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**BEFORE THE HEARING EXAMINER
FOR THE CITY OF REDMOND**

In the Matter of the Appeal of

Jim Jordan

Of the December 18, 2020
State Environmental Policy Act
Determination of Non-Significance
#SEPA-2019-01173 related to the
proposed Cascadia Montessori School
Expansion at 4239 – 162nd Avenue NE,
Redmond

NO. APL LAND-2021-00035

CITY OF REDMOND’S CLOSING ARGUMENT

I. INTRODUCTION

At the conclusion of the hearing in this matter, the Hearing Examiner gave the parties the option of submitting written closing argument. While the legal issues in this appeal have been addressed in full in the City’s Prehearing Brief, the City takes this opportunity to address those issues further in light of the evidence presented at the hearing.

II. CLOSING ARGUMENT

A. Notice of the DNS was Properly Posted and the City Followed all Required SEPA Procedures.

The Appellant’s claim that the City failed to comply with SEPA notice procedures is simply not correct based on the exhibits and testimony submitted at the hearing. The record reflects that the City properly mailed notice of the DNS to all persons required to receive it, including the Appellant, and that the Appellant received the same on December 22, 2020. *Exhibit R-4; Exhibit R-2, Attachment*

1 at p. 1; *Testimony of B. Sticka; Testimony of J. Jordan*. The testimony and exhibits also show that a
2 sign with a laminated copy of the SEPA determination was properly posted at the Cascade Montessori
3 School site and that the sign remained posted from December 17, 2020 to the date of the hearing.
4 *Exhibit C-9; Exhibit R-10; Testimony of T. Keeton; Testimony of P. Keeton*.

5 The Appellant raised two issues regarding notice, neither of which demonstrates a failure to
6 follow the notice procedures in the Redmond Zoning Code. First, the Appellant contended in his
7 written appeal statement that on December 28, 2020, when he went by the School site, the copies of
8 the DNS in the plastic “take one” sleeve below the sign were turned to face inward, rather than
9 outward. *Exhibit R-2, Attachment at p. 1*. But even if this were true, Appellant failed to explain why
10 this would result in defective notice, since the laminated copy of the DNS appearing on the right side
11 of the sign was not affected and that notice is all that RZC 21.76.080 requires. Second, at the hearing
12 the Appellant appeared to contend for the first time that the entire sign was down on December 28.
13 But this was contradicted by the testimony of Ms. Keeton and Mr. Keeton and was also directly
14 contrary to the Appellant’s written appeal statement. *Testimony of T. Keeton; Testimony of P. Keeton;*
15 *Exhibit R-2, Attachment 1 at p. 1*. In short, Appellant simply failed to prove that notice was defective,
16 and the evidence submitted at the hearing proved that the Appellant was incorrect.

17 **B. The Appellant Failed to Prove that Issuance of the DNS was Clearly Erroneous.**

18 As noted at the outset of the City’s Prehearing Brief, the Appellant’s burden in this appeal is
19 to show that issuance of the Determination of Nonsignificance (DNS) for the Cascadia Montessori
20 School Expansion was “clearly erroneous.” *Wenatchee Sportsmen Ass’n. v. Chelan County*, 141
21 Wn.2d 169, 176, 4 P.3d 123 (2000); *Anderson v. Pierce County, supra*, 86 Wn. App. at 302. A
22 decision is “clearly erroneous” only when, although there is evidence to support it, the reviewing body
23 is “left with the definite and firm conviction that a mistake has been committed.” *Id.* (citing *Norway*
24 *Hill Preservation & Protection Ass’n. v. King County Council*, 87 Wn.2d 267, 274, 552 P.2d 674
25 (1976)).

26 The Appellant made two arguments in attempting to meet his burden. First, the Appellant
27 argued that the City had insufficient information on which to base the DNS because (a) the City failed
28 to consider the impact of changes it was allegedly intending to make on 162nd Avenue NE to narrow

1 the travel lanes from 12 feet to 10 feet and to permit 6-foot wide parking stalls on both sides of the
2 street; (b) the City failed to consider cut through traffic on 162nd that would allegedly come from
3 Microsoft's planned expansion of its campus; and (c) the City failed to recognize alleged gaps in the
4 Applicant's traffic and parking studies arising from the use of FTEs to estimate parking demand and
5 the lack of information regarding the number of classrooms and instructional rooms. Second, the
6 Appellant argued the School Expansion project would, in fact, have probable significant impacts from
7 traffic queuing and parking. The Appellant failed to meet his burden on either argument. *Exhibit R-*
8 *2 (Jordan Appeal), Attachment at 2; Testimony of J. Jordan.*

9 With respect to the insufficient information claim, the testimony at the hearing demonstrated
10 that the Appellant's concerns were misplaced. First, both Andy Chow, the City's Development
11 Engineering Manager, and Bruce Newman, a Senior Engineer in the City's Transportation Division,
12 testified that the City has no plans to change 162nd Avenue NE by narrowing the travel lanes or parking
13 spaces and that on-street parking is currently allowed on both sides of the street. *Testimony of A.*
14 *Chow; Testimony of B. Newman.* Mr. Newman further testified that given the low traffic volumes and
15 speeds on 162nd Avenue NE, the conflicts envisioned by the Appellant between vehicular traffic and
16 people opening doors of parked cars were unlikely to be unsafe. *Testimony of B. Newman.* Second,
17 even as he testified regarding his Microsoft traffic concerns, the Appellant admitted that his concern
18 was based on a subjective feeling rather than any traffic data. *Testimony of J. Jordan.* Finally, on
19 cross-examination by the Appellant, the Applicant's traffic engineer, Amy Wasserman, testified that
20 her analysis of parking needs was based on the total number of School employees regardless of part-
21 or full-time status, and not on an FTE count. *Testimony of A. Wasserman.* Ms. Wasserman also
22 testified, under cross-examination by the undersigned, that the number of classrooms and instructional
23 rooms was not relevant to traffic or parking analysis and that the data that is relevant, the number of
24 students and the number of employees, was properly considered. *Id.* The testimony clearly showed
25 that the data gaps about which the Appellant was concerned did not exist and that the information the
26 City had was adequate to allow it to make an environmental determination. Appellant thus failed to
27 meet his burden of proof on his insufficient information argument.

28 The Appellant's actual impacts argument fares no better. An appellant asserting that a project

1 will have probable significant adverse environmental impacts has the burden of introducing evidence
2 to that effect. WAC 197-11-060(4)(a); *Boehm v. City of Vancouver*, 111 Wn. App. 711, 720, 47 P.3d
3 147 (2002). Here, three engineering witnesses testified at the hearing that the Cascade Montessori
4 School Expansion is unlikely to have any significant impacts on the surrounding neighborhood. Ms.
5 Wasserman, the Applicant's traffic consultant, testified that, for the reasons set forth in her report
6 (Exhibits C-1 and R-5), traffic queuing at pickup and drop-off times would be contained onsite and
7 would not spill over onto neighboring streets. *Testimony of A. Wasserman*. Ms. Wasserman also
8 testified that a total of 18 parking spaces would be necessary to accommodate the 21 part- and full-
9 time staff that would be at the School after the expansion and that the 18 spaces that would be available
10 onsite after the expansion would be adequate with no spillover parking onto 162nd Avenue NE. *Id.*
11 Andy Chow, who is a transportation engineer in addition to being the City's Development Engineering
12 Review Manager, testified that the data used by Ms. Wasserman to estimate queuing and parking
13 demand was reasonable, that Ms. Wasserman's methodology was commonly accepted and met
14 industry standards, and that Mr. Chow concurred with Ms. Wasserman's bottom-line conclusion that
15 there would be no significant adverse queuing or parking impacts from the School expansion.
16 *Testimony of A. Chow*. And Bruce Newman, who is involved day-to-day in the City's traffic
17 operations, echoed Mr. Chow's comments, concurring that the data used by Ms. Wasserman was
18 reasonable, that the methodology she used met both the City's and the industry's standards, and that
19 the School's expansion would have no significant impact on traffic or parking operations in the vicinity
20 of the School. *Testimony of B. Newman*.

21 The Appellant offered no qualified evidence to rebut the testimony of the three engineers.
22 While the Appellant testified that he had reviewed numerous traffic and parking studies during his
23 career and believed that Ms. Wasserman's analysis was flawed, the Appellant is not a transportation
24 engineer and did not present the testimony of a transportation engineer at the hearing. *Testimony of J.*
25 *Jordan*. And while the Appellant had questions about Ms. Wasserman's analysis, he did not elicit any
26 testimony from Ms. Wasserman on cross-examination, nor did he present any evidence of his own,
27 that Ms. Wasserman used flawed data, used methods that did not meet City of Redmond or industry
28 standards, or reached flawed conclusions. *Testimony of A Wasserman Testimony; Testimony of J.*

1 *Jordan*. In short, the Appellant failed to offer any competent evidence to show that the Cascadia
2 Montessori School would have probable significant adverse impacts from traffic queuing onto 162nd
3 or from parking spilling over onto that street.

4 At one point in the proceeding, the Appellant appeared to be arguing that the monitoring and
5 corrective measures contingency in the TMP for the School Expansion was an admission that the
6 traffic and parking study was flawed and that probable significant adverse impacts will occur. Impact
7 monitoring, followed by appropriate corrective measures, is an appropriate type of SEPA mitigation
8 measure. WAC 197-11-660(1)(b); WAC 197-11-768(6); *Maranatha Mining, Inc. v. Pierce County*,
9 59 Wn. App. 795, 805, 801 P.2d 985 (1990). Thus, the monitoring and corrective measures
10 contingency does not show that a significant impact will happen; the contingency ensures that no such
11 impact will occur. Appellant's argument on this point was not well-taken.

12 Given the above, the Appellant failed to meet his burden. The City had adequate information
13 to assess the traffic and parking impacts of the proposal in the form of a traffic and parking study
14 prepared by a qualified professional that met City and industry standards. The Appellant failed to
15 show that the study was flawed or that evidence outside of the study demonstrated that a probable
16 significant adverse impact would occur. On this record, the Hearing Examiner cannot be firmly
17 convinced that a mistake was made. The Technical Committee's decision to issue a DNS was not
18 clearly erroneous and must be upheld.

19 **III. CONCLUSION**

20 For the reasons set forth above, the City respectfully submits that the appeal should be
21 dismissed. The City followed all required notice procedures for issuing the DNS. The Appellant
22 failed to show that the DNS was based on inadequate information of that a probable significant adverse
23 impact will occur. Issuance of the DNS was not clearly erroneous, and the DNS must be upheld.

24 DATED this 5th day of April, 2021.

25 OGDEN MURPHY WALLACE, P.L.L.C.

26
27 /s/ James E. Haney

28 James E. Haney, WSBA #11058
Attorneys for City of Redmond