

Bradley Gasawski

From: Terrence Danysh <tdanysh@prklaw.com>
Sent: Wednesday, June 26, 2024 3:54 PM
To: Bradley Gasawski
Cc: Stephanie Hartung; Marge Brandsrud (dmbrandsrud@comcast.net); James Carmody; Charlie Beckett
Subject: Majestic Group (Proj. No. SE-24-00020)/"Friends of Easton" comment letter and attachments regarding grading application and SEPA (Friday, June 28, 2024 comment deadline)
Attachments: 1627_001.pdf; 3-20-2024 decision on County Motion for Remand.pdf; 1628_001.pdf; 1611_001.pdf
Importance: High

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Dear Mr. Gasawski:

Please find the attached comment letter (and accompanying documents) from counsel for "Friends of Easton" with regard to the above-referenced project (Friday, June 28, 2024 comment deadline).

Respectfully,

Terry Danysh
Co-counsel, Friends of Easton

**TERRENCE DANYSH | PRK Livengood
OF COUNSEL**



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4 BEFORE THE KITTITAS COUNTY HEARING EXAMINER

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6 In the matter of an appeal of the:

7 Variance and Mitigated Determination of
8 Nonsignificance for Easton Travel Stop

9 Administrative Site Plan and Determination of
10 Non-Significance for Sparks Park LLC

CDS FILE No. VA-23-00003
SE-23-00010

ORDER ON COUNTY'S MOTION
FOR REMAND

11 This matter came before the Hearing Examiner on Kittitas County's Motion for Remand
12 dated March 8, 2024.

13
14 In response, Appellants Purcell and McLeod, through their attorney, Audrey Clungeon,
15 filed a response dated March 13, 2024, requesting that the application be denied with prejudice,
16 and that the Hearing Examiner not remand the matter back to Kittitas County. This Appellant
17 further argued that the variance is a use variance and that it also should be denied.

18 Appellants, through their attorneys, James Carmody and Terrence Danysh, as joined by
19 Audrey Clungeon, requested that a dispositive order invalidating the Notice of Decision for
20 the variance, with prejudice, be ordered by the Hearing Examiner.

21
22 On March 15, 2024, the attorney for Kittitas County submitted a response to the
23 Appellant's motion for the dispositive order.

24 The Hearing Examiner has considered materials submitted to the Hearing Examiner, as
25 well as the file of record that has been presented to the Hearing Examiner.
26
27

1 The County's position is that there was not a required critical areas review during the
2 processing of the application, that the variance was not properly granted, and the matter should
3 be remanded back to the County for further review.

4 The Hearing Examiner finds that the County's Determination of Completeness was made
5 in error in that proper study of identified critical areas was not completed. Therefore, not only
6 was the variance issued in error, but the SEPA determination was also issued in error.

7 However, the Hearing Examiner does not believe that a dispositive motion dismissing
8 this matter with prejudice is the appropriate remedy.

9 This matter was brought to the Hearing Examiner's attention through the disclosure by
10 Kittitas County. Although, a hearing on the SEPA appeal and on the appeal of the variance has
11 been set, and the timing of pre-hearing disclosures have been ordered, the Hearing Examiner
12 does not believe that invalidating the SEPA determination and variance approval to the extent
13 requested by the Applicant, basically a dismissal with prejudice, is the appropriate remedy.

14 Therefore, the Hearing Examiner orders that the SEPA determination of the MDNS
15 issued September 29, 2023, and the administrative decision approving the variance, also dated
16 September 29, 2023, shall be vacated.

17 This matter is remanded to Kittitas County to require a revised application to correct the
18 original application's deficiencies. The County is directed to issue a new Determination of
19 Completeness, if appropriate.

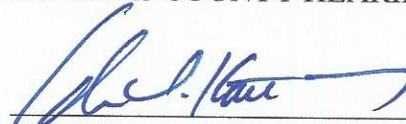
20 If and when the application is determined to be complete, the Hearing Examiner directs
21 the County to start a new SEPA process and to then, if appropriate, to issue a new SEPA
22 determination and new administrative decision regarding the variance application. Any new
23
24
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1 MDNS and variance decision are subject to appeal. Any appeal fee previously paid by
2 Appellants shall be promptly refunded to Appellants.

3 The Hearing Examiner's Order on Pre-Hearing Conference dated December 21,
4 2023, is hereby stricken in its entirety. The open record public hearing previously
5 scheduled to begin May 29, 2024, to extend through May 31, 2024, is hereby stricken.

6 SO ORDERED this 20 day of March, 2024.

8 KITTITAS COUNTY HEARING EXAMINER

9 
10 _____
ANDREW L. KOTTKAMP

TG: 1.23463.00

June 24, 2024

Terry Danysh
Peterson Russell Kelly Livengood PLLC
10900 NE 4th Street, Suite 1850
Bellevue, WA 98004

SUBJECT: MAJESTIC GROUP DEVELOPMENT UPDATED SEPA CHECKLIST

Dear Terry:

Per your request, we have reviewed the updated SEPA checklist submitted for the subject project. From information provided in the SEPA checklist, our understanding is that the project consists of clearing and grading activities and subdivision of the property to be developed in the future. The SEPA checklist identified the only access point as being aligned with existing Sparks Road and intersection north of Exit 70 off of I-90 as noted below.

14. Transportation. Identify public streets and highways serving the site or affected geographic area and describe proposed access to the existing street system. Show on site plans, if any.

Access will be off of Sparks Road at the current "T" intersection north of Exit 70 off I-90

As you recall, Transpo conducted a review of the Transportation report prepared for the previous application. This review was based on a specific development plan that included a fuel station and ancillary uses. Our review of the previous analysis indicated that congestion was anticipated at the ramps and additional analysis was warranted to confirm the interchange would operate at adequate levels.

As identified in the updated SEPA checklist for the project, the only access point for the site is proposed to be aligned with the Lake Easton Road/W Sparks Rd intersection. This location has been identified with no known development plan or assessment of traffic operations as per the following in the SEPA checklist.

e. How many vehicular trips per day would be generated by the completed project or proposal? If known, indicate when peak volumes would occur and what percentage of the volume would be trucks (such as commercial and nonpassenger vehicles). What data or transportation models were used to make these estimates?

No vehicle trips are anticipated with this proposal.

g. Proposed measures to reduce or control transportation impacts, if any:

Not Applicable

While the logical location may be to align with the existing intersection, the proximity of the I-90 westbound ramps creates a condition that needs to be fully evaluated before that location is approved. To evaluate the access point a reasonable worst-case development scenario should be identified in order to estimate the weekday AM and PM peak hour trip generation. Depending on the nature of the development, weekend trip generation and analysis may be needed. The

technical analysis would identify the needed channelization, interaction with adjacent intersections and identification of the needed traffic control at the intersection.

Question g that identifies the required mitigation, notes that this is Not Applicable. A proposed access point should not be identified unless the proper analysis has been completed to confirm it does not create any additional impacts to the system.

In summary, we suggest the following analysis be done prior to finalizing the site access location:

1. Identify a reasonable/worst case development scenario
2. Forecast weekday AM and PM peak hour trip generation. Note the weekend may be relevant to the analysis depending on the nature of the development
3. Evaluate the interchange operations utilizing current traffic counts for the peak periods. This analysis should include an evaluation of the without and with-project conditions.

Sincerely,
Transpo Group

A handwritten signature in black ink, appearing to read "Michael Swenson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael Swenson, PE, PTOE
Managing Principal



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June 26, 2024

VIA EMAIL: Bradley.Gasawski@co.kittitas.wa.us

Mr. Bradley Gasawski
Kittitas County Community Development Services
411 N Ruby ST, Suite 2
Ellensburg WA 98926

Re: SE-24-00020 Majestic Group
Comment on Proposed Grading Application and SEPA

Dear Mr. Gasawski:

The undersigned attorneys are counsel to Friends of Easton, a group of property owners and community members in the neighborhood of Majestic Group's proposed project. The purpose of this letter is to comment on the Majestic Group's (the "Applicant") SEPA application and analysis under the Kittitas County Code. Having reviewed the contents of the Applicant's application and SEPA checklist, Friends of Easton has significant concerns regarding the purpose and preparation of the Applicant's SEPA Checklist, as well as specific concerns regarding the sufficiency of the applicant's analysis of traffic and critical areas impacts.

First and foremost, the present application appears to be an impermissible and illegal attempt to circumvent the regulations of SEPA and the Kittitas County Code (and the principles of environmental review more broadly), by "piece-mealing" environmental analysis of the proposed project to avoid meaningful review of the cumulative impacts it poses. One of the fundamental principles of environmental review law is that when there is evidence that a project under review "will facilitate future action that will result in additional impacts" the impacts of said project must be analyzed simultaneously with those of the proposed future action.¹ The cumulative impact of these actions must be considered when making a threshold decision under SEPA. This rule is explicitly stated in WAC 197-11-060(5)(d), and is incorporated by reference into the Kittitas County Code pursuant to KCC 15.04.020.

¹ *Boehm v. City of Vancouver*, 111 Wash. App. 711, 720, 47 P.3d 137, 142 (2002); *Conservation Nw. v. Okanogan Cnty.*, 194 Wash. App. 1034 (2016) ("The government decision makers must consider more than the narrow, limited environmental impact of the immediate, pending action. . . .The agency cannot close its eyes to the ultimate probable environmental consequences of its current action.")

Friends of Easton's are acutely concerned with "piece-mealing" given the longstanding efforts to develop the Applicant's property to build a truck stop complex, which have spanned years and several attempts at permits. Beginning in 2019 (under permit SE-19-00014), the prior owner of the property sought to develop a Love's truck stop complex on the site of the property. This effort was abandoned after a Land Use Petition to the Kittitas County Superior Court resulted in the prior owner withdrawing their application. Subsequent to this effort, AJ Sandhu (the managing member of prior applicant Sparks Park LLC & present applicant Majestic Group LLC) picked up the baton of the development process, filing for a use variance under permit VA-23-00003 and utilizing the prior owner's documentation and studies.

The variance request resulted in an appeal by Friends of Easton and others, and an eventual remand by the County's Hearing Examiner for lack of a critical areas report by the Applicant.² Subsequent to the remand decision, in March of this year, Mr. Sandhu stated that he had no intention of abandoning his plans to build said truck stop.³ Further, Friends of Easton has seen no documentation that these plans or the application to build the truck stop have been abandoned or withdrawn, and the permit application remains open on the Kittitas County Community Development Services website. Where development of the site for use as a truck stop remains Mr. Sandhu's stated goal for the property, and where he has not formally abandoned these plans in writing (to our knowledge), Friends of Easton are concerned that this is just one more attempt to reach that goal by omission and circumvention of SEPA.

Regardless, additional deficiencies exist in the Applicant's failure to provide meaningful information regarding the nature of the proposed development or to perform the necessary traffic analysis. As proposed by the Applicant, the ramp it seeks is nearly identical to that of the one it sought under the prior permit application, but the present application is devoid of any information regarding the proposed use other than for "a possible subdivision." (The type of subdivision is left unspecified. A truck stop/travel center or components of the same are well within the realm of possibility.)

As opined by Mike Swenson of the Transpo Group (who performed an analysis of the Applicant's property in connection with Mr. Sandhu's prior permit application), the proximity of the property to I-90 means that any development project will entail levels of congestion at the I-90 interchange, which should be analyzed prior to project approval, with appropriate mitigating conditions imposed.⁴ Where the Applicant fails to disclose the proposed development on the site, such analysis is impossible, as is any analysis of the proper alignment of any access.

Finally, a threshold determination is inappropriate where the Applicant has yet to complete the required Critical Area Report pursuant to Chapter 17A.01 KCC. Under Chapter 17A.01 KCC, a Critical Area Report is required for land disturbing activities such as "removing, excavating,

² See Order on County's Motion for Remand, date March 20, 2024, attached.

³ See March 20, 2024 Email from AJ Sandhu to the Kittitas County Hearing Examiner, attached.

⁴ See Transpo Goup letter of June 24, 2024, attached.

disturbing or dredging” the earth within a critical area.⁵ Where such a report is necessary, it must be provided to the County “prior to the county’s consideration of any proposed alteration or development.”⁶ This review should be conducted “concurrently with review conducted under the State Environmental Policy Act (SEPA), as locally adopted.”⁷

As the Applicant’s member, AJ Sandhu, was made aware of in the prior appeal of his prior permit application for the property, his property sits within a Critical Aquifer Recharge Area, which is a critical area within the meaning of the KCC. Where the permit which the Applicant seeks is such a permit, and where the applicant’s parcel is an acknowledged Critical Aquifer Recharge Area, compliance with Chapter 17A.01 is required. The required study should be performed before the issuance of a threshold determination so that appropriate mitigating conditions may be imposed.

Given these deficiencies in analysis, the numerous past efforts to develop the property, and the concerns regarding “piece-mealing” of the SEPA analysis, Friends of Easton believe that the Applicant’s application should be strictly scrutinized, the necessary analyses performed, and the application be in strict compliance with the Kittitas County Code prior to the issuance of any threshold determination.

Sincerely,

PETERSON RUSSELL KELLY LIVENGOOD
PLLC

MEYER FLUEGGE & TENNEY P.S.



Terrence I. Danysh
R. Charles “Charlie” Beckett



James C. Carmody

cc: Marge Brandsrud, Friends of Easton
Stephanie Hartung,
Kittitas County Prosecutor’s Office

⁵ KCC 17A.01.040(1).
⁶ KCC 17A.01.110(2).
⁷ KCC 17A.01.120(3).

Terrence Danysh

From: SANBROS FARMS <sanbros.farms@gmail.com>
Sent: Wednesday, March 20, 2024 10:38 AM
To: Andy Kottkamp
Cc: Terrence Danysh; Christine Rice; Stephanie Hartung; Peggy Cahill; carmody@mftlaw.com; Tracy Parke; Jessie Blackwood; Charlie Beckett; Mark Cook; bill@yourbrokerbill.com; Jamey Ayling; Audrey Clungeon; Dave Bricklin; Bricklin & Newman, LLP
Subject: Applicant Response

Good Morning Mr. Hearing Examiner and Counsel,

My name is Angadjot Sandhu. I am the Managing Member of Mountview Group LLC, the Applicants in this matter. It is our understanding from information received from Kittitas County Public Works, that a response in this appeal is not necessary as the appeal pertains to the County Approval of the Application and nothing more. Please correct us Mr. Hearing Examiner if we are mistaken. However, in light of the allegations made by the Appellants we felt that it was appropriate to respond.

We have filed the applications in a timely manner and have paid the fees required by the County. We have provided any materials and documentation requested by the County. We have responded to comments made by the Appellants during the comment period, however, in reviewing the Appellants briefs, it appears they have not read those responses.

We are not currently nor have any future intention of abandoning this application. As we move forward with the project, we will comply with any and all of the requirements and regulations asked of us.

Irrelevant in this matter, however just a quick closing comment:

Our primary business is that we own and operate multiple organic orchards here in Eastern Washington. Our goal has never been to allow any damage to occur to our environment or to endanger our neighbors.

Sincerely,

AJ Sandhu

Manager/Member

Mountview Group LLC