

KITTITAS COUNTY BOARD OF COUNTY COMMISSIONERS

IN THE MATTER OF

Performance Based Cluster Platting
Code Interpretation for Open Space

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FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

THIS MATTER having come on for hearing in front of the Kittitas County Board of County Commissioners on January 20, 2010 and February 2, 2010, the Board of County Commissioners having taken evidence hereby makes the following Findings of Fact, Conclusions of Law, and Decision as follows:

Now therefore be it resolved that the Kittitas County Board of County Commissioners enters the following findings of fact:

1. On November 25, 2009, Community Development Services Staff Planner, Dan Valoff, signed a code interpretation letter addressed to Sean Northrop, Sapphire Skies, in response to a code interpretation request regarding the calculation of required open space in Performance Based Cluster Plats; and
2. The County's code interpretation letter addresses the calculation of open space in regard to both critical areas and BPA easements, the appeal is only in regard to how BPA easements are to be considered in the calculation of the minimum required open space; and
3. The County code interpretation letter was emailed from the County to Mr. Northrop on November 30, 2009. A timely appeal was submitted on behalf of Sapphire Skies et al on December 8, 2009 by Groff Murphy Lawyers to the Board of County Commissioners. Kittitas County Community Development Services received notice of the appeal from the Board of County Commissioners on December 9, 2009; and
4. After proper notice, an appeal hearing was held on January 20, 2010 at which testimony was taken from Mike Murphy, Goff Murphy Layers representing Sean Northrop, Allison Kimball, Bookside Consulting and Dan Valoff from Community Development Services; and
5. At this hearing, testimony was taken from all who wished to speak, and arguments were heard from Mr. Valoff and the attorneys for the appellant and associated witness; and

6. The record was closed and the hearing was continued until February 2, 2010 for board deliberation; and
7. The Kittitas County Board of County Commissioners had read the items submitted into the record, the briefing submitted by the parties, heard the testimony and arguments presented; and
8. The Board of County Commissioners deliberated over the matter at the close of the public portion of the hearing.
9. The Board of County Commissioners, at a lengthy study session on May 14, 2007, agreed upon the County policy that BPA easements were to be considered as open space for purposes of meeting the minimum 40% threshold found in KCC 16.09.030 but are not to be considered as open space for purpose of calculating bonus density under the Public Benefit Rating System found at KCC 16.09.090.
10. The Board finds that it has been the consistent practice of Kittitas County to include areas utilizing the BPA easements as Open Space as defined in KCC 16.09.100 but not to be used in the Public Benefit Rating System for density bonuses in KCC 16.09.090.

Now therefore be it resolved that the Kittitas County Board of County Commissioners enters the following conclusions of law:

1. The Kittitas County Board of County Commissioners has authority to hear the appeal of an administrative decision by a non-elected County official under Ch. 15.04 KCC.
2. When code provisions are ambiguous, inquiry is made into legislative intent.
3. KCC 16.09.100(3)'s prohibition on open spaces including areas encumbered by federal, state, or local jurisdictions is ambiguous.
4. It was the intent of the Kittitas County Board of County Commissioners that, in the context of a performance based cluster plat application, an easement of the Bonneville Power Administration (BPA) was to be considered for purposes of calculating whether the application set aside the requisite 40% as open space pursuant to KCC 16.09.030, and that such a BPA easement is not to be considered in calculating the Public Benefit Rating System found in KCC 16.09.090.
5. KCC 16.09.030's prohibition upon inclusion of areas already protected through regulatory requirements does not include BPA easements because they are not regulatory.
6. For purposes solely of determining whether the amount in open space in an application meets the 40% required by KCC 16.09.030, a BPA easement is not an encumbrance by a federal, state, or local jurisdiction, and therefore is included.

Now therefore be it resolved that the Kittitas County Board of County Commissioners enters the following decision:

Based on the above Findings of Fact and Conclusions of Law, the Kittitas County Board of County Commissioners hereby declare that the code interpretation dated November 25, 2009 regarding Performance Based Cluster Plat Code open space calculations on appeal herein is hereby reversed. Staff is directed to count the area covered by the BPA easement in question towards calculating the minimum 40% open space threshold required by Ch. 16.09 KCC, and that the matter continue being processed accordingly.

DATED this 16th day of April, 2010 at Ellensburg, Washington.

BOARD OF COUNTY COMMISSIONERS
KITTITAS COUNTY, WASHINGTON


Mark McClain, Chairman


Paul Jewell, Vice- Chairman


Alan A. Crankovich, Commissioner



CLERK OF THE BOARD


Julie A Kjorsvik