CITY OF SPOKANE HEARING EXAMINER

Re:	Appeal by Flora J. Goldstein of a Determination of Nonsignificance Issued by the City's Planning Director	))))))	FINDINGS, CONCLUSIONS AND DECISION FILE NO. AP-08-05 (Z2007-073-LU)

SUMMARY OF APPEAL AND DECISION

Summary of Appeal: The appellant, Flora J. Goldstein, filed an appeal of a Determination of Nonsignificance (DNS) issued by the City's Responsible Official under SEPA, in this case the Planning Director, regarding a proposed Comprehensive Plan change being considered by the City's Planning Commission.

Decision: The decision of the City's Responsible Official is upheld.

FINDINGS OF FACT
BACKGROUND INFORMATION

Appellant: Flora J. Goldstein
3414 South Altamont St
Spokane, WA 99223

Respondent: City of Spokane Planning Services Department
Tami Palmquist, Current Planning
808 West Spokane Falls Boulevard
Spokane, WA 99201

Owner: Konstantin Vasilenko
19914 North Hazard Road
Spokane, WA 99208

Represented by: Steve Peterson
Box 682
Liberty Lake, WA 99019

Authorizing Ordinances: SMC 17A.020, 17E.050, 17G.020, 17G.050 and 17G.060

Date of Decision being Appealed: March 21, 2008

Date of Appeal: April 7, 2008

Hearing Date: April 24, 2008.

Testimony:

Flora J. Goldstein
3414 South Altamont St
Spokane, WA 99223

Tami Palmquist
City of Spokane Planning Department
808 West Spokane Falls Boulevard
Spokane, WA 99201

Steve Peterson
Box 682
Liberty Lake, WA 99019

Konstantin Vasilenko
19914 North Hazard Road
Spokane, WA 99208

Exhibits:

1. Application for Appeal Z2007-073-LU
2. Staff Report including:
   2A Department & Agency Comments as well as Environmental Checklist
   2B Public Comments
3. Letter dated 04-10-08 to Flora Goldstein and Glen Cloninger from Hearing Examiner re: setting the date of the appeal hearing
4. Letter dated 04-10-08 to Flora Goldstein and Glen Cloninger from Hearing Examiner re: procedure for the appeal hearing
5. Applicants comments to SEPA Appeal, dated 04/18/08

FINDINGS AND CONCLUSIONS

Cloninger and Associates, agents for Konstantin Vasilenko, (hereinafter jointly referred to as "Applicant") submitted an application to the City of Spokane to change the City's Comprehensive Land Use Plan for certain property located on the south side of Southeast Boulevard between Cook Street and Mt. Vernon Street, from "Residential 4-10" to "Residential 15-30". This would allow the zoning of the property to be changed from Residential Single Family (RSF) to Residential Multifamily (RMF). After a review of the proposal under the State Environmental Policy Act (SEPA) the City's responsible official, in this case the Planning Director, issued a Determination of Nonsignificance (DNS) on March 21, 2008. On April 7, 2008, an appeal of that DNS was filed by Flora J. Goldstein (hereinafter "Appellant"). A hearing was held on that appeal on April 24, 2008, at which time testimony was taken and exhibits were submitted into the record. After reviewing the decision of the responsible official, listening to testimony and reviewing the record, the Hearing Examiner makes the following decision.

Lack of a Complete Analysis under SEPA

Appellant argues that the City's SEPA analysis was flawed because the checklist is vague and the proposal wasn't properly described and also that there were other procedural errors.

The City's DNS is reviewed under the "clearly erroneous" standard. *Association of Rural Residents v. Kitsap County*, 141 Wn.2d 185, 196, 4 P.3d 115 (2000). A determination is clearly erroneous only when, although there is evidence to support it on the record, the reviewing body is "left with the *definite and firm conviction that a mistake has been committed.*" *Association of*

Rural Residents, 141 Wn.2d at 196 (emphasis added; further citations omitted). A DNS will survive scrutiny under the clearly erroneous standard when the record demonstrates that "environmental factors were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA and that the decision to issue [a DNS] was based on information sufficient to evaluate the proposal's environmental impact." *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000) (citing additional cases). In conducting its review, the reviewing body "may not substitute its judgment for that of the decision-making body, but is to "'examine the entire record and all the evidence . . . .'". *Association of Rural Residents*, 141 Wn.2d at 196.

Determinations made by the Responsible SEPA Official must be accorded substantial weight. RCW 43.21C.075(3)(d) and 43.21C.090; WAC 197-11-680(3)(vi); SMC 17G.050.210(I) Selection of the appropriate environmental process (DNS or EIS) "is left to the sound discretion of the appropriate governing agency, not this court." *Anderson v. Pierce County*, 86 Wn. App. 290, 302, 936 P.2d 432 (1997). Environmental documents need not identify or analyze impacts that are "remote and speculative," *see Cheney v. Mountlake Terrace*, 87 Wn.2d 338, 344, 552 P.2d 184 (1986), and the SEPA Lead Agency's determination that potential environmental impacts are remote or speculative is entitled to substantial weight. *See, e.g., OPAL v. Adams County,* 128 Wn.2d 869, 875, 913 P.2d 793 (1996). Substantial weight is also given to the Responsible Official's decision to do phased review under SEPA.

A SEPA Lead Agency is not required to analyze the environmental impacts of a proposal until its "principal features . . . can be reasonably identified" *and* "the environmental effects can be meaningfully evaluated." WAC 197-11-055(2) and –055(2)(a).

The Appellant has raised several issues relating to the vagueness of the Environmental Checklist. Unfortunately many checklists are more vague than they need to be. Some of that vagueness in this case is understandable because this is a non-project action, a Comprehensive Plan change, and when a definite project is proposed, the specific impacts of that project must be properly evaluated. Phased review in a situation like this allowed by SEPA. In raising the vagueness issue, however, the Appellant has pointed to no probable significant adverse environmental impacts that would occur from this comprehensive plan change that were not addressed. In *Boehm v Vancouver*, 111 Wn. App. 711, 719 (2002), the Court, after noting that the City had prepared an environmental study describing the projects potential environmental impacts and required mitigation, stated: "In contrast, the Boehms presented no evidence regarding any probable significant adverse environmental impacts of the project. Therefore, when the Boehms complain of a failure to adequately identify or mitigate adverse impacts, they have produced no evidence that such impacts exist." See also *Moss v Bellingham*, 109 Wn. App. 6, 23, 31 P.3d 703 (2001).

The Appellant's main complaint was that the checklist was so vague that an ordinary person reviewing it would not be informed of potential adverse environmental impacts. Unfortunately the Appellant is right and the checklist is extremely vague. The checklist was circulated amongst various agencies and City departments and those reviewers are trained to identify potential impacts. Many times they do their own independent research if the believe that the checklist is vague or misleading. There is room on the checklist for staff to comment and add information. If staff comments are not added to the checklist, however, it inhibits the ability of the general public to be properly informed. One example is the Appellant's complaint that there was no traffic information provided. The Transportation Department did comment by separate

memorandum on the checklist and stated essentially that it would review traffic impacts when a specific project is proposed. It still would have been helpful to know at least what the maximum traffic counts may be if the proposal were built to its maximum potential density, and where most of the traffic would enter and leave the site. This would not be a difficult question to answer. A more complete checklist is especially important under current law because once a land use plan change is effective; the appropriate zoning becomes effective also, so there is no further review until the project level. Of course additional SEPA review can be required at that time, but by then the development of the site will be dictated by the new zoning. Still, it is clear to the Hearing Examiner that the Transportation Department was not in any way alarmed by the potential increase in traffic and would have required a traffic study if that was the case. The Traffic Department will also require various street improvements and other mitigation depending on the intensity of the project. No other agencies with jurisdiction noted environmental impacts that would be significant and adverse and the Appellant did not point to any significant adverse impacts that were ignored by staff. Some impacts like storm drainage are addressed in regulations. It is appropriate, however, for staff to make the checklist as readable as possible for the average citizen.

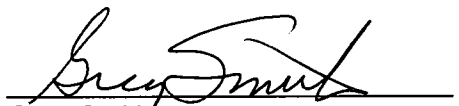
Notification

The Appellant's other complaint related to notification. Originally the proposal was to have a 60 day comment period but the City Council reduced it to 30 days, which is allowed under the law. The public notice used the 30 day comment period while the sign which was posted on the property still stated that comments would be allowed during a 60 day comment period. Staff testified at the hearing that they allowed comments past the March 20, 2008, deadline noted in the written notice as long as they were received prior to the April 20, 2008, deadline noted on the sign. The Appellant was not prejudiced by that particular error and no one else came forward to say that they were prejudiced because of the discrepancy in the two dates. Therefore, the Hearing Examiner cannot find that the matter should be remanded for that reason.

DECISION

Based on the Findings and Conclusions above, it is the decision of the Hearing Examiner to uphold the SEPA determination by the City's Planning Director. While the checklist is overly vague the Hearing Examiner cannot find that issuing a DNS in this case was a clearly erroneous decision.

DATED this 7th day of May 2008.



Greg Smith
City of Spokane Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Appeals of decisions by the Hearing Examiner on SEPA are governed by Spokane Municipal Code 17E.050.210 and WAC 197.11.680.

Any SEPA appeal is to be combined with an appeal of the underlying action. There has been no final decision by the City on the underlying action yet.

In addition to paying any Court costs to appeal the decision, you may be required to pay a transcript fee to the City of Spokane to cover the costs of preparing a verbatim transcript and otherwise preparing a full record for the Court.