

FAIRGROUNDS NEIGHBORHOOD ASSOCIATION

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Executive Board
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FINAL ORDER Salmon Creek Commercial Center APL2006-00011

Page one – please note the correct spelling of my name (Bridget Schwarz) and my correct address (2110 NW 179th Street).

- 1) Type III process. As per county code, this should have been a Type III review.
When Costco submitted their application for a Salmon Creek location we made that case. County staff agreed but would not risk a developer's lawsuit resulting from a belated change to a Type II process.
With this application, we made the same case, citing the same county code. In response, this time county staff quoted an obscure section of county code, clearly in conflict with the intent for public involvement in the process.
The cost of an appeal of the staff decision to the Hearings Examiner in a Type II review (already part of a Type III process) is exorbitant (more than \$1000). *We want our money back!*

- 2) Fully complete status. When the development review application was made available we pounced on it. Among other concerns, we found that the application did not include a traffic impact study, support for the applicant's claim the Water's Edge storm water system had capacity for their project, or the legal right to use it.
To obtain this material FGNA members made numerous trips to the county to examine the public record. It wasn't there either. Then we put our requests in writing.
Community Development staff never could provide the public with a traffic impact study. (We finally got one from Public Works.) Despite repeated requests to the applicant, staff never could obtain the storm water system design that was the basis for the applicant's storm water management proposal. (They finally submitted it to the HE.) And after a great deal of legal research and the HE review, the legal right to use the condo's storm water system is still in question.
The amount of new material submitted by the Applicant during the Hearings Examiner process – measured in inches, if not feet - is testament that the development review application was not fully complete when the staff began their review. Even with the HE decision, many issues are *still* not resolved.
How can an adequate Staff Report be prepared when critical material is missing?

- 3) Salmon Creek development moratorium/project vesting. The first moratorium was resolved only on paper.
Lowering the travel speed standard allowed more cars to clog the corridor. Of the approximately 2000 new PM peak hour trips created, the board reserved 1000 trips for jobs. The county vested 655 of them in a project that will create jobs for minimum wage no benefit citizens selling cheap products made by exploited overseas workers at the expense of middle class American jobs.
The second moratorium has delayed developments that will bring family wage jobs to the area. So now the board wants to shrink the moratorium area and exempt certain kinds of development from the current moratorium. This, despite over 1000 more approved trips that have not yet hit the corridor and uncertain funding for a transportation infrastructure fix that will not start construction for many years.
Washington is one of only a handful of states that allow developers to vest their projects years before the development review applications are submitted, or projects gain approval, or building permits are issued. Once vested, these developments avoid compliance with current regulations and codes.

- 4) Engineering stamps. Admiration for engineering approval trumps common sense.
In regards to the applicant's storm water experts, among other things they missed several obvious flaws in their proposed storm water plans (i.e. the 9" pipe connection upon which they rely does not exist).
In regards to the applicant's traffic experts, the HE finds that the Mill Plain FGNA traffic study was "planned and conducted by nonprofessionals, not under the supervision of anyone with professional experience... and the data was never reviewed or analyzed by anyone with professional experience." Does that mean we can not draw an accurate site

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layout and count cars that pass an imaginary line on and off the property?

In contrast, the applicants traffic counts at the same location “were collected under the supervision of traffic engineers... and the updated TIA based on that study was prepared, reviewed and analyzed by professional transportation engineers.”

Still unexplained is how these *trained professionals and engineers* produced a traffic study that counts cars accessing the Mill Plain location from 2 driveways off of an interstate freeway and 3 driveways over a chain link fence and through the backyards of residents on the north side of the location.

5) Traffic safety hazards -1. The HE concludes (page 19) “the record does not support the conclusion that there is an existing traffic safety hazard at any of the near-by intersections sufficient to implicate the denial authority..” He reasons that none of the lay witnesses who provided personal observation of traffic safety hazards were stating a professional opinion.

Observation and reporting of traffic safety hazards is not required of the applicants traffic analysis. This effectively eliminates traffic safety hazards as a criteria of development approval. Further, the HE ignores the county’s Public Works department assessment of the Salmon Creek Interchange area as needing safety improvements and having a high rate of accidents (Exhibit 141).

6) Traffic safety hazards - 2. The HE acknowledges (page 16) that “Anyone familiar with this area, its street segments and intersections is painfully aware of the horrendous traffic congestion and compromised safety of the area.” Where is the mitigation for the impacts of Left In and Right Out traffic movement on the access driveway?

7) Traffic safety hazards -3. The HE (page 23) “shares these concerns.. that the applicant has inadequately addressed the potential safety issues due to the location of the proposed driveway access onto NE Rockwell Drive.” The condition he imposes (A-3d) is typical – grant approval and work out the details later, outside of public scrutiny.

8) ITE category. To this day, the applicant will not disclose the tenant for this project. To this day, they can not therefore reasonably assume that the future tenant will meet the criteria (discount supercenter *with full grocery*) for the ITE category 813 traffic impacts they report, Indeed, of *all* the possible tenants, only one big box retailer would meet that criteria. Under the circumstances, the only reasonable ITE category on which to base traffic impacts is 815 (discount supercenter). Why wasn’t the traffic impact study done using the logical ITE category?

9) Local counts count. On the face of it, a 28% pass by reduction in trip counts for a regional destination on a road to a mostly undeveloped area is unreasonable. If, as the applicant states, local counts are the most relevant, why weren’t RTC traffic counts used to calculate pass by trips?

10) Current trip generation studies -1. The HE claims (page 16) that “the traffic count and TIA requirements ... are submission requirements and do not appear to be approval criteria.” As it applies to traffic impacts, that exempts applicants from (page 9) “the burden of proof and must meet demonstrate with substantial evidence that all of the applicable criteria are, or through the impositions of conditions, can meet the approval criteria”.

11) Current trip generation studies – 2. The HE claims that the 2003 TIA and subsequent DKS update met the requirement for current traffic counts. Again, the ITE category used is not appropriate. Again, the DKS update is fatally flawed.

12) Current trip generation studies - 3. The HE rejects the FGNA traffic counts as substantial evidence in part “because the opponents collected their trip generation data on the day before Thanksgiving (a dubious choice, which appears to invalidate any conclusions that might be drawn from those data)”.

The HE and applicant know, or should know, that the response to a development review application comes with a

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deadline. We had no choice – and indeed quickly organized a traffic count effort within a limited time frame *before* the Thanksgiving holiday and those related traffic impacts. The HE and applicant know, or should know, that County staff will not consider extending a development review response deadline to allow us a traffic study done in the spring.

13) Off street parking. We disagree that the applicant is providing “an adequate number of off-street parking spaces according to the Development Code.” The applicant is providing 309 more spaces than required for code (505 spaces). Why? Because this will accommodate the actual traffic impacts they expect from this development, as opposed to what they reported in the traffic impact analysis.

14) Substantive SEPA objections. The HE notes (page 35) that since “the application is subject to substantive land use regulations and development standards, SEPA is not the appropriate avenue for challenging impacts regulated under those substantive regulations.” The HE “rejects the argument that there are unassessed environmental impacts or that incremental impacts associated with various substantive impacts have not been adequately assessed.”

The HE is correct that “There is no evidence in the record that the particular operational qualities of a Wal-Mart store are different than those of other big-box retailers.” He refused to allow any testimony on that specific point.

The HE erred when he refused to accept evidence under SEPA of the social and economic impacts of big box developments, and Wal-Mart stores in particular, and the report prepared by the Clark County Sheriff’s office on crime impacts from Wal-Mart. The HE erred when he concluded that the limited testimony he permitted in regards to cumulative impacts was sufficient to support a DNS determination.

WAC 197 – 11-448 Relationship of EIS to other considerations.

- (1) SEPA contemplates that the general welfare, social, economic, and other requirements and essential considerations of state policy will be taken into account in weighing and balancing alternatives and in making final decisions.

RCW 43.21H.010 Purpose.

The purpose of this chapter is to assert that it is the intent of the legislature that economic values are given appropriate consideration along with the environmental, social, health, and safety considerations in the promulgation of rules by state and local government.

RCW 43.21H.020 State and local authorities to insure that economic values be given appropriate consideration in the rule-making process.

All state agencies and local government entities with rule-making authority under state law or local ordinance shall adopt methods and procedures which will insure that economic values will be given appropriate consideration in the rule-making process along with environmental, social, health, and safety considerations.