

3. It is undisputed that Mr. Jacobs, as the City's Solid Waste Division Manager and representative on the regional Solid Waste Advisory Committee (SWAC), ~~is a key member of City staff that would normally be expected to comment on a project such as the Deluxe project, a proposal that envisions construction and operation of a regional solid waste handling facility. Under any reading,~~ the February 5, 2008 Jacobs letter was ^{RE} extremely critical of the Deluxe project.

4. It is undisputed that the February 5, 2008 Jacobs letter was removed from the City's SEPA file, was not made available to the Petitioner, was not in any of the materials presented to the Hearing Examiner. It is undisputed that the Hearing

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RE

1 Examiner made his decision without the benefit of the February 5, 2008 Jacobs letter.

2 5. The facts relevant to the Court's decision are not disputed. While there
3 *was some level of disagreement as to whether Mr. Jacobs was ordered to remove his*
4 *letter from the SEPA file or he did so of his own volition, these disputed facts are not*
5 *germane to the Court's conclusions of law nor to the Court's decision.*
6

7 6. Petitioner has substantially obtained the relief originally sought in her
8 LUPA Petition.

9 7. Any findings of fact herein that are properly construed as conclusions of
10 law shall be treated as such.

11 Having carefully considered the foregoing, the Court reaches the following
12 **CONCLUSIONS:**

13
14 1. The City was obligated to maintain the February 5, 2008 Jacobs letter in
15 the SEPA record. Were it otherwise, the City would have the ability to control and
16 dictate the contents of the SEPA record that comes forward for the Hearing Examiner's
17 consideration. This would defeat the entire purpose of the Land Use Petition Act, RCW
18 36.70C, which affords great deference to the administrative decision below on the
19 premise that the Hearing Examiner had the complete record before him for his
20 consideration.
21

22 ~~2. A rule that allows for the removal of critical comment letters from the~~
23 ~~SEPA record would prove untenable, because it would lead to situations such as the~~
24 ~~present one where the parties present differing facts as to why and how the comment~~
25 ~~letter was removed from the record, and the ultimate significance of the comment~~
26

27 **ORDER GRANTING SKAGIT COUNTY'S**
28 **MOTION TO CLARIFY THE RECORD,**
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1 ~~letter's removal from the record. The LUPA statute is not geared toward the evidentiary~~
2 ~~fact finding that this would necessarily involve.~~

3 ~~2~~ ~~3~~. The Court's jurisdiction in this matter arises under the Land Use Petition
4 Act, RCW 36.70C. RCW 36.70C.140 allows the Court to "affirm or reverse the land
5 use decision under review or remand it for modifications or further proceedings," and
6 "[i]f the decision is remanded for modification or further proceedings, the court may
7 make such an order as it find necessary to preserve the interests of the parties and the
8 public, pending further proceedings or action by the local jurisdiction." The Court has
9 the authority under LUPA to remand the land use decision for "modification or further
10 proceedings."
11

12 ~~3~~ ~~4~~. RCW 36.70C.130 sets forth an exhaustive list of conclusions that the
13 Court may permissibly draw as the basis for relief from its review of the record.
14 However, the issue before this Court is not a question of conclusions that may
15 permissibly be drawn from a review of the record. Rather, the issue before this Court is
16 whether the Court has the authority to remand the proceedings in light of undisputed
17 evidence that the Hearing Examiner's decision was not based on a complete
18 administrative record.
19

20 ~~4~~ ~~5~~. The Court considered and rejects the City's argument that the proper
21 remedy is an independent writ of certiorari action filed in superior court. RCW
22 36.70C.030(1) provides that LUPA "replaces the writ of certiorari for appeal of land use
23 decisions and shall be the exclusive means of judicial review of land use decisions..."
24 Allowing a multiplicity of challenges to local land use decisions as the City suggests
25

26
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1 would defeat the central purpose and intent of LUPA, which was enacted by the
2 legislature to "reform the process for judicial review of land use decisions made by local
3 jurisdictions, by establishing uniform, expedited appeal procedures and uniform criteria
4 for reviewing such decisions..." RCW 36.70C.010.

5 ~~6.5~~ ^{RC} The Court concludes that LUPA is silent as to the proper remedy where
6 key documents were removed from the record, were not furnished to the Petitioner, and
7 were not considered by the Hearing Examiner reaching his decision.
8

9 ~~7.6~~ RCW 36.70C.030 provides that "[t]he superior court civil rules govern
10 procedural matters under this chapter to the extent that the rules are consistent with this
11 chapter." Where LUPA is silent on the Court's management of these proceedings, the
12 Court turns to the Rules of Civil Procedure, giving due regard for the LUPA statute's
13 mandate that the Court "shall provide expedited review" of LUPA matters. RCW
14 36.70C.090. The County's motion to vacate the Hearing Examiner's decision is akin to
15 a motion for summary judgment arising under CR 56, insofar as County and Petitioner
16 seek relief that will terminate this Court's review based on issues of law where the
17 material facts are not in dispute. That being noted, the relief the County and Petitioner
18 seek is something less than dispositive, because it involves procedural remand in a
19 LUPA appellate matter. The relief sought by the County and Petitioner is in other ways
20 similar to amendment of judgment under CR 59 and relief from judgment under CR 60.
21 The Court concludes it has the authority to grant the relief sought by the County and
22 Petitioner on this motion, and remand the proceedings to the City.
23
24

25 ~~8.7~~ The County's motion was originally filed on August 25, 2008 together with
26

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1 ~~a motion to shorten time, with the hearing date and briefing schedule agreed upon by~~
2 ~~the parties. The Court set the hearing on a compressed time schedule in consideration~~
3 ~~of Deluxe Recycling and Disposal LLC's requests for expedited review. The Court~~
4 ~~concludes that the parties received sufficient notice of the hearing and the relief sought,~~
5 ~~and opportunity to respond.~~ *OC*

7 ~~9. The purpose of SEPA is to inform the decision-making process, not to~~
8 ~~justify decisions already made. WAC 197-11-406. Because the City has not yet~~
9 ~~performed a SEPA review process that considers and responds to the issues raised in~~
10 ~~the February 5, 2008 SEPA review letter, the City must perform a new SEPA threshold~~
11 ~~determination to comport with the dictates of SEPA.~~ *OC*

13 **10.** Petitioner Janicki is the substantially prevailing party, and is entitled to her
14 costs associated with preparation of the record. RCW 36.70C.110.

15 WHEREFORE, it is hereby ORDERED:

- 16 **1.** The Hearing Examiner decision dated May 22, 2008 is VACATED.
- 17 **2.** This matter is remanded to the City of Sedro-Woolley for further
18 environmental review consistent with this decision.
- 19 **3.** Unless the Deluxe application is withdrawn or otherwise disposed of, the
20 City shall conduct a new SEPA analysis and issue a new SEPA threshold determination
21 for the Deluxe proposal, taking into consideration ^{*inter alia*} the February 5, 2008 Jacobs letter,
22 ~~appropriate comments,~~
23 ~~and other such input as the City's Solid Waste Division may provide.~~ *RC*
- 24 ~~**4.** The City may use a qualified and objective outside consultant in conduct~~
25 ~~of the foregoing SEPA analysis.~~

27 ORDER GRANTING SKAGIT COUNTY'S
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4 5. The City shall pay Petitioner's costs associated with preparation of the SEPA record in the amount of ~~\$1,841.75~~ *to be determined. Council shall*

5 6. Review is hereby terminated and this matter dismissed with prejudice without costs or fees to either party other than as set forth in paragraph 4. *provide court with their respective proposals w/ 14 days of this order*


DATED this 2 day of Oct 2008.



JUDGE / COMMISSIONER

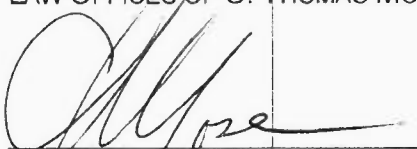
Presented by:

SKAGIT COUNTY PROSECUTING ATTORNEY



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Stephen Fallquist, WSBA # 31678
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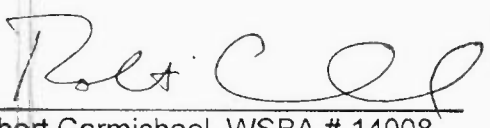
LAW OFFICES OF C. THOMAS MOSER



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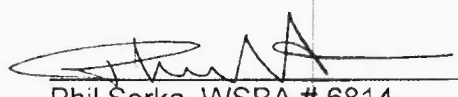
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ORDER GRANTING SKAGIT COUNTY'S
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