

BEFORE THE CITY OF CAMAS HEARINGS EXAMINER

Karin Nostrati on behalf of Morning Meadows Estate et al.,

Appellant,

v.

City of Camas, a Washington municipal corporation, Permitting Agency, and

Pac USA Camas LLC,

Applicant.

*FILE NO.: SPRV23-06  
APPEAL24-1001  
PROJECT: 13<sup>TH</sup> STREET GAS STATION*

**PAC USA CAMAS LLC’S PREHEARING BRIEF ON PROPER SCOPE OF APPEAL**

**I. INTRODUCTION**

This Memorandum responds to the Hearing Examiner’s request for prehearing briefing on the proper scope and content of the upcoming hearing on the September 30, 2024, Karin Nosrati appeal<sup>1</sup> of the City’s August 15, 2024 SEPA threshold determination of non-significance and September 16, 2024 Staff Report and Decision on the Type II permits for the 13<sup>th</sup> Street Gas Station Project (“Decision”).<sup>2</sup>

<sup>1</sup> Ex. 105 (Nosrati Appeal).

<sup>2</sup> Ex. 103 (Staff Report and Decision).

## II. ISSUE PRESENTED AND SHORT ANSWER

ISSUE: Under the Camas Municipal Code, is the Examiner’s consideration of a SEPA appeal and appeal of Type II site plan review and design review decisions subject to the same standards?

SHORT ANSWER: Yes. As described below, the Camas Municipal Code (“CMC”) authorizes the Examiner to hear appeals of SEPA threshold determinations and Type II permit decisions. Both appeal processes require that an aggrieved party file a timely appeal within fourteen days of the decision at issue. Both hearings are conducted on the record, and both hearings place the burden of proof on the appellant.

Unlike a Type III predecisional open record hearing, such as a preliminary plat, where the Examiner is the decisionmaker of the first instance,<sup>3</sup> for both a SEPA appeal and a Type II appeal, the Examiner is sitting in review of the Community Development Director’s SEPA determination and permit decisions. The hearings are “on the record,” and, for both the SEPA DNS and Type II permits, the burden of proof remains with the appellant to demonstrate clear error in the City’s decisions.

## III. ARGUMENT

### A. Ms. Karin Nosrati is the Sole Appellant in this Matter.

At the November 14, 2024 hearing, the issue arose as to whether Ms. Karin Nosrati is the appellant in this case or whether the approximately thirty-six other households that were listed by Ms. Nosrati in her appeal as “neighbors [that] would like to be included in the appeal and receive an invitation to the hearing” are also appellants.<sup>4</sup>

There are two reasons why the Ms. Nosrati is the only appellant in this matter:

First, in her appeal statement, Ms. Nosrati identifies herself as the sole appellant and claims that she is acting “[o]n behalf of the residents of Morning Meadows Estates, residents of Katie’s

<sup>3</sup> A Type III decision is final decision made by the Examiner, after an “open record predecision hearing” and governed by different procedures than appeals of SEPA threshold determinations and Type II decisions. *See*, CMC 2.15.080 (B-C); CMC 18.55.180 (hearing procedure for Type III decisions).

<sup>4</sup> Ex. 105 (Nosrati Appeal, p. 3).

Hill and residents of Evergreen Acres Tract.”<sup>5</sup> She uses the singular to refer to herself as the appealing party—“[I] am appealing . . . .”<sup>6</sup> Of all the individuals listed on appeal statement pages 3-5, she put the word (“Appellant”) only after her name and that of her husband.<sup>7</sup> Finally, CMC 18.55.200(6) requires that an appeal include “a statement that the appellant has read the notice of appeal and believes the content to be true, followed by the appellant’s signature.” Here, while she did not sign the appeal, Ms. Nosrati’s typed name is the only one appearing after the required verification.

Second, in addition to the plain language of her appeal statement, under the applicable appeal procedures, Ms. Nosrati is the only appellant of record who filed a timely appeal. CMC 16.13.060 lists the requirements for perfecting a SEPA appeal, and CMC 18.55.200 lists the requirements for perfecting an appeal of a Type II decision.<sup>8</sup> Both provisions require that an appeal be filed within fourteen days of the decision being appealed. Ms. Nosrati is the only person who has met this requirement, and therefore is the only person who has not lost standing as a result of a failure to exhaust administrative remedies. *Ward v. Bd. of Cnty. Comm'rs, Skagit Cnty.*, 86 Wn. App. 266, 271, 936 P.2d 42 (1997) (“The doctrine of exhaustion of administrative remedies is well established in Washington. In general, agency action cannot be challenged on review unless all rights of administrative appeal have been exhausted.”);<sup>9</sup> *West v. Stahley*, 155 Wn. App. 691, 697, 229 P.3d 943 (2010), *as amended* (Aug. 5, 2010) (hearing examiner properly dismissed an appeal of an engineering permit filed more than fourteen days after the permit issued, as the untimely appeal precluded subsequent LUPA review).

<sup>5</sup> Ex. 105 (Nosrati Appeal, p. 1).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at p. 5.

<sup>8</sup> Here, the City’s SEPA threshold determination is made by the City’s Community Development Director, who the Code designates as the City’s SEPA responsible official, and is appealable to the Examiner. CMC 16.13.060; CMC 18.055.030(E). Likewise, the City’s site plan review and design review (major) are both Type II decisions made by the City’s Community Development Director or his or her designee. CMC 18.55.030, Table 1; 18.055.030(1)(B); 18.55.200(A).

<sup>9</sup> The Wards were denied review because their attorney was one day late in filing an appeal of a hearing examiner’s decision to the County’s Commissioners.

In undertaking the role of a lawyer, pro se litigants assume the duties and responsibilities of a lawyer and are held accountable to the same standard of legal knowledge. *Batten v. Abrams*, 28 Wn. App. 737, 739 n.1, 626 P.2d 984, *rev. denied*, 95 Wn.2d 1033 (1981). Even taking into account the relaxed standards of a quasi-judicial administrative proceeding, Ms. Nosrati should be held to the presentation of her case. The principle of fairness to all parties dictates that the scope of Ms. Nosrati's appeal, and by extension, the Examiner's jurisdiction, is based upon the record created before the Community Development Department, the issues presented in Ms. Nosrati's September 30, 2024 appeal statement, and the evidence that she presents at the consolidated appeal hearing to support her claims of error on those issues.

**B. The Nosrati Appeal Is Primarily a SEPA Appeal.**

The Nosrati appeal statement lists seven issues.<sup>10</sup> Five of the issues are properly characterized as SEPA issues, one is a Type II permit issue on whether a car wash is an allowed use in the BP zone, and the final issue, regarding the City's alleged potential liability for granting an exception to an intersection/parcel access spacing standard is likely outside of the Examiner's purview.

**The SEPA issues are as follows:**

1. Pollute open waters in the vicinity, increasing concerns about management of the Lacamas Lake watershed;
2. Endanger safe drinking water supply of immediate neighbors['] wells;
3. Create noise and light pollution that would interfere with the quiet enjoyment of residences in the nearby neighborhoods;
4. Create a dangerous intersection with multiple safety concerns: Ingress and egress is proposed where there is poor visibility due to the topography of the Goodwin Road hill and it's (sic) near 90 degree turn; insufficient braking distance to avoid a crash; disrupt traffic including school bus traffic to nearby high school; and

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<sup>10</sup> Ex. 105 (Nosrati Appeal, p. 3).  
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5. Disrupt recreational use of designated bicycle route, create a hazardous crossing for pedestrians, including students.

**The Type II permit issue is:**

1. Permit the construction of a car wash in a BP zoning (sic), potentially violating zoning requirements. Camas has previously only permitted car washes in CC zoning. A car wash is not listed in the City of Camas Code of Ordinances.

**The Unclassified Issue is:**

1. Expose the City of Camas to liability for granting an exception to the posted Access Standards if permitting a left turn access shorter than 660 ft into the parcel.

Thus, the bulk of the Nosrati appeal relates to SEPA, with one zoning issue. As explained below, regardless of the characterization of the issues, both the City’s SEPA and the Type II Permit appeal standards call for a hearing on the record and establish that Ms. Nosrati is the only person with standing to pursue that appeal.

**C. Code Requirements for a SEPA Appeal**

Per CMC18.55.165(E), all SEPA appeals must be filed in writing with the City of Camas clerk and accompanied by the required filing fee. The notice of appeal “*shall be filed no later than fourteen days after the threshold determination has been issued*” and “*shall identify the appellant, establish standing, and set principal points of the appeal.*”<sup>11</sup> Here, there was only one appeal filed, with one appeal fee paid, and that appeal identified Ms. Nosrati as the appellant. Subsequent requests by other individuals to provide comments after the SEPA comment period closed on August 29, 2024, or to join the appeal after the appeal deadline passed are simply untimely and are not properly part of the administrative record for this appeal. For this reason, materials received from non-parties after the close of the SEPA comment period (for SEPA issues) and issuance of the City’s Decision (for Type II permit issues) should not be admitted at the hearing.

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<sup>11</sup> Emphasis added.

**D. Code Requirements for a Type II Appeal.**

The same 14-day bar applies for appealing the City’s Type II site review and design review decisions. CMC 18.55.200(A) (Type II decisions may be appealed to the hearing examiner); CMC 18.55.200(C) (“*All appeals are initiated by filing a notice of appeal with the director within fourteen days of issuance of the decision being appealed.*”)<sup>12</sup> The Type II appeal statement must include the appellant’s name, address, and phone number; the appellant’s statement describing their or other’s standing to appeal; identification of the application which is the subject of the appeal; the appellant’s statement of grounds for the appeal and the facts upon which the appeal is based; the relief sought, including the specific nature and extent; and a statement that the appellant has read the notice of appeal and believes the content to be true, followed by the appellant’s signature. CMC 18.55.200(D)(1-6). Again, Ms. Nosrati is the only person who has met these requirements, and therefore is the only appellant of record with standing to prosecute the Type II appeal.

**E. The Hearing Examiner’s Jurisdiction for Both a SEPA Appeal and a Type II Permit Appeal is Limited to the Issues Raised in the Appeal Statement.**

As a quasi-judicial administrative officer, the Examiner’s authority is defined by the enabling legislation of the local government that created that position. *Chaussee v. Snohomish Cnty. Council*, 38 Wn. App. 630, 636, 689 P.2d 1084 (1984) (“[a]dministrative agencies are creatures of the legislature without inherent or common-law powers and may exercise only those powers conferred either expressly or by necessary implication”).

Chapter 2.15 CMC creates the City’s hearing examiner system and grants the Examiner the power to hear a variety of matters including SEPA threshold determinations and Type II permit decisions. CMC 2.15.020 and CMC 2.15.080(B-C).

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<sup>12</sup> Emphasis added.

For Type II decisions:

The director’s decision shall become final at the close of business on the fourteenth day after the date on the decision unless an appeal is filed. ***If an appeal is received the hearings examiner will review the decision based on the record and render the city’s final decision.***

CMC 18.55.030(B) (emphasis added).

The City uses a consolidated process for SEPA threshold determination and project permit application review. Per CMC 18.55.165(C) SEPA appeals, other than an appeal of a DS, are consolidated with the underlying substantive permit decision. Thus, for both SEPA and Type II appeals, the appeal is based on the record, and the scope of the appeal is defined by the issues raised in a timely filed appeal statement. New parties cannot be added, and new issues cannot be raised after the 14-day appeal period. Furthermore, both SEPA and Ch. 36.70C (“LUPA”) require exhaustion of administrative remedies as an element of standing. RCW 43.21C.075(4) and RCW 36.70C.060(2)(d). Thus, the timely filing of an appeal statement establishes both the appellant’s standing and the issues subject to review.

**F. An Open Record Hearing for a SEPA and Type II Permit Appeal Does Not Create an Opportunity for the Introduction of New Parties or New Appeal Issues.**

Washington’s Local Project Review Act (Ch. 36.70B RCW) distinguishes between “open record predecision hearings” and “open record appeal hearings”. RCW 36.70B.030(3). An open record hearing that is held prior to a local government’s decision on a project permit is known as an “open record predecision hearing.” *Id.* An open record hearing held on an appeal, is known as an “open record appeal hearing,” if no open record predecision hearing has been held on the project permit. *Id.* Thus, the Nosrati appeal is an open record appeal hearing. Per §4(4) of the Examiner’s Rules of Type II Appeal Procedure for the City of Camas (“HE Rules”) “[t]he appellant has the burden of proof . . .” for a Type II appeal.

#### IV. CONCLUSION

While she may be representing the interests of other community members, Ms. Nosrati is the appellant here. Her SEPA/Type II permit appeal is limited to the issues raised in her September 30, 2024 appeal statement. Whether Ms. Nosrati's appeal is characterized as a SEPA appeal, a Type II permit appeal, or both, she bears the burden of demonstrating that the City's threshold determination and permit decision were in error. Under the applicable law, there is no basis for allowing an expansion of Ms. Nosrati's appeal, by adding new parties, admitting third-party comments that were offered after the applicable comment deadlines, or considering issues beyond those contained in Ms. Nosrati's appeal statement.

For these reasons, the applicant, PAC USA Camas, LLC, respectfully requests that the Examiner issue a pre-hearing order on the scope and procedures for Ms. Nosrati's appeal that is consistent with the applicable law as outlined in this Memorandum.

Dated this 21<sup>st</sup> day of November 2024.

SCHWABE, WILLIAMSON & WYATT, P.C.

By: /s/ Patrick J. Mullaney  
Patrick J. Mullaney, WSBA #21982  
[pmullaney@schwabe.com](mailto:pmullaney@schwabe.com)  
Stephen W. Horenstein, WSBA #6183  
[shorenstein@schwabe.com](mailto:shorenstein@schwabe.com)  
1420 5<sup>th</sup> Avenue, Suite 3400  
Seattle, WA 98101  
Phone: 206-622-1711  
*Attorneys PAC USA Camas LLC*



**CERTIFICATE OF SERVICE**

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct: That on the 21st day of November 2024, I arranged for service of the foregoing **PAC USA CAMAS LLC'S PREHEARING BRIEF ON PROPER SCOPE OF APPEAL** via Electronic Service to the parties to this action:

**Hearing Examiner's Office:**

Carey Certo  
[ccerto@cityofcamas.us](mailto:ccerto@cityofcamas.us)

**Appellant:**

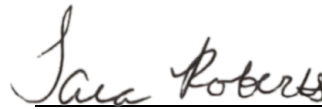
Karin L. Nosrati  
[bforback@gmail.com](mailto:bforback@gmail.com)

**Applicant:**

PLS Engineering  
Travis Johnson  
[travis@plsengineering.com](mailto:travis@plsengineering.com)

**City of Camas:**

Shawn MacPherson  
[SMacPherson@cityofcamas.us](mailto:SMacPherson@cityofcamas.us)  
Robert Maul  
[RMaul@cityofcamas.us](mailto:RMaul@cityofcamas.us)  
Alan Peters  
[Apeters@cityofcamas.us](mailto:Apeters@cityofcamas.us)  
Yvette Sennewald  
[ysennewald@cityofcamas.us](mailto:ysennewald@cityofcamas.us)



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Tara Roberts, Legal Assistant