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BEFORE THE HEARING EXAMINER FOR THE CITY OF RENTON

RE: WA State Dept. of Transportation)
Noise Variance) FINAL DECISION
LUA15-000036, VAR)

Summary

The applicant has applied for a variance to the City’s noise standards in order to make required improvements to SR 900 between mile post 6.66 and mile post 9.87 over 34 nonconsecutive nights from June 1, 2015 to December 31, 2015. The variance is approved subject to conditions.

Testimony

Vicki Grover, City of Renton Civil Engineer, summarized the proposal.

Mohammad Hasan, WSDOT project manager, explained the need for the project. He noted that SR 900 has multiple cracks that will get worse and compromise the functionality of the roadway. The worst noise levels will be reached in the SR 900/ 135th area, where work may take up to ten nights.

Maria Laura Musso-Escude, representing the applicant, noted that the grinders will generate the most noise at 85 dBA. 85 dBA is comparable to a blender. People will notice the grinders at night, but the grinders are moving and will be past a home in about 15 minutes. When people call the complaint line, WSDOT can help reduce noise by providing ear plugs and can offer

1 hotel accommodations if all else fails. Calls are rare but they do sometimes happen.

2 **Exhibits**

3 Exhibits 1-7 identified at page 2 of the staff report were admitted into the record during the
4 hearing. The following exhibits were also admitted during the hearing:

5 Exhibit 8 Staff report.

6 Exhibit 9 11x17 aerial photograph of project site and 8x11 photographs of project
7 site.

8 **Findings of Fact**

9 **Procedural:**

- 10
- 11 1. Applicant. Washington State Department of Transportation.
 - 12 2. Hearing. A hearing was held on the subject application on February 24, 2015 in the City of
13 Renton City Council Chambers.
 - 14 3. Project Description. The applicant has applied for a variance to the City's noise standards in
15 order to make required improvements to SR 900 between mile post 6.66 and mile post 9.87 over 34
16 nonconsecutive nights from June 1, 2015 to December 31, 2015.

17 The project would consist of replacing concrete panels, conducting pavement shoulder repairs, adding
18 pavement markings, and constructing accessibility improvements in conformance with the Americans
19 with Disabilities Act (ADA). Construction equipment used during the nighttime operations will
20 include, but is not limited to: dump trucks, generators, portable lighting (light plants), paving
21 machines, grinders, compaction rollers, air compressors, and saw cutters for asphalt and concrete.
22 Noise levels resulting from project construction activity would generate peak noise levels of 68 to 85
23 dBA as perceived at a distance of 50 feet from the WSDOT property lines.

24 When feasible, temporary noise shields would be placed around construction equipment. In addition,
25 the proponent proposes measures to mitigate noise impacts. One-ton pick-up trucks will not be
26 allowed to park or idle near residences. An after-hours noise complaint phone number will be
provided. Use of backup alarms will be minimized.

A variance from RMC 8-7-2 is necessary in order to conduct the nighttime work, as maximum
permissible environmental noise levels (per WAC 173-60-040, incorporated by reference in RMC 8-
7) limit extended periods of noise from 10:00 pm to 7:00 am to levels between 45 dBA and 60 dBA,

1 with exceedances of 5 to 15 dBA permitted for periods of 1.5 to 15 minutes in any one-hour period
2 (WAC 173-60-040).

3 4. Surrounding Uses. Numerous properties along the SR 900 construction route are occupied by
4 single-family homes.

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6 5. Adverse Impacts. The noise generated by the proposal will be mitigated as much as can be
7 reasonably required of WSDOT. 85 dBA is noisy for night time hours, especially for homes located
8 directly adjacent to SR 900 right of way. However, the need for repairs of SR 900 is unavoidable and
9 will only be temporary. Although the variance request is for a total of 34 evenings, this is for the
10 entire length of the repair project in Renton and noise levels will only be exceeded for a maximum of
11 ten nights in the most affected area, which is in the 135th St. area along SR 900. WSDOT has
12 proposed in Ex. 1 six mitigation measures which are implemented in the conditions of approval of
13 this decision. From a review of this list and the questioning of WSDOT representatives during the
14 hearing, it appears that WSDOT will be using all reasonable measures available to reduce noise
15 impacts. Measure ranges from using noise mitigation shields to a complaint hotline will be
16 employed. All residents within 500 feet of the project will be provided notice of the work 14 days in
17 advance of the project.

14 **Conclusions of Law**

15 1. Authority. RMC 8-7-8(A) authorizes the hearing examiner to hear requests to variances of the
16 noise standards set by Chapter 7 RMC.

17 2. Review Criteria. Noise variances are governed by RMC 8-7-8(D). Applicable criteria are
18 quoted below in italics and applied through corresponding conclusions of law.

19 **RMC 8-7-8(D)(1):** *That the applicant suffers practical difficulties and unnecessary hardship and the*
20 *variance is necessary because of special circumstances applicable to the applicant's property or*
21 *project, and that the strict application of this Chapter will deprive the subject property owner or*
applicant of rights and privileges enjoyed by others.

22 3. The criterion is met. The work must be done during night time hours when noise limits are
23 strictest in order to minimize disruption of the transportation system. The work is unavoidable as SR
24 900 is in serious need of repair in order to continue functioning properly.

25 **RMC 8-7-8(D)(2):** *That the granting of the variance will not be materially detrimental to the public*
26 *health, welfare or safety, or unduly injurious to the property or improvements in the vicinity of the*
location for which this variance is sought.

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2 5. The noise levels generated by the proposal may very well annoy and disturb adjoining
3 property owners. However, the disturbance will be for a limited period of time and the applicant will
4 provide for ear plugs and/or hotel accommodations if the noise is intolerable. Given the absolute
5 need for the SR 900 repair work, the amount of mitigation proposed as outlined in Finding of Fact
6 No. 5 and the limited nature of the adverse impacts, it is concluded that granting the variance will not
7 be materially detrimental or unduly injurious as contemplated in the criterion quoted above.

8 **RMC 8-7-8(D)(3):** *That the variance sought is the minimum variance which will accomplish the*
9 *desired purpose.*

10 6. The applicant demonstrated during the hearing that the work is unavoidable and that the
11 mitigation imposed is the most that could be reasonably required. For these reasons the variance is
12 the minimum necessary.

13 **RMC 8-7-8(D)(4):** *That the variance contains such conditions deemed to be necessary to limit the*
14 *impact of the variance on the residence or property owners impacted by the variance. The variance*
15 *approval may be subject to conditions including, but not limited to, the following:*

- 16 *a. Implementation of a noise monitoring program;*
- 17 *b. Maximum noise levels;*
- 18 *c. Limitation on types of equipment and use of particular equipment;*
- 19 *d. Limitation on back-up beepers for equipment;*
- 20 *e. Required use of noise shields or barriers;*
- 21 *f. Restrictions to specific times and days;*
- 22 *g. Specific requirements for documentation of compliance with the noise variance*
conditions;
- 23 *h. Specific requirements for notification to nearby residents;*
- 24 *i. Required cash security to pay for inspection services to verify compliance;*
- 25 *j. Required access to the project by the City to verify compliance with the noise variance*
conditions;
- 26 *k. Specific program to allow for temporary hotel vouchers to effected residents;*
- l. Requirements for written verification that all workers understand the noise variance*
conditions for the project; and
- m. Provision allowing the City to immediately revoke the variance approval if the*
variance conditions are violated.

27 7. Most of the measures identified above have been either proposed or required for the project.
28 The measures taken to mitigate impacts have been found adequate by staff and it doesn't appear that
29 any additional measures from the list above would materially help to mitigate noise impacts.

1 **RMC 8-7-8(D)(5):** *The importance of the services provided by the facility creating the noise and the*
2 *other impacts caused to the public safety, health and welfare balanced against the harm to be*
3 *suffered by residents or property owners receiving the increased noise permitted under this variance.*

4 8. The need for improvements to SR 900 are of critical importance and that has been balanced
5 into the assessment of impacts (FOF No. 5) as required by the criterion above.

6 **RMC 8-7-8(D)(6):** *The availability of practicable alternative locations or methods for the proposed*
7 *use which will generate the noise.*

8 9. There are no practicable alternative locations or methods available.

9 **RMC 8-7-8(D)(7):** *The extent by which the prescribed noise limitations will be exceeded by the*
10 *variance and the extent and duration of the variance.*

11 10. Noise levels may reach levels as high as 85 dBA by grinders for up to 10 days in the SR
12 900/135th portion of the project. WSDOT representatives testified that 85 dBA is the noise level of a
13 blender. As previously noted, these noise impacts are unavoidable. In a worst case, WSDOT will
14 provide hotel accommodations to adjoining property owners.

15 **DECISION**

16 As conditioned, the variance meets all applicable criteria as outlined in this decision. The
17 conditions of approval are as follows:

- 18 1. The applicant shall provide the City of Renton project manager with the phone
19 number for after-hours noise complaints prior to commencement of construction.
20 Any complaints within the Renton city limits will be summarized and reported to the
21 City's project manager within 10 days of the complaint. In response to complaints,
22 the applicant will take all reasonable measures to minimize disturbance, including the
23 provision of ear plugs or hotel accommodations as testified during the hearing.
- 24 2. The applicant shall implement all proposed mitigation measures identified in Exhibit
25 1 to diminish or eliminate noise during construction.
- 26 3. The applicant shall notify the City of Renton project manager with the date and areas
of expected night work prior to commencement of night work, a minimum of 24
hours in advance of the work.
4. As authorized by RMC 8-7-8(D)(4)(m), the Community and Economic Development
Administrator may revoke this variance if the applicant fails to comply with all
conditions.

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2 DATED this 10th day of March, 2015.

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5 Phil A. Olbrechts

6 City of Renton Hearing Examiner

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8 **Appeal Right and Valuation Notices**

9 RMC 4-8-080 provides that the final decision of the hearing examiner is subject to appeal to the
10 Renton City Council. RMC 4-8-110(E)(14) requires appeals of the hearing examiner's decision
11 to be filed within fourteen (14) calendar days from the date of the hearing examiner's decision.
12 A request for reconsideration to the hearing examiner may also be filed within this 14 day appeal
13 period as identified in RMC 4-8-110(E)(13) and RMC 4-8-100(G)(9). A new fourteen (14) day
14 appeal period shall commence upon the issuance of the reconsideration. Additional information
15 regarding the appeal process may be obtained from the City Clerk's Office, Renton City Hall –
16 7th floor, (425) 430-6510.

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Affected property owners may request a change in valuation for property tax purposes
notwithstanding any program of revaluation.