

**COMMISSIONERS' MINUTES  
KITITAS COUNTY, WASHINGTON  
SPECIAL MEETING**

**WEDNESDAY**

**1:30 P.M.**

**FEBRUARY 9, 2005**

Board members present: Chairman Perry D. Huston, Vice-Chairman David Bowen & Commissioner Alan Crankovich.

Others: Julie Kjorsvik, Clerk of the Board; Darryl Piercy, CDS Director; Marco Rains, CDS Staff Planner; James Hurson, Chief Civil Deputy Prosecutor; Richard Cole, Attorney for Appellant; Chuck Cruse, Representing the Proponent and approximately 8 members of the public.

**APPEAL HEARING**

**NOACK SHORT PLAT**

**CDS**

**CHAIRMAN HUSTON** opened the appeal hearing regarding the administrative decision granting conditional preliminary approval of the Noack Short Plat. He reviewed the quasi-judicial process and asked for disclosures from the Board. The Board had no disclosures to make and there were no objections made to the members hearing the matter.

**MARCO RAINS, CDS STAFF PLANNER** was sworn in and reviewed his staff report dated February 8, 2005. He said on October 21, 2004, the Noack Family Revocable Living Trust had applied for a two lot short plat within the Ag-20 zoning district located North of Brick Mill Road and West of Colockum Road in Ellensburg. The Community Development Services issued Conditional Preliminary Approval of the Noack Short Plat (SP-04-49) on December 22, 2004. He reviewed the appeal issues that were filed by Attorney Richard T. Cole on behalf of J. Wayne and Cindy L. McMeans on January 10, 2005. He explained how the appeal issues that were raised relating to private protective covenants were a separate and distinct form of land use regulation from the County's subdivision, zoning and other development regulations and that they are enforced through private civil action. The County does not have the jurisdiction to enforce those restrictions. He said that according to Kittitas County Code plat notes concerning private covenants are not a requirement for preliminary or final approval of a short plat. Mr. Rains said that the administrative review of the Noack Short Plat was done in accordance with Kittitas County Code and met the requirements for preliminary approval (KCC 16.12) and therefore the appeal should be denied. **ATTORNEY RICHARD COLE** cross-examined Mr. Rains and asked if the applicants had provided their office with a copy of the Declaration of Protective Covenants and Restrictions filed with the

County Auditor on 12/1/97. **MR. RAINS** said they did not. **MR. COLE** submitted a copy for the record (EXHIBIT 1). **MR. COLE** called Mrs. McMeans as a witness. **CINDY McMEANS** was sworn in to testify and was questioned by Mr. Cole regarding the Protective Covenants and Restrictions.

**JAMES HURSON, CHIEF CIVIL DEPUTY PROSECUTOR** explained that Mr. Rains had consulted with him previously regarding the Protective Covenants and Restrictions, but advised him that the County can not enforce those issues and that they are a separate contractual relationship (civil enforcement action), and not part of the Short Plat process. He said the applicants met the requirements and criteria for the Conditional Preliminary Approval of a Short Plat and if they wanted to agree to add a note to the Plat, they could, but there is no enforcement mechanism by the County. **ATTORNEY RICHARD COLE** gave rebuttal statements. He agreed with Mr. Hurson that the division of property versus building is separate, but he wants to be sure that his clients are protected with the covenants. He did not see any harm or risk with the County placing language on Plats which state they are subject to any covenants in place, to ensure people are aware they may exist. **CHUCK CRUSE, REPRESENTING THE PROPONENT** was sworn in. He said the Protective Covenants and Restrictions were irrelevant to the short plat process. He said the property has uses other than for residential. **MR. COLE** asked Mr. Cruse if the proponents were willing to put language on the Plat referencing the covenants. **MR. CRUSE** said no, it was not necessary. **THERE WERE NO OTHERS INTERESTED IN TESTIFYING AND CHAIRMAN HUSTON ASKED FOR CLOSING REMARKS.**

**MR. RAINS** asked for the Board to uphold the administrative decision of the Community Development Services department relating to the Noack Short Plat. There were no closing remarks given by Mr. Cole or Mr. Cruse.

**COMMISSIONER BOWEN** said he understood the apprehension of the appellant, but said the covenants were a separate issue and not enforceable by Kittitas County and not a part of the Short Plat process.

**COMMISSIONER BOWEN** moved to uphold the administrative decision to grant conditional preliminary approval of the Noack Short Plat (SP-04-49). **COMMISSIONER CRANKOVICH** seconded.

**COMMISSIONER CRANKOVICH** agreed with Commissioner Bowen and felt the applicant had met the requirements for preliminary approval of a short plat as set forth by Kittitas County. **CHAIRMAN HUSTON** said it can be difficult where to draw the line to avoid loading documents up with irrelevant information that are not requirements of the

County. He felt that staff made the appropriate decision and noting the applicants acknowledged that the covenants do exist.

Motion carried 3-0.

Meeting adjourned at 2:06 p.m.

**CLERK OF THE BOARD**

**KITTITAS COUNTY COMMISSIONERS  
KITTITAS COUNTY, WASHINGTON**

---

**Julie A. Kjorsvik**

---

**Perry D. Huston, Chairman**