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

ANNIE JANICKI,

Petitioner,

vs.

CITY OF SEDRO-WOOLLEY, a municipal
corporation, and DELUXE RECYCLING
AND DISPOSAL LLC, a Washington
Corporation,

Respondents.

No. **08 2 01130 8**

**PETITION FOR RELIEF UNDER THE
LAND USE PETITION ACT**

COMES NOW the Petitioner, by and through her attorney, C. Thomas Moser, pursuant to RCW 36.70C.005, *et seq*, The Land Use Petition Act, and the common law in Washington, does now state and allege as follows for cause of action against Respondent:

I. PARTIES AND JURISDICTION

1.1 Petitioner, Annie Janicki is the aggrieved party, and the appellant below in these proceedings. Petitioner's mailing address is 8150 Garden of Eden Road, Sedro-Woolley, Washington 98284.

1 1.2 Petitioner's attorney is C. Thomas Moser, 411 Main Street, Mount Vernon,
2 Washington 98273.

3 1.3 **Local Jurisdiction:** The local jurisdiction who made the land use decision at issue is
4 the City of Sedro-Woolley, with an address at 720 Murdock Street, Sedro-Woolley, Washington
5 98284. The decision making body for the land use decision at issue herein is the Hearing
6 Examiner. The land use decision appealed herein is the decision to not grant an appeal filed by
7 Petitioner to the Hearing Examiner, which appeal was denied by written decision dated May 22,
8 2008. A copy of that decision is attached hereto as **Exhibit A**.

9 1.4 **Applicant:** The applicant is Deluxe Recycling And Disposal LLC, 4916 LaBounty
10 Place, Ferndale, Washington 98248.

11 1.5 The real property that is the subject matter of this appeal is located at 109 Jameson
12 Street, Sedro-Woolley, Skagit County, Washington.

13 1.6 This Court has jurisdiction over the parties and the subject matter of this petition.

14 **II. STANDING**

15 2.1 The Petitioner has standing in this matter pursuant to RCW 36.70C.060.

16 2.2 Petitioner was the appellant below, which was denied.

17 2.3 Petitioner appealed a SEPA determination made by the City of Sedro-Woolley
18 Planning Department to the Sedro-Woolley Hearing Examiner.

19 **II. STATEMENT OF FACTS**

20 3.1 Applicant, Deluxe Recycling And Disposal LLC (Deluxe hereinafter) filed a building
21 permit and SEPA Checklist with the City of Sedro-Woolley (City hereinafter). The building
22 plans are alleged to have been filed with the City in December 2007. The application was
23

1 allegedly deemed completed on December 18, 2007. The SEPA Checklist is alleged to have been
2 filed January 10, 2008. The SEPA Checklist itself is dated November 29, 2007.

3 3.2 The proposed project is a solid waste handling facility on 12.84 acres of property
4 across the street from Sedro-Woolly High School.

5 3.3 The City Planning Director issued a Mitigated Determination of Non-Significance
6 (MDNS) dated March 7, 2008. The MDNS was based on the SEPA Checklist and other
7 documents allegedly filed by the Applicant for the project.

8 3.4 The Petitioner filed a timely appeal to the Hearing Examiner. A hearing was
9 conducted at which the public was not allowed to participate, on May 5, 2008.

10 3.5 The Hearing Examiner denied the appeal and a copy of the written decision is
11 attached as **Exhibit A**.

12 **IV. STATEMENT OF ERRORS MADE IN LAND USE DECISION**

13 4.1 The decision of the Hearing Examiner is in error because it failed to reverse the
14 decision of the Planning Department Director.

15 4.2 The decision of the Hearing Examiner is in error because he refused to allow public
16 testimony despite the fact that over 200 people attended the public hearing. See Hearing
17 Examiner Summary, paragraph 3, page 3.

18 4.3 The decision of the Hearing Examiner is in error in failing to consider the pre-
19 application approval given by the City to the Applicant's proposal, which contaminated the
20 SEPA process. The pre-judgment by the elected officials compromised the Lead Agency who
21 works for the elected officials in making an objective SEPA threshold determination and violates
22 the appearance of fairness. See Finding C, Appeal Issue 1, Conclusion.

1 4.4 The decision of the Hearing Examiner is in error in determining that the issue of
2 whether the permit application is compliant with the City's Solid Waste Management Plan and
3 related resolution adopted by the City were outside the scope of the appeal. See Finding D,
4 Appeal Issue 2, Conclusion.

5 4.5 The decision of the Hearing Examiner is in error by refusing to consider all the
6 Exhibits presented by the parties in considering the appeal. The Hearing Examiner limited the
7 scope of consideration to only "Exhibits G through Y", which he determined were relevant to the
8 appeal. See Finding A, second paragraph.

9 4.6 The decision of the Hearing Examiner is in error because the decision is based on a
10 "presumption" made by the Hearing Examiner in support of the application. In Finding E.9 the
11 Hearing Examiner finds that the applicant's representations about odor, dust and the amount of
12 garbage "would presumably be incorporated into the facility Operations Plan as part of the
13 permit approval under RCW 70.95." This is speculation, not a finding. See Finding E.9.a, page 8.

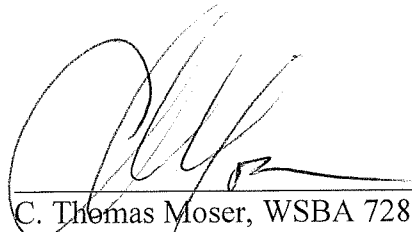
14 4.7 The decision of the Hearing Examiner is in error because the Hearing Examiner
15 determined that quantity of garbage is not important in the SEPA process, believing that "there is
16 the information available that acts as a de facto proxy for a specific numeric value." See Finding
17 E.9.a, page 8.

18 4.8 The decision of the Hearing Examiner is in error because it anticipates a process that
19 is outside the record, is based on speculation, and make presumptions about odor, dust and
20 storage of garbage, while ignoring quantity. See Finding E.9.a Conclusion, page 8.

21 4.9 The decision of the Hearing Examiner is in error in concluding that the City has
22 authority to suspend a Certificate of Occupancy to enforce the vague MDNS conditions. See
23 Finding E.7.a.

1 5.4 For such other and further relief as allowed by law and as the court deems just and
2 equitable.

3 Dated: June 12, 2008

4 
5 C. Thomas Moser, WSBA 7287
6 Attorney for Petitioner

**FINDINGS, CONCLUSIONS AND DECISION
OF THE HEARING EXAMINER
CITY OF SEDRO-WOOLLEY**

APPELLANT: Tom Moser for Annie Janicki.

PERMIT NO.: BP-111-07

LOCATION: 109 Jameson Street, Sedro-Woolley, Washington

APPEAL: A request to appeal a SEPA Mitigated Determination of Non-Significance for a proposed solid waste collection/transfer facility (see Exhibits G through N).

REVIEW PROCESS: Hearing Examiner conducts a public hearing and makes the final decision.

SUMMARY OF RECOMMENDATION AND DECISION:

Staff Recommendation: Deny appeal

Hearing Examiner Decision: Deny appeal

PUBLIC HEARING:

After reviewing the official file, which included the Appeal to the Hearing Examiner, building permit application and all subsequently submitted materials noted in the Exhibits section of this decision; and after visiting the site, the Hearing Examiner conducted a public hearing on the appeal. The hearing on the Janicki appeal was opened at 10:00 a.m., May 5, 2008, in City Hall, Sedro-Woolley, Washington, and closed at 11:50 a.m. A verbatim recording of the hearing is available in the Planning Department. Exhibits requested by the Hearing Examiner and submitted by the Parties to the Appeal are listed at the end of this decision.

HEARING COMMENTS:

The following is a summary of the Parties to the Appeal hearing comments and submissions:

From the Appellants:

C. Thomas Moser, Attorney: Mr. Moser gave arguments in response to the Applicant's motion to dismiss the appeal on the grounds it was not timely. These arguments are substantively represented in Exhibit E. Mr. Moser also presented the Appellant's issues and reasoning with respect to the issuance of the MDNS, which are

substantively represented by Exhibits A, C and E. Appellants' arguments fall into three categories:

- 1) That the application was pre-judged as represented by several actions by City officials and, thus, the SEPA review process was inherently flawed;
- 2) That the Applicant and the City are not allowed to proceed with the siting and permitting of a solid waste transfer station due to conflict with the Skagit County Solid Waste Management Plan; and
- 3) That the MDNS mitigations are inadequate and, thus, an EIS should be required.

In support of these arguments Mr. Moser also submitted Exhibits AP1 through AP13 into the record at the hearing.

From the Applicant:

Phil Serka, Attorney: Mr. Serka presented their arguments in support of the Motion to Dismiss the appeal as being untimely, which are substantively represented by Exhibit D. Mr. Serka also responded to the Appellants' arguments noted above. His responses are substantively represented by Exhibit D. Mr. Serka also submitted Exhibit BP1 into the record.

Edward Koltonowski, Gibson Consultants: Indicated that the realignment of Jamison would not have an appreciable impact on the functionality (i.e. level of service) of regional roadways; that the extension of Jamison Street is contemplated within the City's Comprehensive Plan; and that proposed traffic mitigations are adequate based on their analysis.

Larry McCarter, proposed operator of the facility: Mr. McCarter clarified that actual hours of taking in solid waste to the facility would run no later than 5:30 PM. Operation hours past 5:30PM would be solely for securing the day's intake and cleaning the facility.

From the City:

Jack Moore, Planning Director: Discussed the permit process leading up to the issuance of the MDNS. Mr. Moore also stated that the Planning Department's review of the application and issuance of the MDNS was not influenced by comments or resolutions by the City Council.

Robert Carmichael, Attorney: Provided the City's responses to the Appellants' arguments noted above. Mr. Carmichael's comments are substantively represented by Exhibits B and F.

SUMMARY OF HEARING EXAMINER ACTIONS

- 1) A pre-hearing telephone conference was held with the Parties to the Appeal including Mr. Thomas Moser for the Appellant, Mr. Phil Serka representing the Applicant and Mr. Robert Carmichael representing the City; along with Mr. Eron Berg, City Administrator, and Mr. Jack Moore, Planning Director. This Examiner provided guidance on how the hearing would be conducted, noting that whether or not the project should be permitted was not the question before this Examiner; and that the scope of the question was narrow,

being specific to the adequacy of the City's use of the SEPA process in issuing the MDNS.

- 2) This Examiner requested all written material submitted in support of the building permit application be provided prior to the May 5, 2008 hearing. These materials were received on April 29, 2008; and are included here as Exhibits G through X.
- 3) At the hearing on May 5, 2008, this Examiner provided a brief discussion to the public on the role of a Hearing Examiner, noting what an examiner can and cannot do relative to the nature of the question before him. This Examiner explained that given the nature of the hearing; i.e. an appeal of a SEPA determination; that testimony would be limited to only those who were directly Parties to the Appeal. Note that well over 200 people were in attendance. This Examiner also noted that he was in receipt of Exhibits X and Y, which contain all public correspondence and comments submitted relative to the project proposal.
- 4) At the hearing on May 5, 2008, this Examiner denied the Applicant's Motion to Dismiss the appeal as being untimely. While the MDNS was signed on March 7, 2008, notice of issuance was not published until March 12, 2008. The Applicant's want the controlling date to be the date it was signed (March 7), which would have rendered the Appellant's submission on March 26, 2008 as untimely and invalid. This Examiner disagreed, noting that the general public must rely on the published date (in this case March 12) to be informed an appeal was an option; and this being a public process, the published date must be the controlling date. Note also the City set the MDNS appeal deadline at March 26, 2008. The Appellants submitted on that date, therefore, their Appeal was timely.

FINDINGS OF FACT AND CONCLUSION

- A. The Appellants filed a timely appeal on March 26, 2008 (see Exhibit A). Specifically, the Appellant, Annie Janicki, has appealed the City's SEPA Notice of Threshold Determination Mitigated Determination of Non-Significance (MDNS) dated March 7, 2008, relative to permit number BP-111-07, Deluxe Recycling & Disposal (see Exhibits G through O).

The appeal request is specific to the rules of procedure and content found in the State Environmental Policy Act (SEPA) and embodied in WAC 197-11. The only relevant question before this Examiner is whether the City erred in issuing an MDNS based on the information provided in Exhibits G through Y.

- B. 1. SEPA requires, and the City has incorporated, language that states the decision of the issuing authority must be given substantial weight in deciding the adequacy of environmental reviews.
2. The Burden of Proof rests with the Appellants. This burden is substantive and non-trivial, and cannot be achieved with mere assertions or claims.

- C. **APPEAL ISSUE 1:** *The process leading up to issuance of the MDNS for the proposed solid waste transfer facility shows a pattern of favorable pre-judgment by City officials that compromised staff's ability to conduct an objective SEPA review.*

1. a. Appellant arguments relative to this issue(s) are found in the following exhibits:

Exhibit A: pages 1 and 2.
Exhibit C: pages 1 through 3.

- b. Exhibits submitted by the Appellants in support of this argument:

AP9, AP10, AP11, AP12; and Exhibit C, Attachments A, B, C and D.

2. City responses to the above issue(s) are found in the following exhibits:

Exhibit B: page 3.
Exhibit F: pages 4 through 7.

3. Applicant response to the above issue(s) is found in the following exhibit:

Exhibit D: pages 12 and 13.

CONCLUSION: Based on a review of the Exhibits listed in this decision, Finding A above and arguments offered at the hearing, the question of "pre-judgment" of the permit application is outside the scope of this appeal.

D. APPEAL ISSUE 2: *Deluxe Recycle & Disposal fails to comply with the City's solid waste plan, i.e. that the City, in endorsing Skagit County's Solid Waste Management Plan (CSWMP), agreed to a single transfer facility, which already exists. Further, that a City resolution in opposition to a subsequent amendment to the CSWMP that would allow for a second facility precludes the current application; and, thus, the permit should have been rejected under the SEPA review.*

1. a. Appellant arguments relative to this issue(s) are found in the following exhibits:

Exhibit A: pages 2 and 3.
Exhibit C: pages 4 and 5.

- b. Exhibits submitted by Appellants in support of this argument:

AP1, AP2, AP3, AP4, AP5, AP6, AP7.

2. City responses to the above issue(s) are found in the following exhibits:

Exhibit B: page 3 and 4.
Exhibit F: pages 7 through 9.

3. Applicant response to the above issue(s) is found in the following exhibit:

Exhibit D: page 13.

CONCLUSION: Based on a review of the Exhibits listed in this decision, Finding A above and arguments offered at the hearing, the question of whether the permit application is compliant with the City's participation in the Skagit County Solid Waste Management Plan is outside the scope of this appeal.

E. APPEAL ISSUE 3: *Mitigations issued under the MDNS are inadequate and can only be rectified by requiring the preparation of an Environmental Impact Statement (EIS).*

1. a. Appellant arguments relative to this issue(s) are found in the following exhibits:

Exhibit A: pages 3 through 7.
Exhibit C: pages 5 through 10.

- b. Exhibits submitted by Appellants in support of this argument:

AP8.

2. City responses to the above issue(s) are found in the following exhibits:

Exhibit B: pages 4 through 7.
Exhibit F: pages 9 through 17.

3. Applicant response to the above issue(s) is found in the following exhibit:

Exhibit D: pages 7 through 12.

4. The determination to issue an MDNS on permit application BP-111-07 was based on planning staff's review of the following documents and studies submitted by the Applicant:

Building Permit Application	Exhibit N
Project Drawings Folio	Exhibit M
SEPA Checklist	Exhibit H
Traffic Impact Assessment	Exhibit I
Critical Areas Site Reconnaissance	Exhibit J
Drainage/Stormwater Pond Design	Exhibit K
Potential Environmental Conditions Report	Exhibit L

5. The City's Planning Department issued the MDNS (Exhibit G) containing 27 identified mitigations that the Applicant must comply with and/or implement as part of the final approval of the permit. Mitigation conditions as enumerated in the MDNS are grouped below by category of potential impacts and/or issue:

Compliance with City Regulations - 3

Title 13.36 Stormwater Management Standards
Title 13.40 Stormwater Facilities Maintenance
Title 15.40 Public Works Construction Standards
Title 17 Zoning
Sedro-Woolley Public Works Design Standards
Sedro-Woolley Comprehensive Plan

Restrictions on Operations - 18, 20, 24, 25

No collection of hazardous wastes.
Only domestic effluent can be discharged to sewer system.
On-site storage of municipal waste is not approved.
Composting not approved as part of this SEPA review.

Hours of Construction & Operation - 1, 16

Environment Requirements - 2, 6, 14, 19, 21

Compliance with Clean Air Act regulations; RCW 70.94

Compliance with Ecology NPDES general stormwater permit
SWMC 17.66 and FIRM; structures in floodplains
Radiation detector required in off-loading area
Materials must be secured to prevent displacement from flood

Noise/Dust/Odor – 15, 17, 26

Traffic & Road Improvements – 7, 9, 10, 11, 12, 13, 22

Impact Fees – 5, 23

Lighting – 4, 27

Site Landscaping – 8

6. In Exhibits A and C the Appellants claim several issues that, taken together, point to an inadequacy of MDNS mitigation conditions and, thus, an EIS should be required. The Appellants present these arguments in Exhibit C under the following headings on pages 5 through 10:

Proposed Mitigations are Vague and Unenforceable	page 5
Comparison to the County MDNS on the Cimarron Proposal	page 5
Storage of Garbage On-Site	page 7
Traffic Impacts	page 7
Quantity of Garbage	page 7
Requirement for EIS – Generally	page 8

These issues are reviewed separately in the sections that follow.

7. *Proposed Mitigations are Vague and Unenforceable:*

- a) In Exhibit A under items #1, #2 and #3 on page 5, and iterated generally in Exhibits A and C, the Appellants raise the question as to who would have enforcement authority and how enforcement would occur should the Applicant fail to comply with the proposed mitigations.

In Exhibit B and at the hearing the City noted that meeting the proposed mitigations and conditions of on-going operation; which include compliance with any and all applicable City, County and State regulations; would be tied to the Certificate of Occupancy (CO), which is issued by the City. Should the Applicant violate proposed mitigations, then the City has the authority and the obligation to suspend the CO. The Applicant would be required to cease operation of the facility until which time the violation has been corrected.

CONCLUSION: The City's authority under the issuance of a CO provides sufficient mechanism for enforcement of mitigations and conditions imposed within the MDNS.

- b) As to the alleged vagueness of the mitigations, this issue appears to be related to on-site storage of garbage, in particular the issues of odor, dust, storage time limits, and displacement during flood events. These items are discussed in sections that follow.

8. *Comparison to the County MDNS on the Cimarron Proposal*

- a) In Exhibit C the Appellants take issue with the City's claim that the MDNS is adequate, in part, because a similar project (Cimarron) MDNS had fewer and less specific mitigations, and was subsequently upheld under an appeal. The Appellants argue that this comparison is inaccurate and inappropriate, and should not be used by the Examiner in making his decision. This Examiner concurs.

CONCLUSION: Adequacy of MDNS mitigations must be reviewed relative to the specific site circumstances and programmatic context of a given project proposal. The fact that the Cimarron MDNS was upheld has no bearing on the adequacy of the MDNS issued for Deluxe.

9. *Storage of Garbage On-Site & Quantity of Garbage*

- a) The Appellants allege that the issues surrounding dust, odor, amount of garbage, and length of on-site storage of garbage have not been adequately reviewed by the City or addressed by the mitigations proposed. The argument they want to make is that since the City has not identified a numeric standard or limit for these items, the proposed mitigations are therefore vague and illusory.

The City responds by noting the mitigation language in the MDNS with respect to these issues. As to dust and odor, the mitigation is compliance with the regulations enforced by the Northwest Clean Air Agency. These regulations contain both qualitative and quantitative standards by which dust and odor control enforcement is triggered. As to storage, mitigation #24 prohibits the storage times that would result in unreasonably offensive odors. Again, enforcement of this condition would be via the State Clean Air Act 70.94, which are the regulations under which the Northwest Clean Air Agency operates. In effect, mitigations #24 and #26 are mutually supportive.

The Applicants note that they would need to secure a Solid Waste Handling Facility Permit from the Skagit County Health Department under the State requirements of RCW 70.95. Part of these requirements is the Applicant must develop a facility Operations Plan, which is required to address the range of potential environmental impacts including, but not limited to dust and odor control, proper storage of waste materials and a screening of the incoming waste stream.

This Examiner finds it curious that none of the Parties to the Appeal have referenced the SEPA checklist (Exhibit H). If the permit is ultimately approved, then the descriptions of how the facility would be operated would become part of the permit record and the Applicant would be bound by the statements made within it. Relative to dust, odor and storage the checklist provides several relevant statements:

"Recyclables, such as plastic, cardboard, mixed paper, wood, sheet rock, metals, concrete and asphalt roofing would be sorted into various holding units ... As the units fill up, the materials would be baled for sale ..." page 2, Exhibit H [Examiner's emphasis]

"The remaining solid waste would be compacted into individual waste units. The waste units would be self contained covered

units that would be transported to approved landfills by semi-truck as they are filled.” Page 2, Exhibit H [Examiner’s emphasis]

“Odors associated with the processing of solid waste are typically not a problem for several reasons:

- the processing facility is mostly enclosed and the one open side allows for greater air circulation; [Note that mitigation #15 requires that the facility be completely enclosed with four sides]
- odiferous wastes are transferred to sealed containers immediately;
- containers of waste are shipped off-site for processing regularly;
- housekeeping practices at the facility would include prompt removal of waste materials from the floors and containerization of all odiferous materials by the end of each day.” page 6, Exhibit H [Examiner’s emphasis]

“During the period when wood debris are being ground, water would be available for dust suppression.” page 6 [Examiner’s emphasis]

These practices would presumably be incorporated into the facility Operating Plan as part of the permit approval under RCW 70.95. The SEPA checklist contains other statements concerning facility operations and how potential impacts would be mitigated during the normal operations of the facility, and they are relevant to the review of this appeal. For example, it does not appear that loose garbage would “... float out of a container ...” if recyclables are baled and solid waste containers are self enclosed and sealed.

As to quantity of garbage being a fatal flaw requiring disclosure through an EIS as alleged by the Appellants, there is the information available that acts as a de facto proxy for a specific numeric value. In particular, the size of the facility itself (~ 30,000 square feet) and the estimated number of vehicle trips per day (average of 348) together clearly limit the amount of waste materials that can be brought to the site. The Appellants have left it unclear as to how knowing the specific numeric poundage or volume of garbage would improve or alter the analysis and decision making relative to the SEPA review and issuance of the MDNS mitigations.

CONCLUSION: The proposed mitigations related to odor, dust and storage of garbage appear to be adequate, particularly in light of the disclosures within the SEPA checklist and the operational requirements imposed on the facility via RCW 70.95.

10. Traffic Impacts

- a) The Appellants raise issues related to the traffic mitigations #9, #10, #11, and #12 (see Exhibit Am pages 5 and 6). To summarize the primary point, the Appellants contend that the extension of Jamison Street west to HWY 9 and requiring the access into the site be designed in a manner that would discourage traffic to the facility coming from the east; that this "... will re-direct other traffic through south Sedro-Woolley for traffic going both directions" and "...will dramatically increase commuter and heavy truck traffic through a long-established residential neighborhood ...". In addition, they contend that no analysis was performed as to the impacts to intersections with HWY 20.

The City responds in Exhibits B and F that the Jamison Street extension was contemplated and reviewed during the Comprehensive Plan formation, and potential impacts were analyzed in that process.

The Applicant responds that HWY 20 intersections were analyzed in the Traffic Impact Assessment (Exhibit D).

The Appellants' assertion that the traffic mitigations relative to Jamison Street and site access are based on a supposition. In as much as the Appellants bear the burden of proof, they have offered no supporting exhibit to substantiate that claim. In addition, the Traffic Impact Assessment does analyze two HWY 20 intersections: at West State Street and at Rhodes Road.

The City's Comprehensive Plan does include and provide for the possibility of extending Jamison Street west through the former lumber yard to connect with HWY 9. The Appellants want to argue that this constitutes new information and should not be allowed into this appeal. However, SEPA does state that information, rules and policies that have themselves been through a SEPA review can be incorporated into an environmental document without further analysis. The City's Comprehensive Plan necessarily went through a public process, and part of that process would have been the preparation of an EIS for the Plan.

CONCLUSION: The analyses performed within the Traffic Impact Assessment and via the Comprehensive Plan process provide sufficient disclosure of potential impacts to form the basis for the mitigations proposed.

11. Requirement for EIS – Generally

- a) The Appellants' arguments relative to whether an EIS is required in this particular case are substantively represented on pages 8 through 10 in Exhibit C, and presented in detail at the hearing. They cite several court rulings relative when and under what conditions an EIS should be required. They argue that the nature of the facility in the context of surrounding land uses will necessarily produce impacts that are sufficiently significant and probable as to require an EIS under WAC 197-11.

The City's response is substantively represented on pages 6, 7, 16 and 17 of Exhibit F, and presented in detail at the hearing. Their basic argument is that the legal precedents offered by the Appellants do not support the claim that an EIS is required in this case. Further, that they have not provided substantive demonstration that

issuing the MDNS was a clearly erroneous action on the part of the Planning Director.

On this issue this Examiner must concur with the City's analysis. Besides the fact that the cases cited by the Appellants were either adjudicated prior to inclusion of an MDNS process within SEPA or are no longer considered "good law", the underlying projects that were the subjects of those cases were much broader in scale and scope than the current proposal. They involved nearly every aspect of the natural and built environment. The substantive issues in this case focus on traffic and facility operation, and involve a single use and structure. In as much as the courts have routinely defined SEPA as primarily a disclosure process, one must ask how requiring an EIS would provide; i.e. disclose; information beyond what has been provided in the studies and reports that have already been prepared?

CONCLUSION: The information upon which the MDNS and proposed mitigations were based has been sufficiently detailed and inclusive enough to rightfully utilize an MDNS process in this case. The SEPA comments were reviewed and considered in formulating the mitigations.

DECISION

Based upon the foregoing findings and conclusions, the request for an appeal of the issuance of a SEPA MDNS for permit application BP-111-07 is Denied.

Entered this 22nd day of May, 2008.


Donald B. Lergen, AICP
Hearing Examiner

APPEAL OF HEARING EXAMINER DECISION

The decision of the Examiner, approving, modifying, or denying an application or an appeal shall be final and conclusive unless a written appeal is filed according to the City's appeal procedures as set forth in Chapter SWMC Section 2.88.170 B; which states that any party with standing may file an appeal of the hearing examiner's decision with the Superior Court per the Land Use Petition Act RCW 36.70 C.

EXHIBITS:

The following exhibits were offered and entered into the record, both prior to and during the hearing:

Appeal and Response Briefs

- A. Notice of Appeal to Hearing Examiner, dated March 26, 2008, from Tom Moser representing Annie Janicki.
- B. Transmittal & Report Memorandum (aka Staff Report) and five exhibits (aka Attachments), dated April 15, 2008.
 - Attachment A:* Mitigated Determination of Non-Significance, dated March 7, 2008; published March 12, 2008.
 - Attachment B:* Resolution 743-07, dated May 24, 2007.
 - Attachment C:* Resolution 706-04, dated November 23, 2004.
 - Attachment D:* Interlocal Cooperative Agreement between Skagit County and Towns and Cities in Skagit County for Solid Waste Management, dated May 17, 2004.
 - Attachment E:* Mitigated DNS for Skagit County materials processing facility SPU #PL04-0176.
- C. Appellant's Response to Staff Report and four exhibits (aka Attachments), dated April 25, 2008.
 - Attachment A:* Excerpt from Sedro-Woolley City Council meeting minutes of May 23, 2007.
 - Attachment B:* Excerpt from Skagit County Board of County Commissioner's meeting minutes of May 22, 2007.
 - Attachment C:* Sedro-Woolley memo to City Council from Eron Berg, dated April 23, 2008, with attached resolution affirming May 17, 2004 interlocal agreement with County and cities (see Exhibit B, Attachment D above).
 - Attachment D:* Article from Skagit Valley Herald, dated October 20, 2006.
- D. Applicant's Motion to Dismiss appeal and Response to Appellant's Response to Staff Report brief (see Exhibit C above), dated May 1, 2008.
- E. Appellant's Response to Applicant's Motion to Dismiss, dated May 1, 2008.
- F. City's Response to Appellant's Response to Staff Report, dated May 2, 2008.

Permit #BP-111-07 Application Materials

- G. Mitigated Declaration of Non-Significance for file #BP-111-07, Deluxe Recycling & Disposal, LLC, dated March 7, 2008; published March 12, 2008.
- H. SEPA Checklist for Deluxe Recycling Solid Waste Processing Facility and one attachment, dated November 29, 2007; received by the City January 10, 2008.
 - Attachment A:* Letter from Department of Ecology dated April 5, 2007 regarding review of potential contaminant issues and making a No Further Action Determination related to the MTCA for the subject site.
- I. Traffic Impact Assessment prepared by Gibson Traffic Consultants, dated October 10, 2007.
- J. Wetland site reconnaissance prepared by Wetlands, Inc., dated September 14, 2007.
- K. Stormwater Detention and Treatment study/design prepared by Skagit Surveyors & Engineers, dated September 6, 2007.
- L. Potential Environmental Conditions regarding soil samples prepared by Geotest, dated July 9, 2007.

- M. Map folio of the site, proposed buildings, site layout and elevations; consisting of seven 11" x 17" sheets, dated October 23, 2007.
- N. Building Application forms; including project narrative, assessor's info, sewer certification; application forms dated December 17, 2007.
- O. Notice of Application and SEPA Comment Period; published in Courier-Times on January 16 and January 23, 2008.

MDNS SEPA and Related Comments

- P. Department of Ecology, dated January 18, 2008.
- Q. Sedro-Woolley School District No. 101, dated January 28, 2008.
- R. Skagit County Public Health, dated January 30, 2008.
- S. Skagit County Public Works, dated January 30, 2008.
- T. Sedro-Woolley Wastewater Treatment Plant, dated February 5, 2008.
- U. Sedro-Woolley Public Works, dated February 20, 2008.
- V. Skagit County Public Works, dated March 18, 2008.
- W. Skagit County Public Health, dated March 26, 2008.
- X. Packet of 53 public comment letters and e-mails, dated from May 2007 through March 2008.
- Y. Packet of 44 individual letters and signed petitions in opposition to the proposed solid waste transfer facility at the subject site, dated from April to May, 2008.

Appellant Hearing Exhibits

- AP1. Excerpt from Final EIS for Skagit County Solid Waste Management Plan Update, April 1994.
- AP2: Excerpt from Skagit County Solid Waste Management Plan, December 2005.
- AP3: Copy of Sedro-Woolley Resolution No. 767-08, dated April 23, 2008.
- AP4: Copy of Sedro-Woolley Resolution No. 706-04, dated November 23, 2004.
- AP5: Copy of Interlocal Cooperative Agreement between Skagit County and Towns and Cities in Skagit County for Solid Waste Management, dated May 17, 2004.
- AP6: Copy of Interlocal Agreement for Comprehensive Solid Waste Disposal System, dated July 9, 1986.
- AP7: Excerpt from Sedro-Woolley City Council meeting minutes, dated November 23, 2004.
- AP8: Skagit County Public Works SEPA comment memo, dated January 30, 2008.
- AP9: Excerpt from Sedro-Woolley Zoning code, Chapter 17.28.010 A & B, Use Restrictions, Industrial (I) Zone.
- AP10: Excerpt from Sedro-Woolley Comprehensive Plan Capital Facilities Element, page 1 and page 50.
- AP11: Excerpt from Sedro-Woolley Comprehensive Plan Utilities Element, Goals and Policies.
- AP12: Memo from Eron Berg to City Council regarding ordinance to approve acquisition of land for extension of Jamison Street to the west, dated January 9, 2008.
- AP13: Excerpt from Traffic Impact Assessment prepared by Gibson Traffic Consultants, dated October 10, 2007.

Applicant Hearing Exhibit

- BP1: Resume for Edward T. Koltonowski of Gibson Traffic Consultants establishing qualifications.

PARTIES TO THE APPEAL:

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SKAGIT COUNTY CLERK
SKAGIT COUNTY, WA
2008 JUN 12 PM 12:49

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

ANNIE JANICKI,

Petitioner,

vs.

CITY OF SEDRO-WOOLLEY, a municipal
corporation, and DELUXE RECYCLING
AND DISPOSAL LLC, a Washington
Corporation,

Respondents.

No. **08 2 01130 8**

NOTE FOR CALENDAR

[CLERK'S ACTION REQUIRED]

NOTE FOR MOTION CALENDAR

Please note that the issue of law in this
case will be heard on the date set out in
the margin and the Clerk is requested to
note the same on the motion calendar for
that day.

XX CIVIL ___ DOMESTIC

Date of Hearing: July 21, 2008

Time of Hearing: 1:30 p.m.

Nature of Hearing: Initial Hearing on
Jurisdictional and Preliminary Matters

TO: THE CLERK OF THE COURT AND TO: OPPOSING ATTORNEYS/ PARTIES:

Name & Address of

Opposing Attorneys/Parties:

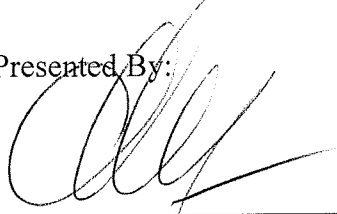
NOTE FOR CALENDAR - 1



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1 DATED June 12, 2008


2 Presented By:

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5 C.THOMAS MOSER, WSBA #7287
6 Attorney for Petitioners

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NOTE FOR CALENDAR - 2

 **MOSER**
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