

**BEFORE THE LAND USE EXAMINER
FOR THE CITY OF CAMAS, WASHINGTON**

Regarding an appeal of an administrative) **PROCEDURAL ORDER**
 decision conditionally approving a gas station,)
 convenience store, and car wash at 20101 NE) **SPRV23-06/APPEAL24-1001**
 13th Street in the City of Camas, Washington) **(13th Street Gas Station- Appeal)**

A. SUMMARY

1. PLS Engineering, representing the property owner, Pak USA Camas, LLC, (the applicant) requested approval of an eight-pump gas station, a 4,100 square-foot convenience store, and a drive-thru car wash on a 0.97-acre parcel located at 20101 NE 13th Street; also known as Clark County Assessor parcel number 176148000 (the “site”).

a. The site and abutting properties to the south and east are located in the City of Camas and zoned BP (Business Park). Properties to the west are located in unincorporated Clark County and zoned R1-10 (Residential, 10,000 square foot minimum lot size). Properties to the north, across NE 13th Street, are located in unincorporated Clark County and zoned R1-20 (Residential, 20,000 square foot minimum lot size).

2. On August 15, 2024, the City of Camas published a revised SEPA threshold determination of Non-Significance (DNS) for this project.¹ (Exhibit 90). The 14-day comment period expired on August 29, 2024.

3. On September 16, 2024, the City of Camas Planning Director (the “director”) issued a Type II decision approving the application subject to conditions of approval. (Exhibit 103).

4. On September 30, 2024, the City received an appeal of the Director’s decision filed by Karin L Nosrati “On behalf of the residents of Morning Meadows Estates, residents of Katie’s Hill and residents of Evergreen Acre Tracts...” The appeal further provided that “The following neighbors would like to be included in the appeal and receive an invitation to the hearing:” and listed 49 individuals (34 households), including Ms. Nosrati and her husband. (Exhibit 105). The appeal included the following statement:

This project has potential to

- Pollute open waters in the vicinity, increasing concerns about management of the Lacamas Lake watershed.
- Endanger safe drinking water supply of immediate neighbors on wells
- Create noise and light pollution that would interfere with the quiet enjoyment of residences in nearby neighborhoods

¹ The City originally published a DNS on February 22, 2024, with a comment period closing on March 7, 2024. (Exhibit 35). However, the applicant submitted a revised SEPA Checklist and supporting documents on July 15, 2024. (Exhibit 81). Therefore, the City reissued the DNS to allow comments on the revised documents.

- Permit the construction of a car wash in a BP zoning, 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
- 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 near 90 degree turn; insufficient braking distance to avoid a crash; disrupt traffic including school bus traffic to nearby high school
- 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.
- Disrupt recreational use of the designated bicycle route; create a hazardous crossing for pedestrians, including students

5. The City scheduled a public hearing before City of Camas Hearing Examiner Joe Turner (the "examiner") on November 14, 2024, to consider the appeal. At the hearing, issues were raised regarding:

a. Whether Ms. Nosrati is the sole appellant or whether the 49 individuals listed in the appeal are also appellants;

b. Whether the appeal only addressed the City's substantive decision or also included an appeal of the City's SEPA determination of Non-Significance (DNS) published on August 15, 2024 (Exhibit 91); and

c. What procedures apply to the appeal hearing, including:

i. Whether the appeal hearing is an open or closed record hearing;

ii. Who may testify in support of the appeal;

iii. Which party carries the burden of proof on appeal; and

iv. What exhibits are included in the record for the appeal.

6. The examiner accepted limited argument from the parties regarding these issues and substantive testimony from one witness at the initial hearing on November 14, 2024. Pursuant to the applicant's request, the examiner continued the hearing until 4:30 p.m. on Thursday, December 12, 2024. The examiner order the parties to submit any new documents to the City, subject to the following schedule:

a. All parties must submit initial arguments regarding the appeal procedural issues listed above no later than 5:00 p.m. on November 21, 2024;

b. All parties must submit rebuttal arguments regarding the appeal procedural issues listed above no later than 5:00 p.m. on November 27, 2024; and

c. All parties must submit arguments and evidence regarding the substantive issues and the examiner must submit an interim procedural order addressing the issues listed above and setting out the procedural rules for the appeal hearing no later than 5:00 p.m. on December 6, 2024.

7. This Procedural Order is limited to the procedural issues listed above and discussed in this Procedural Order. The examiner will expressly incorporate this Procedural Order into the Final Order. This Procedural Order is not subject to appeal except as part of the subsequent Final Order.

B. DISCUSSION

1. The examiner finds that the appellant is the unnamed informal organization of 49 neighbors listed in the appeal.

a. Karin L. Nosrati filed the appeal expressly stating, “On behalf of the residents of Morning Meadows Estates, residents of Katie’s Hill and residents of Evergreen Acre Tracts, I am appealing the approval...” and listed the names and addresses of 49 individuals. (Exhibit 105 at 1). In response to Ms. Nosrati’s question “Can one person submit the appeal or should it be submitted by some or all of the neighbors” (Exhibit 131 at 16) the City replied, “You can file one appeal with others to join.” (Exhibit 131 at 19). The City’s online appeal filing system only allowed for a single appellant signature. (Exhibit 131 at 29-25).

b. Given the above, the examiner finds that the appellant informal organization clearly intended to file a single appeal on behalf of all 49 “members” of the organization listed in the appeal. This is no different than an attorney filing an appeal on behalf of a group of neighbors. Ms. Nosrati filed and signed the appeal as the designated representative and contact person for the unnamed informal organization of residents listed in the appeal.

c. As the appellant’s designated representative and contact person, any documents or information provided to the organization, including service of any LUPA appeal required by RCW 36.70C.040(2), shall be directed to Ms. Nosrati, unless the appellant expressly designates in writing a different contact person for this appeal and submits that written designation to the City and the applicant. The designation must include the new representative’s name, telephone number, mailing and email addresses.

2. The examiner finds that the appellant filed a timely appeal of both the City’s SEPA determination and substantive administrative decision.

a. CMC18.55.165(E) provides:

1. All SEPA appeals shall be filed in writing with the City of Camas clerk accompanied by the required filing fee.

2. The notice of appeal shall identify the appellant, establish standing, and set principal points of the appeal.
3. The notice of appeal shall be filed no later than fourteen days after the threshold determination has been issued.

b. CMC 18.55.200 provides, in relevant part:

- A. Type II decisions may be appealed to the hearings examiner.
- B. The following decisions may be appealed to the City Council: (1) Shoreline master program permits; (2) SEPA decisions; (3) civil regulatory orders, and (4) civil fines. For all other decisions under this chapter, there is no appeal to any other decision maker within the city.
- C. All appeals are initiated by filing a notice of appeal with the director within fourteen days of issuance of the decision being appealed.

...

c. CMC 16.13.060 provides:

Except for permits and variances issued pursuant to the Camas shoreline master program and consolidated appeals pursuant to Section 18.55.265(C), when any proposal or action is conditioned or denied on the basis of SEPA by a nonelected official, the decision shall be appealable to the hearings examiner. Such appeal may be perfected by the proponent or any aggrieved party by giving notice to the city of Camas clerk within fourteen days of the date the decision was issued.

d. RCW 43.21C.075(2) requires that SEPA appeals be combined with the associated decision and that SEPA appeals are subject to the same filing deadline as the associated decision, in this case within 14 days from the date of the City's administrative decision approving this application.

e. The Notice of Decision does not clearly distinguish between the director's SEPA determination and the substantive Type II administrative decision.

i. The Notice of Decision identifies the director's decision as "13TH STREET GAS STATION (FILE NO. SPRV23-06) (CONSOLIDATED FILES: ARCH23-07, CA23-08, DR23-09, SEPA23-12). (Exhibit 104 at 1). The Notice of Decision provides "**THIS IS TO SERVE AS NOTICE** that a decision of APPROVAL has been rendered for a Type II Site Plan Review Application for the **13th Street Gas Station.**" (*Id.* All emphasis in original). The Notice of Decision refers to the SEPA determination as one of the "consolidated files" addressed in the decision and makes no

mention of a separate process for appeals of the director's SEPA determination. The "APPEAL PROCEDURES" section of the decision merely states "Decisions may be appealed to the hearing examiner." This implies that that the "decision" includes the director's decision approving the Site Plan Review (SPR) as well as all of the listed "consolidated files", ARCH23-07, CA23-08, DR23-09, SEPA23-12, are subject to appeal to the examiner.

(A) This interpretation is also consistent with the use of the plural term quoted above, stating "Decisions may be appealed to the hearing examiner" (*Id.* Underline added) rather than the singular phrase "This decision may be appealed..."

f. The appellant filed the appeal within 14 days from the date of the director's decision. Therefore, the appeal was timely.

g. The appeal narrative provides the appellant is "[a]ppealing the approval of a project called 13TH STREET GAS STATION (FILE NO. SPRV23-06)." (Exhibit 105). However, the appeal clearly objects to several issues addressed in the director's SEPA determination, demonstrating the appellant's intent to appeal both the director's SEPA determination and the director's decision approving the site plan application.

h. The City argues that "[t]he appellant would need to indicate that they are appealing the SEPA determination, and they must explicitly raise issues regarding the environmental review." (Ex 128 at 1). However, the City failed to provide any support for this assertion.

i. Given the City's failure to clearly establish separate appeal procedures distinguishing between substantive and SEPA appeals and the appellant's clear intent to object to the City's SEPA determination, the examiner finds that this appeal must be treated as an appeal of both the SEPA and substantive decisions.

3. As this is an appeal of an administrative decision, with no prior open record hearing, the examiner will conduct the hearing as an open record appeal hearing. This is consistent with RCW 36.70B.050(2), which provides "Except for the appeal of a determination of significance as provided in RCW 43.21C.075, [local governments shall] provide for no more than one open record hearing and one closed record appeal", and RCW 36.70B.020, which provides, in relevant part:

- (1) "Closed record appeal" means an administrative appeal on the record to a local government body or officer, including the legislative body, following an open record hearing on a project permit application when the appeal is on the record with no or limited new evidence or information allowed to be submitted and only appeal argument allowed.
- ...
- (3) "Open record hearing" means a hearing, conducted by a single hearing body or officer authorized by the local government to conduct such hearings, that creates the local government's record through testimony and submission of evidence and

information, under procedures prescribed by the local government by ordinance or resolution. An open record hearing may be held prior to a local government's decision on a project permit to be known as an "open record predecision hearing." An open record hearing may be held on an appeal, to be known as an "open record appeal hearing," if no open record predecision hearing has been held on the project permit.

(Underlines added).

In this case the City reviewed the application through its Type II review process, issuing an administrative decision without a hearing after providing public notice and an opportunity for written comments. Therefore, a closed record hearing is not allowed in this case, as the appeal is not “[f]ollowing an open record hearing on a project permit application...” RCW 36.70B.020(1).

4. The examiner will bifurcate the appeal hearing in this matter, first considering the SEPA procedural appeal and then the substantive appeal of the director’s site plan review decision. The following procedures apply to the SEPA appeal portion of the hearing.

a. The City has the initial burden of proof to demonstrate that it actually considered relevant environmental factors "in a manner sufficient to be a *prima facie* compliance with the procedural dictates of SEPA" before issuing a SEPA determination. *Boehm v. City of Vancouver*, 111 Wn. App. 711, 718, 47 P.3d 137 (2002). *Prima facie* compliance requires a showing “that there is evidence of sufficient circumstances which would lead to a logical and reasonable inference of the facts sought to be proved.” *State v. Vangerpen*, 71 Wn. App. 94, 98, 856 P.2d 1106 (1993). There is no obligation to examine every remote and speculative impact. *Cheney v. Mountlake Terrace*, 87 Wn.2d 338, 344-45, 552 P.2d 184 (1976).

b. If the City makes this *prima facie* showing, the burden shifts to the appellant to establish a violation of SEPA. The examiner must consider the appeals based on the “clearly erroneous” standard of review. *Chuckanut Conservancy v. Dep't of Natural Resources*, 156 Wash.App. 274, 286, 232 P.3d 1154 (2010). The examiner is required to give substantial weight to the threshold determination by the City’s determination. RCW 43.21C.090. The examiner may only reverse the SEPA Official’s decision if he is, “[I]left with the definite and firm conviction that a mistake has been committed.” *Norway Hill Pres. & Prot. Ass'n v. King County*, 87 Wash.2d 267, 274, 552 P.2d 674 (1976) (quoting *Ancheta v. Daly*, 77 Wash.2d 255, 259, 461 P.2d 531 (1969)).

c. CMC18.55.165(E) requires that SEPA appeals must “set principal points of the appeal.” Therefore, the examiner will limit the appeal to the specific SEPA issues raised in the appeal. (Exhibit 105).

d. The examiner will take testimony from parties to the appeal in the following order:

i. From the City, as the City has the initial burden of proof to demonstrate that it actually considered relevant environmental factors.

ii. From the appellant, as the appellant bears the burden of proof on appeal;

iii. From the applicant.

iv. Rebuttal testimony from the appellant.

v. The examiner will not accept testimony from the general public (persons who are not listed in the appeal). (Exhibit 105).

e. The examiner will then close the SEPA appeal portion of the hearing and proceed with the hearing regarding the appeal of the director's substantive decision.

f. The examiner will swear in all witnesses prior to taking any testimony, as required by RCW 43.21C.075(3)(c).

5. The examiner is serving in an appellate capacity for purposes of this appeal of the Community Development Director's permit decision. Therefore, the appellant continues to bear the burden of proof for this portion of the appeal; the appellant must show that the proposed development does not comply with the Code.

a. The examiner will accept testimony regarding the substantive appeal in the following order:

i. From the appellant, as the appellant bears the burden of proof on appeal;

ii. From the applicant in response to the appeal;

iii. From the City in response to the appeal; and

iv. Rebuttal testimony from the appellant.

v. The examiner will not accept testimony from the general public (persons who are not listed in the appeal). (Exhibit 105).

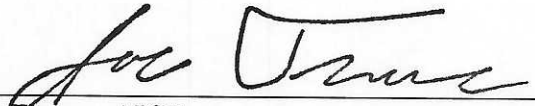
b. Gas stations and associated accessory uses are permitted uses in the BP zone. Therefore, the substantive portion of the hearing will be limited to whether the proposed development does or can comply with the relatively objective approval criteria set out in the Staff Report: CMC 16.31 (Archeological Preservation), CMC 16.51 (Critical Areas), CMC 18.18 (Site Plan Review, and CMC 18.19 (Design Review), and whether the proposed car wash facility is allowed in the BP zone. Concerns regarding the potential adverse environmental and health impacts of the proposed gas station are not relevant to this portion of the review.

6. The hearing the examiner will close the hearing at the conclusion of the substantive appeal portion of the appeal.

E. CONCLUSION

The examiner will conduct the continued hearing regarding this appeal at 4:30 p.m. on December 12, 2024, subject to the procedures set out in this Procedural Order.

DATED this 2nd day of December 2024.



Joe Turner, AICP
City of Camas Land Use Hearings Examiner

THIS “PROCEDURAL ORDER” IS NOT A “FINAL DECISION” SUBJECT TO APPEAL TO SUPERIOR COURT. The examiner will issue a subsequent Final Order ruling on the SEPA and substantive appeals after the close of the record in this case. The examiner will expressly incorporate this Procedural Order into the Final Order. This Procedural Order may be appealed as part of the subsequent Final Order in this case.