



KITTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES

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"Building Partnerships – Building Communities"

STAFF REPORT

TO: Kittitas County Board of County Commissioners

FROM: Neil Caulkins, Deputy Prosecuting Attorney

DATE: June 17, 2014 Public Hearing (hearing date)

SUBJECT: 2014 Amendment to Kittitas County Code Title 15A, Revising SEPA Appeal Procedure

This public hearing is intended to hear public testimony and consider the Planning Commission's recommendations on a proposed amendment to the existing appeal process involving administrative decisions, including appeal of threshold determinations made per the WAC 197-11 and RCW 43.21C, State Environmental Policy Act, or SEPA.

Background

Whenever an administrative decision is made, the decision within Kittitas County is appealable through a "closed record" process, or hearing where no public testimony before the body making the decision on appeal is entered into the record. This administrative appeal process that is used for appeals of SEPA threshold determinations (not including a DS) and appeals of administrative land use decisions such as short plats or variances. This process was recently challenged and found by the Washington State Supreme Court not to comport with State Law which requires an open record hearing for such matters (decision attached to your agenda). Hence, the County has proposed revision to its appeal procedures to comply with the recent court decision.

Proposal

In summary, the proposed amendments include:

- (1) The appeal of an administrative land use decision, such as a short plat or variance, will be to the BOCC in an Open Record Appeal to be conducted as an Open Record Hearing.
- (2) Appeals of SEPA threshold determinations (not a DS) associated with land use decisions requiring a public hearing (first to the Hearing Examiner who makes a recommendation to the BOCC) will be before the Hearing Examiner who will conduct and decide (not just make a recommendation) on the SEPA appeal before potentially moving on in the hearing to the associated permit request if further hearing is required.
- (3) Appeals of the rare SEPA threshold determination that is associated with an administrative land use will be before the BOCC and be conducted and decided as an Open Record Hearing before potentially moving on to the appeal of the associated permit decision.
- (4) Any subsequent appeal of either a SEPA threshold determination or administrative land use decision beyond what is described above shall be to either the Superior Court or Hearings Board, as appropriate.

Additionally, the subsequent appeal of SEPA (to the Superior Court or Hearing Board, as appropriate) shall be timely if made within the time allowed for the appeal of the associated permit.

Planning Commission Recommendation:

The Planning Commission held a regularly scheduled public hearing on March 25, 2014 to consider proposed amendments (as outlined above) to Kittitas County Code chapter 17.08 and 17.15. The Planning Commission, in a 5-0 vote, recommended that the Board of County Commissioners approve the proposed amendments as presented by the Community Development Services staff.