History of attempts at development on Chester Creek swamp area

Attach 1: flood map

Attach 2: MDNS SEPA

Attach 3: Letter from the city

Attach 4: City Prebrief and affidavits

Attach 5: Appellant Prebrief

Attach 6: relevant emails

News articles:

<https://www.spokesman.com/stories/2018/mar/20/development-plans-in-spokane-valley-draw-the-ire-o/>

<https://www.spokesman.com/stories/2018/jun/05/spokane-valley-officials-evaluate-conflict-of-inte/>

<https://www.spokesman.com/stories/2018/jul/17/spokane-valley-city-council-suggests-it-will-rejec/>

<https://www.spokesman.com/stories/2018/aug/03/spokane-valley-city-council-rejects-plan-for-mixed/>

history:

* Diamond Rock (Crapo) filled FPD-2018-0002 (Flood Plain Development Plan) including CLOMR-F (Conditional Letter of Map Revision based on Fill) to the area in question (Parcel 45333.1807, swamp on Bowdish and Sundown) on 10/4/18.
  + This Includes SEPA Checklist (SEP-2018-0019)
* City issues a determination of MDNS (Mitigated Determination of Non-Significance) for SEPA on 4/19/19. A sign was posted on the property (on printer paper) giving an appeal deadline of 14 days to this SEPA only.
* The Neighbors whose homes are on Sundown asked me (Al Merkel) to help. They have been experiencing flooding, settling issues, and various other problems and whose houses were also raised from floodplain by Mr. Crapo. They wanted me to produce an appeal to this construction for fear that additional development will cause their homes additional problems, as well as traffic issues. Various other Ponderosa residents also have concerns due to the proximity of this development plan to the Ponderosa exit on Bowdish, as this is one of only 2 exits to the community.
* Neighbors contribute funds to the appeal through donations, and I wrote the appeal on their behalf (though I also have standing to appeal). I have not been compensated in any way for this work, as I believe that Spokane Valley’s lax development laws have already cost its people too much. I am not a lawyer but have some familiarity with these processes and Spokane Valley city code.
* I filed, on behalf of the neighbors the SEPA Appeal (APP-2019-0002) on 5/3/19, within the appeal deadline, and the appeal was accepted by the city as complete.
* A hearing was scheduled as per Spokane Valley code.
* On 6/3/2019 Mr. Erik Lamb then sent a letter to our party requesting a continuance, informing us that ***Spokane Valley city code was wrong*** and, in his opinion, we needed to continue this until the permits were issued on the underlying application. This request was in direct contravention to Spokane City Code.
  + I asked that Mr. Lamb and Mr. Driscoll explain to the group of neighbors that this would in no way effect the proper and timely appeal that had been filed, and specifically that if they chose not to add additional appeal issues to the appeal, it would in no way affect its validity.
  + Mr. Lamb presented this information to the neighbors the week before June 23, 2019 in person. Several neighbors were present and asked specifically if choosing not to add additional items later would affect the appeal and were told categorically no.
  + The neighbors agreed to the city’s request in good faith so that the city would not face liability for illegal laws.
* Neighbors choose not to add additional appeal items to the appeal, as the technicalities of the CLOMR are dependent on the validity of the SEPA determination.
* Appeal was scheduled for 6/10/20.
* City requested a pre-hearing brief from Appellant, this is not normally required. Appellant objected but was overruled by hearing examiner.
* Appellant filed prehearing brief summarized as follows:
  + Critical error was made in evaluating SEPA by city in that the SEPA did not evaluate the site where the substantial fill was taken from. There is clear example of why this is inappropriate in the SEPA handbook, where it specifies:

Page 11, section 2.3.1 “A large proposal involving actions in vastly different locations, such as material being mined at one site, then transported to and processed at another, is another example of defining the entire proposal. Appropriate environmental review would look at the impacts of all the related activities.”

* + The SEPA process inherently functions through the credibility of the applicant who self certifies the checklist. In this case there are several issues with that credibility that can be testified to by the neighbors, including the engineering capability to successfully raise the property out of flood plain. This is witnessed by the neighbors adjacent to the property.
  + These applications are constantly piecemealing the process, by separating out the individual parts of a project into bite size pieces that can be more easily approved than if the total project was presented.
* City filled a brief as well summarized as follows:
  + Because the appellant did not add any issues with the permit, the appeal should be dismissed. Essentially once the permits are approved the SEPA appeal no longer matters.
    - This is in direct contravention to what the neighbors were told.
    - The good faith the neighbors showed in listening to the city turned out to be legal maneuvering to dismiss the appeal.
  + Appellant fails to raise a valid challenge to the clearly erroneous standard
    - This is the arguable part and should be judged by the hearing examiner.

***IN SUMMARY:*** it seems that representatives of the city (which is supposed to support all of its citizens), took advantage of the good faith citizens put in their city, to legally maneuver citizens into a position where a legal challenge would be invalidated. This shows clear favoritism for developers. After all, if the city felt that our appeal was so invalid, why legally maneuver us rather than simply just face the appeal?

Witnesses:

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