

Local



Crossgates hearing will not be reopened

By EDWARD CAREY

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An environmental hearing on the proposed \$85 million Crossgates mall in Guilderland — which opponents had said were important in their fight to stop construction — will not be reopened, state Environmental Conservation Commissioner Robert F. Flacke has decided.

The decision does not affect Flacke's earlier promise to give a final decision on 11 environmental permits needed by Pyramid Crossgates Co., the mall's developer, within 60 days from today.

Flacke's decision apparently is based on concern over air quality in the vicinity of Schoolhouse Road and Western Avenue if the mall is built.

Lawrence Vernon, an EnCon legal counsel, disclosed Monday night Flacke has decided to allow all parties to submit additional written comment on air quality at the Western Avenue-Schoolhouse Road intersection over the next two weeks.

Flacke's decision was announced to mall opponents Monday evening, with formal announcement of the decision expected today.

Vernon said all parties during the next two weeks will be allowed to comment on air quality impact at five receptor points on Western Avenue in the vicinity of the Schoolhouse Road intersection, also known as "Intersection 1." Three of the five are on the north side of Western Avenue.

Intersection 1 has been called "the most critical" by EnCon, referring to

the fact an EnCon planner on April 17 told Flacke air quality standards could not be met at that intersection through 1984. Standards would be met in 1985 because more cars that produce less pollution will be on the road by that year.

Air quality standards recently were reanalyzed by EnCon, which said peak concentrations of carbon monoxide at Intersection 1 exceed department standards. Those concentrations were measured at the receptor points along Western Avenue.

A receptor point, according to Vernon, is "a point at which a potential for impact of any air pollution could be reasonably predicted."

The reanalysis came after Flacke's Nov. 28, 1980, decision to withhold permits for the proposed mall, giving Crossgates six months to supply additional information. Flacke — who overruled a decision by the hearing judge — said at the time information on air quality, traffic flow and runoff water was incomplete.

Vernon said although comments over the coming two weeks are limited to air quality, "traffic flow and volume are functions of traffic that can't be separated from air quality."

Flacke's decision to allow all parties to make further comment ruled out any future environmental hearing, which had been supported by Crossgates opponents, and was chosen over another option of Flacke's — to close the record to public comment.

Crossgates opponent Lindsay Childs

of McKownville said the two-week period will "give us a last shot at responding to the air quality situation. I would assume Pyramid will take advantage of the opportunity to introduce mitigation proposals which will allow them to not violate the air quality standards." Childs said he believed EnCon was "leaning over backwards to allow Crossgates to make their case."

Meanwhile, Childs' wife, Rhonda, president of Concerned Citizens Against Crossgates, and John Shea, attorney for the McKownville Improvement Association, two groups opposing the mall, have written to Flacke in response to what they call "clandestine" meetings between EnCon personnel and representatives of Pyramid Crossgates Co.

In a letter dated April 23, Shea said he witnessed a meeting last Thursday between Pyramid representatives and EnCon and state Transportation Department officials. Shea contends "such conduct is strictly prohibited by law, namely, State Administrative Procedure Act Section 307."

In his letter, Shea also requests "an adjournment of the proposed adjudicatory hearings and an immediate suspension of any further consideration of the application for permits requested by the Pyramid Crossgates Co. from the department" — a position he maintained Monday night even after learning of Flacke's decision.

In a separate letter, Mrs. Childs called for dismissal of Pyramid's application and the resignation of Flacke.

Mrs. Childs, like Shea, said she saw

Pyramid representatives meeting EnCon officials. She cited EnCon regulations stating "no party shall directly communicate with the hearing officer designated for any particular hearing, in connection with any issue of fact or law involved in any pending application, except upon notice and opportunity for all parties to participate."

But Edward Miller, EnCon project coordinator for the Crossgates proposal, said his department would be "in violation only if they (Pyramid representatives) tried to sit down with Bill Dickerson (EnCon hearing officer on the project)."

Shea said he saw Theodore Davis of EnCon's air quality division and Charles Sarris, EnCon legal counsel, in the meeting with Pyramid officials on the fifth floor of EnCon's Wolf Road offices.

Mrs. Childs said the meeting she witnessed took place in Flacke's "personal suite" on the sixth floor.

Shea said EnCon "doesn't communicate with opponents of the project. But they are on familiar terms with the Pyramid Crossgates Co. We do not enjoy the same privileges as the applicant."

Mrs. Childs said, "We're not throwing up our hands and saying 'finished' yet," noting she will meet attorneys today and tomorrow to discuss action that might be taken by Concerned Citizens Against Crossgates.

Bruce Kenan, managing partner for Pyramid Crossgates, was not available for comment.