

December 12, 2013

Carl D. Cox, Hearings Examiner
City of Monroe
806 W. Main Street
Monroe, WA 98272

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CITY OF MONROE

RE: 13-APHE-0001—Lowell Anderson and Douglas Hamar's request for reconsideration

Dear Mr. Cox:

Pursuant to MMC 21.50.080, Lowell Anderson and Douglas Hamar hereby request reconsideration of the Hearings Examiner's decision designated as 13-APHE-0001, which was entered on December 5, 2013. The subject decision determined that the Final Environmental Impact Statement (FEIS) for the East Monroe Comprehensive Plan Amendment and rezone application "*provides reasonably sufficient discussion and analysis for the reader concerning potential impacts from development of the Property and of mitigating measures, and reasonably informs the reader of the significant aspects of the probable environmental consequences of the proposed action.*"

Our request for reconsideration is based on our belief that the decision is in error in its application of RCW 43.21C.090, which accords the Lead Agency—in this case, the City of Monroe—substantial weight in their decision making.

First, surely RCW 43.21C.090 does not give the City carte blanche to ignore Monroe's existing Comprehensive Plan, specifically *Eastern City Limits/US-2 and Riverfront Ridge* and *Future Vision and Issues—LU 11-12*, nor should it give the City carte blanche to ignore Monroe's Municipal Code, specifically, *18.10.045—Purpose of Limited Open Space Zoning District*, nor should it allow false statements in the FEIS to qualify as the "*impartial discussion*" required of an EIS. *See WAC 197-11-400(2)*.

That the City did ignore existing law is clearly evidenced in their decision to accept the "No Action Alternative" defined in the FEIS. The Hearings Examiner rightly points out that the SEPA Handbook describes the "*no action*" alternative for a rezone proposal as the *most likely development on the site under existing zoning*." The "No Action Alternative" as defined in the FEIS would be virtually impossible under existing law. Moreover, the FEIS in effect acknowledges the unlikely nature of the development imagined in the "No Action Alternative" when in the Summary it declares that the rezone to commercial will make development of the site "*economically feasible*," yet goes on to prescribe essentially the same build-out and mitigation measures—at presumably the same expense—for all three alternatives, including the "No Action Alternative."

The City clearly did proffer a false statement in Figure 13 of the FEIS when they notated the *2006 Flood Elevation Imagery* with "*The images below are of the project area during the 2006 flood. Even when flood waters reached their highest elevations, the site remained above water.*" The inaccuracy of this statement was amply evidenced by extensive eyewitness testimony and photo imagery.

We ask the Hearings Examiner to reconsider in his conclusion where it reads:

The FEIS also included photographs of flooding in 2006 indicating that the subject area of the Property was not underwater even during the high flood event. I found, however, the procedures used in obtaining data and providing analysis consistent with the requirements for an FEIS, even though the pictures and analysis of the condition of the subject area of the Property during the 2006 flood event imply that the Property was above water.

The City's statement does not "imply" that the site remained above water in the 2006 flood, it clearly states it as fact, and it is entirely false.

We ask, how can false and misleading information provide for a "reasonably thorough discussion of the significant aspects of the probable environmental consequences" called for in an EIS?

Second, we believe that the "substantial weight" given to the lead agency (per RCW 43.21C.090) may have been extended inappropriately to Pace Engineering and their Representative and spokesperson, Susan Boyd, at the November 7th hearing. Pace (including Ms. Boyd) is a contractor to Heritage Baptist Fellowship, who is the applicant for the rezone that is the subject of the FEIS. As such, Pace's (and Ms. Boyd's) primary responsibility is to their client (the Heritage Baptist Fellowship), and not to the citizens of Monroe. Just as you would not expect a defense attorney to go before a judge and jury and provide "impartial discussion" of the case against their client, it is unreasonable to expect or assume that Pace would produce an EIS that does not provide overwhelming support for the objectives of their client. In short, the deference afforded the City's decision to accept the FEIS does not make the substantial misinformation in the FEIS produced by Pace any more accurate.

...there is no question but that the accuracy and truthfulness of the information in the EIS is of paramount importance to the ultimate approval or disapproval... WILLIAM WEYERHAEUSER, ET AL, Respondents, v. PIERCE COUNTY, ET AL, 873 P.2d 498, 124 Wash. 2D 26 [2] (1994)

As specific examples of where we believe RCW 43.21C.090 was improperly accorded to Pace, and Ms. Boyd as their spokesperson, we submit the following:

1. In your conclusion, item number 10 - Use of LIDAR, you state:

Ms. Boyd also provided testimony on this issue, stating that the use of LIDAR data and technology is more accurate than use of data [sic] from the field survey, and permits use of the "latest and greatest computer simulation" to provide precise calculations.

Ms. Boyd's statement is simply false. Traditional field surveys are used to calculate the accuracy of LIDAR—not the other way around. Various LIDAR systems and interpretation methods are judged reasonably accurate if they match traditional field survey points at a 95% confidence level. The following quotes from experienced professionals in the field confirm this:

***LiDAR News, Defining Accuracies in Mobile LiDAR Surveying, Stephen Clancy, 2011**
.....The National Standard for Spatial Data Accuracy (NSSDA) was implemented by the Federal Geographic Data Committee (FGDC) to define absolute accuracies – not as a ratio, class or order, but as a unit of measure.....Following NSSDA procedures, a minimum of 20*

evenly distributed points from the digital map product are compared to conventional survey points to compute the root-mean-square error (RMSE) at the 95% confidence interval.

<http://www.aerialservicesinc.com/2012/12/just-how-accurate-is-lidar/>:

.....because the operation of these systems and the processing of LiDAR data is fraught with error in unskilled hands, it is far easier and, unfortunately, more common that LiDAR data is delivered that does not meet project specifications (whether they are tested or not). For those purchasing professional LiDAR services, you are well advised to know your provider and "trust but verify" that their deliverables meet your specifications.

The thorny problem of LIDAR specifications, Robert A. Fowler

<http://www.lasermapping.com/laserM/en/doc02.htm>

When deciding to contract LIDAR most people have some concerns because the number one problem seems to be there are no legitimized specifications which have been written to address this technology. Well, that's not quite true. FEMA has some draft specifications which, in the version I have at least, are impossible for anyone to comply with unless you bulldoze the area devoid of vegetation.....If there are any biases in the measurements, they will never show up except with a field check.if the results are inconsistent that means something is not working properly and more bench tests are required.....Essentially, this is what almost all LIDAR service providers do. On a periodic basis, they test their system against a swath of ground data which has been extensively surveyed on the ground using alternate methodology.

It should be noted that, with regard to Ms. Boyd's statement above, there are special situations for which Lidar produces a more complete picture than field surveys—very large geographic areas, such as counties, wilderness and entire states where closely spaced traditional survey points are impractical. However, that is not the case for the East Monroe property under consideration here. Thus, for our purposes, her statement remains false. The following quote from the USGS describes the accuracy of LIDAR for large areas—and, further, goes on to discuss how, even then, they look to "on the ground" data for confirmation:

USGS –Lidar 101: An Introduction to Lidar Technology, Data, and Applications Accuracy

Accuracy is one of the primary reasons for use of lidar data. Lidar is an accurate, cost effective method for collecting topographic elevation data for large areas (Fowler and others, 2007).

Accuracy Assessment Techniques

The basic goal of an accuracy assessment is to measure known points on the ground (ground control points, or GCPs) and compare those with points generated from the lidar data.

In practice, independent measurements (points collected in the field) are compared with a surface created from the lidar points.

2. In your conclusion, item number 2. Compensatory Flood Storage, you state:

I understood the differences in calculations offered by the FEIS and by Appellants with respect to cut and fill requirements, but noted that there is no requirement that all the fill come from the Property itself, or from the area indicated by Appellants. I also found testimony by Ms. Boyd concerning the compensatory flood storage on the Property compelling.

As we were detailing our concerns about the astounding inaccuracy of Pace's cut and fill calculations, Ms. Boyd jumped up to the map with this red herring about “*no requirement that the fill come from the property itself,*” which no one disputes. We thought we subsequently brought the conversation back to relevancy, but apparently Ms. Boyd's diversion was successful. The critically missing volume is that of the “cut”—not the “fill.” As you rightly noted in Finding of Fact 19 “compensatory flood storage must be equal to or greater than the volume displaced by fill (a 1:1 minimum ratio).” In other words, you cannot fill a volume in the floodplain—regardless of the source of fill—without an equivalent volume of cut being available on the property itself.

The 46,500 cubic yard figure in the FEIS may be the result of a computer glitch or faulty LIDAR methodology; but, in any case, it is far out of sync with the reality on the ground represented by the more reliably accurate 1999 Field Survey (exhibit L21), and the basic math calculations in Cut and Fill Disparity (exhibit L31). The actual fill—and therefore the cut—needed to raise the developable 10.17 acres a foot above floodplain is closer to 68,000 cubic yards and the actual cut available on the property is somewhere around 17,000 cubic yards. The development scenario the FEIS advocates is missing 51,000 cubic yards of required flood storage.

3. On this same subject, in section 20 of your findings of fact you state:

Ms. Boyd does not dispute that the Property has flooded in the past, and could be caused by a number of factors...

This is an extremely deferential interpretation of what Ms. Boyd said at the time. We were shocked and dismayed at her admission, “We don't know why it floods.” We thought that was as powerful an indictment of an EIS for a FEMA designated “*special flood hazard zone*” as one could possibly make. It clearly shows that Pace started with the conclusion their client desired and worked their way back through the document to justify that conclusion. Apparently, they never reached the first question one would want to ask when preparing an EIS for an area in a floodplain—why does this area flood?

4. In your conclusion, item number 6. Access, you state:

The FEIS includes a detailed Traffic Impact Analysis by Gibson Traffic Consultants, and provides the reader with guidance concerning required improvements associated with obtaining access to the Property, including inbound left-turn channelization, separate outbound lanes, and an outbound left-turn acceleration lane. The FEIS also includes analysis of use of a roundabout as requested by WSDOT, analysis of impacts to affected intersections, and discussion of mitigation. Notably, the FEIS informs the reader that under any of the alternatives considered, traffic at the impacted intersections would remain within acceptable levels of service.

Indeed the Traffic Impact Analysis is long on detail, but it is short on reality. The access intersection remaining at an acceptable level of service is entirely dependent on which direction the vast majority of vehicles are headed while exiting the property during the “PM peak” hours. The FEIS predicts they will be going west, but the reality is they will be commuters going east. Upwards of 230 cars an hour as projected in the FEIS going east rather than west would create horrific accident potential trying to access a “left-bound acceleration lane.” This is why WSDOT insists on a roundabout, which would certainly be safer. However, those same cars entering a roundabout and headed east will create backups

in the eastbound lane—west of the roundabout—far outside “*acceptable levels of service*,” not to mention polluting the air with tons of additional CO2 from idling vehicles.

In conclusion:

We believe we have provided a significant number of instances within the Hearings Examiner's decision where RCW 43.21C.090 may have been improperly accorded or interpreted more broadly than the law's intent. Therefore, we respectfully request that the Hearings Examiner reconsider and reverse his decision and find the FEIS for the East Monroe Comprehensive Plan and rezone inadequate as a matter of law.

Thank you for your consideration in this matter.

Sincerely,



Lowell Anderson



Douglas Hamar