

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

**WEDNESDAY**

**1:30 P.M.**

**AUGUST 5, 2009**

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

Others: Catherine Dunn, Deputy Clerk of the Board; Jeff Watson, Staff Planner; James Denison, Attorney for Otto Seiber; Otto Seiber, applicant.

**SPECIAL MEETING**

**O. SEIBER SEPA DNS APPEAL**

**COMMISSIONERS**

At 1:30 p.m. **Chairman Crankovich** opened the special meeting continued from July 28, 2009, to consider an Appeal from James T. Denison, Jr., who is appealing an administrative decision of the County Community Development's decision of preliminary approval for the O. Seiber Short Plat (SP-08-00052), an application submitted by Encompass Engineering, authorized agent for O. Seiber, landowner, for a 3-lot short plat on approximately 17.65 acres of land that is zoned Ag-5. The Record is closed.

**Vice-Chairman Jewell** disclosed that on Thursday, July 30, 2009 following the Community Development Services continued study session, he had a discussion with Jeff Watson, Jan Ollivier, other CDS staff and Public Health staff. He thought this was allowed until he was told differently by legal staff. There was no new information in his conversation. In addition, he received some pictures and well logs from James Rivard, which he did not open or look at.

**Commissioner McClain** asked if he had formed an opinion based on this conversation. **Vice-Chairman Jewell** said he had not received any new information and did not form an opinion based on that conversation. **James Denison**, Attorney for the applicant, asked about the substance of the conversation and the meeting. **Vice-Chairman Jewell** said they were discussing the water moratorium during the meeting and then he initiated a conversation after it centered around RCW 27.53.070, discouraging field investigations. **Mr. Denison** asked if he could put that conversation aside. **Mr. Jewell** said that he could. **Mr. Denison** then said that Mr. Seiber had no objection.

**Commissioner McClain** noted that no one was present from the Yakama Nation.

**Commissioner McClain** said that he had taken a great deal of time to consider this decision and had six pages of comments that he will place into the record. They are facts that helped him in his decision making process. Mr. Woody of the Yakama Nation Cultural Resources office talked at length of the 22 sites. These could be anything but he noted "lithic procurement" sites in his explanation.

**Commissioner McClain** said he did not think these were included in the law. In his opinion plants and medicines were not included in the RCW's. The statute is looking for voluntary reporting of archeological sites on private property not required reporting as the Yakama Nation believes. He believes that the Nation has misread the statute and is looking for entitlement to dig holes and look over private land. The legislature's intent is when someone discovers something on their land, they need to report it.

**Commissioner McClain** said that the Department of Archeology's letter is overreaching with a threatening tone and Condition #7 of the Preliminary Approval should be withdrawn and Condition #8 revised.

**Vice Chairman Jewell** said he took time to consider what is the County's legal obligation on archaeological artifacts, resources and sites and how does that obligation lends itself to the short plat in question as well as if the county has no legal obligation then what is the best policy decision considering the relevant facts. The applicant has testified that while this application is only for the subdivision of land with no groundbreaking activity, it is clearly to be used for residential building which would include groundbreaking activities. The statute in question states that field investigations on private land should be discouraged. Staff asserts that the statute provides for some level of responsibility for local agencies to make a reasonable effort to detect and protect these resources. Does the county have an obligation to detect archaeological sites through the use of a cultural resource survey in this case. After considering all these points, **Vice Chairman Jewell** does not believe the county is legally obligated to make Condition #7 a part of the Final Approval of the O. Seiber Short Plat and that this becomes a decision of policy. Both the applicant and the Yakama Nation have agreed that a survey of the building area would be satisfactory, however considering the ground disturbances that have occurred, he believes that Condition #8 is sufficient to protect the interests of all parties concerned.

**Chairman Crankovich** said he agrees with the comments of the other Board members and in his opinion, the 22 locations within a mile of the proposed Short Plat with no maps or charts shown as evidence by the Yakama Nation, are not compelling. There is a high amount of development surrounding the building area of the short plat. He said that he understands the concerns of the Yakama Nation and its members but there is no definition "of high probability". He said that Johnson Menninick has expressed an opinion that a professional

