

September 28, 2005

Amy Calderwood – King County Ombudsman  
Jonathan T. Stier – Assistant King County Ombudsman  
Office of Citizen Complaints  
Yesler Building  
400 Yesler Way, Room 240  
Seattle, WA 98104  
206-296-3452

RE: Ombudsman Case No. 2005-01126

Dear Ms. Calderwood & Mr. Stier,

In the interests of those I will copy this email to; I want to address some of your conclusions in a pointless effort of identifying some of the nonsense in your conclusions. I know it falls on deaf ears, because I know that your principal duty is to defend the county from allegations like mine. But I also went into knowing that trusting an ombudsman who got her former boss fired and now has his job, was unrealistic too.

Here goes. I will cite some of Mr. Stier's statements and respond.

- 1.) "As you complaint points out, no known traffic volume measurement on NHR shows that the 1,350 vph threshold has been reached."**

Correct, but King County has failed to provide information on any traffic counts since April 2004. Both my PDA request and the following response to Joseph Elfelt identified the April 2004 counts as the only counts collected and available under the PDA as of July 11, 2005. This flies in the face of DOT's claims that a count was performed by anyone in October 2004 as your report states, but it is a convenient discovery given my allegations. I have also acknowledged the fact that the threshold was not actually triggered, unlike the omission by you that the county was within their discretion to adjust the trigger value if evidence showed it was set too high.

Subject: UPD traffic count-REPLY  
Date: Mon, 11 Jul 2005 16:19:57 -0700  
From: Kara, Fatin <Fatin.Kara@METROK.COV>  
To: 'Joseph Elfelt' <>, Lee, Lisa-Elizabeth-DDES <Lisa-Elizabeth-DDES.Lee@METROK.COV>  
CC: Nolan, Matthew <Matthew.Nolan@METROK.COV>, McMahon, Dennis <Dennis.McMahon@METROK.COV>

Dear Mr. Elfelt

Thank you for your request. The last count we have at the location you requested was from April of 2004. The 3 day count we collected at this location results are as follows:

April 27th 2004: 1340 (PM peak hour, East bound).

April 28th 2004: 1325 ( " " " " " " ).

April 29th 2004 1327 ( " " " " " ).  
1350 trigger is not exceeded by these counts.

The next sheduled King County count at this location is planned between September and December of this year.

FYI

Thanks

Fatin Kara

**2) “DOT retains the discretion to require monitoring more or less frequently than annually under certain conditions.”**

“Discretion” does not include that option to act contrary to the facts or common sense. It also does not support or justify a decision that “any” reasonable or honest person would disagree with. Without justification, King County DOT and/or DDES decided that, contrary to the fact that Novelty Hill Road was on the verge of triggering the threshold, and despite the fact that hundreds of additional homes were already permitted and at different stages of construction, Novelty Hill Road could support additional volumes above its current levels plus the additional cars that would be added by hundreds of new homes already permitted.. The “authority” of an agency to make an “arbitrary and capricious” decision does not excuse the fact that it is an arbitrary and capricious decision.

Did you investigate any of the circumstances surrounding DOT’s decision to stop counting traffic and ignore the small number of additional trips that would have triggered the threshold?

Did you investigate the fact that the intersection at 208<sup>th</sup>, by its design and the timing of the lights, may in fact have been designed to prevent volumes from ever actually triggering the threshold despite backing cars up for miles?

**3) “the permit language appears to afford DOT wide latitude to determine the frequency of monitoring.”**

Only as long as that determination can be justified within reason and supported by the facts. The decision to stop counting cars was NOT reasonable given the facts, and no reasonable or honest person looking at these facts would have made the same conclusions. In fact, the direct financial conflict of interest I will address later provided a clear motivation for the county to ignore, and in fact work to avoid enforcing it.

**4) “So long as DOT’s actions are within its authority, we cannot conclude it is acting arbitrarily or capriciously.”**

Then you should have a conversation with the King County Hearing Examiners Office that identified several instances where DOT acted in an “arbitrary and capricious” manner in decisions that it certainly had the authority to make, but were clearly arbitrary and capricious because they were unsupportable by the facts or reason. The standard you have set that would allow any actions to be acceptable simply

because the agency has the authority to make them is ridiculous! It would justify any illegal or corrupt decision simply on the basis that the authority is granted a decision-making person or body to make the decision. I think you should rethink this statement.

**5) “According to the most recent report, dated December 2004, the last official traffic counts were conducted in October 2004.”**

No such counts were provided under the Public Disclosure Act to me or Joseph Elfelt this year under separate requests. Are we to take DOT’s word today that such a count exists after their failure to provide those counts under two separate PDA requests? What did those counts conclude? Did volumes increase from the April counts? Did hundreds of new homes add less than 20 car trips to the roadway 6 months later? Is 208<sup>th</sup> incapable of moving cars through the intersection given its design and/or timing of the lights?

The failure of DOT to provide this count data strongly suggests that it was either intentionally withheld, or it in fact, never existed to be provided to us under the PDA. Which is it? Or was this just another case of county ineptitude that benefited this developer, as every past mistake has?

**6) “The existence of separate traffic counts that may have been conducted by DOT or other agencies in April of 2004 or 2005 has no bearing in our conclusion, because those counts appear to be within the permit requirements.”**

You are suggesting that the last official count by King County, done in April 2004, has no bearing? Instead you rely on a count by the developer’s traffic consultant, and a count never disclosed under PDA? I don’t think this is rocket science, but believe it or not, there are still some of us out here that expect our government to defend our interests.

Last year, Novelty Hill Road was operating westbound in the AM at 1,475 cars per hour, or at level well above the trigger level if the AM was the standard. But King County ignores the AM because it would hurt developers with higher volumes, so they use the afternoon to count traffic where the volumes are spread out more, but still use an inflated capacity of 110% of design capacity for a 3-lane configuration, or 1,350 vph. Never mind that 2 lanes enter the 208<sup>th</sup> intersection from 3 sides. Never mind that traffic backs up for a mile or more in the eastbound direction, or that in April 2004 the roadway was just a couple dozen car trips short of the threshold.

Now in October 2004 the county claims that they obtained a count from a private firm that still hasn’t exceeded the threshold. That’s your story because that count was not provided under PDA to me. Even if that count was below the threshold, how does an honest or reasonable person explain the fact that hundreds of homes were populated between April and October, but virtually no additional volume of cars was able to pass through the intersection at 208<sup>th</sup>?

Novelty Hill Road was basically saturated and at the threshold in April 2004. With additional homes permitted and under construction, there is not a reasonable or honest person that would not have expected the threshold to be met within days or weeks if it was physically possible for 1,350 cars to move through the intersection at 208<sup>th</sup>. The only way this wouldn’t occur would be if the intersection at 208<sup>th</sup> was incapable by design or light timing to allow that volume to pass.

Several things are certain.

- A) Novelty Hill Road is backing up westbound in the AM 2-3 miles every morning.
- B) Novelty Hill Road is backing up eastbound of 208<sup>th</sup> every afternoon for a mile or more, and worse on bad weather days, limited by the 208<sup>th</sup> intersection in allowing the potential volumes through the intersection.
- C) Cars are not traveling anywhere near posted speed limits during either commute, and in the range of 5-10 mph when stuck in these backups.
- D) Novelty Hill Road is “saturated” during the commute in the commute directions.

No bearing? King County DOT had the discretion to adjust the threshold if it was determined the Novelty Hill Road was at saturation or if additional permitted homes would clearly make up the difference. The importance of the last publicly released count in April 2004 is critical. It demonstrates that 18 months ago Novelty Hill Road was just 20 car trips away from halting development of Redmond Ridge and Trilogy. King County’s failure to recognize this fact is indefensible and not excused because a permit left these decisions at their “discretion”. Their failure and decision was “arbitrary and capricious”. It was counter to the facts, reason, honesty, responsibility, or common sense.

**7) DOT believes that the CIP is sufficiently programmed and designed within the applicable time frame and that building permits will therefore not be affected by the 1,350 trigger.”**

And here, no doubt, is DOT’s and DDES’s strategy for ignoring this permit condition when and if the trigger can be met. All those meetings held in late 2004 that were identified in other PDA records I obtained must have come up with this. What do we do if the trigger is met, they asked. This new strategy is no more surprising and no less dishonest than anything else they’ve done already.

Tell me, did you investigate any of DOT’s claims, or did you simply take their word? After all, my complaint made some serious allegations of DOT and DDES. Did you consider that perhaps their word was no good? That maybe after a decade of decisions that created this crisis that they may be trying to cover their butts?

What specific improvements are funded and approved in the CIP? Is there even an approved CIP to do anything on Novelty Hill Road? If there is not, then they have no basis to ignore this permit condition, and even if there was, the permit does not provide them with the option to ignore this condition simply on their word that a fix is coming – some day.

If you had investigated this last claim you might have learned the following. King County DOT doesn’t have an approved project to fix the traffic crisis on Novelty Hill Road. They have pseudo-committed bonding to reach an imaginary cost estimate that was put into the CIP to do something, but that is not real money until borrowed and the project will likely cost 2-3 times their CIP estimates. This imaginary and unapproved project has been slid for years and is now out in the 2008-2010 timeframe. I’d bet money that it will be shifted further to the right at the county’s earliest convenience. Whatever is eventually spent will be taxpayer dollars too, even though this crisis was created to help Weyerhaeuser avoid paying for it.

What’s more, the crisis exists right now and has for more than 2 years. With 2-3 mile morning backups and 1-2 mile afternoon backups, the problem needs addressing today. Absent an immediate remedy, the

halting of permits to Redmond Ridge and Trilogy was to postpone the worst of the crisis until these improvement projects were approved and constructed. Neither has occurred and if left to DOT, Novelty Hill Road will be completely gridlocked before anything is done.

So you can close this complaint file over my strong objections. In my opinion your investigation was exactly what I expected; another cover-up and whitewash of wrongdoing within King County to help a developer and defraud the citizens of King County of hundreds of millions of dollars. As people lose 2-3 hours of their lives a week sitting in the back-ups created by Quadrant and ignored by King County, you can all go about your jobs pretending to have the public trust. But you don't.

This analysis also justifies my request that it be performed by an outside and independent investigator. Clearly the King County Ombudsman is unable to investigate any allegations of wrongdoing by the county. The first rule of any investigation is to investigate. Not to ask the accused for their excuses and put them into your conclusions.

And while the Board of Ethics is supposed to examine their direct conflict of interest in enforcing permits with a direct financial impact on their departments, don't think I overlooked your failure to address that conflict of interest King County has in enforcing permit conditions like this one. With over 600 permits issued to Quadrant Homes since May 1, 2004 and over \$1.2 million in permit fees obtained by simply looking the other way, I can see that it would have been a very hard allegation to defend against. But this allegation alone should have warranted keeping this file open until the Board of Ethics rules.

Michael Costello  
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Redmond, WA 98053