

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

TUESDAY

1:30 P.M.

MAY 25, 2010

Board members present: Chairman Mark McClain, Vice-Chairman Paul Jewell and Commissioner Alan Crankovich.

Others: Catherine Dunn, Deputy Clerk of the Board, Greg Zempel, Prosecutor; Neil Caulkins and Brent Bottoms, Prosecutor's Office; Dr. Mark Larsen, Health Officer; Cathy Bambrick, Public Health Administrator; Jan Ollivier, Planning Manager; Jeff Watson, Planner; Jeff Slothower, appellant's representation; Chuck Cruse, Cruse & Associates; Dave Nelson and Wayne Nelson, Encompass Engineering; Urban Eberhart, Farm Bureau; Anne Watanabe; Steve Lathrop; Dave Duncan; Bill Hinkle and 2 persons representing the public.

SPECIAL MEETING

ADMINISTRATIVE APPEAL

COMMISSIONERS

At 1:30 p.m. **Chairman Mark McClain** opened the special meeting to consider an administrative appeal of the Community Development Services and Environmental Health Department, which was filed by **Attorney Jeff Slothower** representing D&H Ranch, Inc; SDL Properties, Inc and L&D Land Corporation, Inc regarding vesting to rules and regulations applied on the date of the short plat application being submitted. He read the legal notice and outlined the appeal process. The Board disclosed that none of them had anything to disclose. **Jeff Slothower**, attorney for appellants, submitted additional exhibits (A-20, A-21) and those witnesses expected to be called by the appellant were sworn in by **Chairman McClain**.

Jeff Slothower asked who would be considered the responsible official in this matter because, although the appeal was of a letter by Cathy Bambrick, Public Health Administrator, the responsible official of the short plat was Jeff Watson, Planner. **Deputy Prosecutor Neil Caulkins** replied that there would be no Responsible Officials Testimony, as the County was relying on the record and Final Arguments.

There was no Responsible Official Testimony.

Appellants Testimony:

Chuck Cruse, Cruse & Associates, said he became a Public Land Surveyor in Kittitas County in 1979, doing business first as Cruse & Nelson, then as Cruse & Associates. He said he worked on Galaxy and Turf Ranchettes Short Plats, previously platted as High Valley

Ranchettes. **Jeff Slothower** questioned Mr. Cruse on Exhibits A-1 to A-18 establishing the process used by Environmental Health to condition for potable water in short plats. **Mr. Slothower** submitted Exhibit A-22 and A-23.

There was a 5-minute break to make copies of the exhibits.

Deputy Prosecutor Brent Bottoms objected to the additional exhibits saying this was a tactic to hold relevant information which should have been submitted earlier and is an unfair surprise. **Jeff Slothower** argued that since there was no evidence by the Responsible Official, this was relevant to the issue. **Chairman McClain** said he would accept the additional exhibits. **Vice-Chairman Jewell** and **Commissioner Crankovich** agreed. **Mr. Slothower** said it took some time to read the County's brief and for Mr. Cruse to go through his files.

Jeff Slothower said these exhibits would demonstrate potable water requirements for short plats that have been re-short platted. The parcels were short platted earlier as Radar Road and Fieldstone Short Plats. He said they received the same comment letter regarding potable water which they demonstrated with a 1997 water well report.

There was no Proponents Response.

The Interested Parties Testimony:

Urban Eberhart, speaking for the Kittitas County Farm Bureau, said the members will be impacted by the rescinding of Resolution 2004-36 and they object to no public process involving it. He said they thought the policy was retroactive and extremely broad.

David Nelson, Encompass Engineering, said he also had similar PLS history as Chuck Cruse. He said he had talked with the Stevens County Planning Director, who formerly worked for Kittitas County and who said that Stevens County goes by these same potable water reports, as does many other counties.

Final Arguments:

Deputy Prosecutor Brent Bottoms said there were two issues which were easy to confuse, making sure water is potable and making sure water is there. He said the conditional approval includes everything in the application that the applicant listed.

Chairman McClain said a number of things in the conditions of approval are not done before the final approval for instance, 911 addressing and mailboxes. **Deputy Bottoms** said the requirement that water is potable should be done before the final approval. **Chairman**

McClain said that some of the requirements are done between the preliminary and final approvals.

Deputy Bottoms said the length of time between hydrologic study and current time doesn't take into consideration current conditions.

Deputy Prosecutor Neil Caulkins said he had submitted a Brief, and went on to say the appeal is seeking to challenge a refusal to process a short plat. He said the preliminary conditions say they need to submit soil logs and water availability information. He said the project cannot be processed without soil logs. He said there was no refusal and the original letter from Jeff Slothower said if a letter is not returned within 5 days, he would consider it a refusal. **Deputy Caulkins** said the vested rights doctrine sets what requirements are needed and they only attach to lawful requirements.

Jeff Slothower, attorney for appellants, said the County has fully missed the entire issue, which is about processing land use applications in a manner that allows applicants to know in advance what the rules are. He said going back to 1991, the rules are policy and in 2004 a Resolution was done to level the playing field and the appellant feels they are entitled to rely on Resolution 2004-36. He said the County hasn't presented any evidence to prove their case.

Mr. Slothower said the RCW's state the County must require a developer to "make adequate provisions for potable water". He said the statutes are undefined for a reason, which is to give the County flexibility and discretion to do the job as is done in Resolution 2004-36, but in March, this was changed. He said the statutes need to be read to harmonize with them and the County argument doesn't fit to the statutory stream. He said the appellants are vested to Resolution 2004-36 and the County Prosecutors are wrong. He said if the County wishes to adopt a new code regarding potable water, they must take input, have public hearings and adopt a rule, that is, to go through the public process. He said the relief his client is asking for is to uphold the appeal and allow the processing of short plats under Resolution 2004-36.

Chairman McClain said he was struggling with how this decision would be appealed. **Jeff Slothower** replied it would be through the Land Use Petition Act (LUPA).

Vice-Chairman Jewell moved to continue the public hearing to June 8, 2010 at 11:00 a.m. in the Commissioner Auditorium, with the record closed. Commissioner Crankovich seconded the motion. Motion carried, 3-0.

Meeting adjourned at 3:00 p.m.

DEPUTY CLERK OF THE BOARD

Catherine Dunn

Catherine Dunn

KITTITAS COUNTY COMMISSIONERS
KITTITAS COUNTY, WASHINGTON

[Signature]

Mark McClain, Chairman

Paul Jewell, Vice-Chair