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BEFORE THE HEARING EXAMINER
IN AND FOR THE COUNTY OF SNOHOMISH

**In re Residential Treatment Facility
North,**

No. 22-102230 CUP

KATHLEEN RICHARDSON,

Appellant,

TULALIP TRIBES,

Applicant,

SNOHOMISH COUNTY PLANNING and
DEVELOPMENT SERVICES
DEPARTMENT,

Respondent.

SNOHOMISH COUNTY DEPARTMENT
OF PLANNING AND DEVELOPMENT
SERVICES' REPLY IN SUPPORT OF
MOTION TO DISMISS

The department of Planning and Development Services (PDS) moved for summary dismissal of this SEPA appeal under SCC 30.61.305. That provision requires an appellant to submit a sworn affidavit or declaration “demonstrating facts and evidence, that, if proven, would demonstrate that the issuance of the threshold determination was clearly erroneous.” SCC 30.61.305(1). If the appellant fails to demonstrate such facts and evidence, the appeal “shall be” summarily dismissed SCC 30.61.305(2). Here, PDS’s

1 motion explained how the Appellant failed to meet this threshold showing, and why the
2 appeal must be dismissed.

3 Appellant's response to PDS's motion fails to show why her appeal should not be
4 dismissed. The response consists of repeated allegations and continued argument that
5 more environmental review is required. The burden in this appeal is Appellant's. In her
6 response, Appellant attempts to shift the burden to PDS to prove a negative, based on
7 speculation and improbable hypotheticals. Appellant has not stated facts that would leave
8 the Examiner "with the definite and firm conviction that a mistake has been made." SCC
9 30.61.310(1). Accordingly, the appeal must be dismissed. The remainder of this
10 document briefly replies to Appellant's response.
11

12 **Issue No. 1 (Future Development)** – Appellant does not address PDS's arguments
13 for dismissal. Particularly, Appellant does not explain how under WAC 197-11-060 the
14 proposed facility is "closely related" to speculative future development of the adjacent
15 parcel.
16

17 **Issue No. 2 (Drainage)** – Appellant provides no response on this issue.

18 **Issue No. 3 (Wetland Buffers)** – Appellant provides no response on this issue.

19 **Issue No. 4 (Septic System)** – Appellant's response is predicated on the allegation
20 that a portion of the proposed drainfield will be within a wetland buffer. By email to the
21 Examiner dated November 30, Appellant retracted this allegation. The remainder of
22 Appellant's argument is that the Snohomish Health District or Department of Health will
23 not correctly apply their regulations in permitting the septic system for the proposed
24 facility. This is speculative and not a proper basis for a SEPA appeal.
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1 **Issue No. 5 (Travel Lane)** – Appellant does not address PDS’s arguments for
2 dismissal.

3 **Issue No. 6 (Water Availability)** – Despite the City of Stanwood’s letter of water
4 availability, Appellant continues to argue the environmental impacts of a well must be
5 studied. Appellant’s argument is not only speculative, but improbable. Additionally,
6 Appellant argues the “development to extend the water main should be included in the
7 scope of the SEPA analysis.” Reply, p. 2. The proposal as described in the DNS did
8 include extension of the water line, explaining the extension “will be constructed entirely
9 within existing right-of-way.” PDS Motion, Ex. A.

11 **Issue No. 7 (Traffic)** – Appellant repeats allegations from the appeal, concluding
12 additional study may reveal impacts at “the intersection closest to the driveway” that “may
13 be significant.” Reply, p. 2 (emphasis added). The only facts asserted in the appeal are
14 that the intersection of 76th Ave NW and 300th is the primary access point for 430+ homes,
15 is ½-mile away, and is “perpetually busy.” No facts are alleged regarding the current level
16 of service of the intersection and how the proposed project would cause a “probable” and
17 “significant” impact. Appellant fails to make a sufficient threshold showing on the issue
18 of traffic.

20 **Issue No. 8 (Emergency Services)** – Appellant continues to allege the conclusion
21 that the proposal will significantly impact emergency response times without alleging any
22 facts to support that conclusion. It is Appellant’s burden to allege facts to be proven at
23 hearing that would demonstrate a probable and significant impact on the environment. No
24 such facts are alleged.

1 In sum, the issues raised by Appellant are appropriate for public comment during
2 the hearing on the conditional use permit. However, they are not sufficient to clear the
3 hurdle as legal issues in the context of a SEPA appeal. To survive a motion to dismiss,
4 Appellant was required to set forth facts and evidence she would prove at hearing that
5 would demonstrate “probable” and “significant” environmental impacts of the proposal.
6 The SEPA appeal does not meet that threshold, and must be dismissed under SCC
7 30.61.305.
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9

10 DATED: December 7, 2022.

11 ADAM CORNELL
12 Snohomish County Prosecuting Attorney

13 

14 By: _____
15 Laura C. Kisielius, WSBA #28255
16 Deputy Prosecuting Attorney
17 Attorney for Respondent PDS
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DECLARATION OF SERVICE

I, Regina McManus, hereby declare that I am an employee of the Civil Division of the Snohomish County Prosecuting Attorney, and that on December 7, 2022, I caused to be delivered Planning and Development Services' Reply in Support of Motion to Dismiss and this Declaration of Service on the following parties by the methods indicated:

Kathleen Richardson 7925 300 th ST NW Stanwood, WA 98292 <i>Appellant</i>	<input type="checkbox"/>	U.S. Mail, postage prepaid
	<input type="checkbox"/>	Hand Delivered via Legal Messenger
	<input type="checkbox"/>	Overnight Courier
	<input type="checkbox"/>	Electronic Court E-file
	<input checked="" type="checkbox"/>	Electronically via email: kathymrichardson@yahoo.com
	<input type="checkbox"/>	Facsimile
Rhylee Marchand Tyler Eastman 6406 Marine Drive Tulalip, WA 98271 <i>Attorneys for Applicant</i>	<input type="checkbox"/>	U.S. Mail, postage prepaid
	<input type="checkbox"/>	Hand Delivered via Legal Messenger
	<input type="checkbox"/>	Overnight Courier
	<input type="checkbox"/>	Electronic Court E-file
	<input checked="" type="checkbox"/>	Electronically via email: rmarchand@tulaliptribes-nsn.gov teastman@tulaliptribes-nsn.gov
	<input type="checkbox"/>	Facsimile

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED: December 7, 2022, at Everett, Washington.

Regina McManus
Civil Division Office Manager