

COMMISSIONERS' MINUTES
KITITITAS COUNTY, WASHINGTON
APPEAL HEARING

TUESDAY

1:30 P.M.

OCTOBER 28, 2003

Board members in attendance: Chairman Max A. Golladay, Vice-Chairman Perry Huston and Commissioner Bruce Coe.

Others: Shannon Carlson, Deputy Clerk of the Board; Chad Bala, CDS Staff Planner; Jim Hurson, Deputy Prosecuting Attorney; Darrel Ellis, Attorney for the Appellant; Georgia Johnson, Appellant.

✓ APPEAL HEARING

CHEPODA/JOHNSON APPEAL

CDS

At approximately 1:30 p.m. **CHAIRMAN GOLLADAY** opened the appeal hearing to consider an appeal to the Kittitas County Community Development Services administrative land use decision denying a request from Georgia Chepoda Johnson and Darryl S. Chepoda for parcel segregation under Kittitas County Code 16.04.020(6). **CHAIRMAN GOLLADAY** explained the process and how the hearing would be conducted. He asked each party to give the clerk any exhibits they would have. **CHAD BALA, STAFF PLANNER** submitted the Probate documents from the Chepoda Estate (Exhibit #1), and documentation of the Thomas Telfer Estate (Exhibit #2). **DARRYL ELLIS, ATTORNEY for the APPELLANT** submitted two surveys of the parcels (Exhibit #3 and Exhibit #4). **CHAIRMAN GOLLADAY** administered the oath to each party, and read the original notice of public hearing adding that there was a request to continue the public hearing on September 23rd by the appellant's attorney, the request was granted and the public hearing was continued to October 28th, 2003 at 1:30 P.M.

CHAD BALA, COMMUNITY DEVELOPMENT SERVICES STAFF PLANNER, clarified the zoning as Rural-3 on all five of the parcels on the map that was submitted. **MR. BALA** went through his staff report highlighting that the appeal issue is that the appellants stated that the Kittitas County Development Services staff's decision contains neither a legal nor factual basis for the denial, other than the unsupported opinion of the Civil Deputy Prosecutor James Hurson. **MR. BALA** went through the details of the information with regard to the probate file.

COMMISSIONER COE asked if there was a timeline on a lot line adjustment and if there was an alternate method than segregation? **MR. BALA** explained that there is not a timeline on the lot line adjustment, and alternative methods do exist.

CHAIRMAN GOLLADAY asked the appellants if they wish to give testimony at

that time. They declined to present testimony. CHAIRMAN GOLLADAY asked for any questions from either party. Acknowledging that there were no further questions or comments he asked for final arguments.

MR. DARRYL ELLIS, representing the appellants, noted the correctness of how the land was acquired. He stated that if they needed to re-open the estate to confirm existing ownership to the parcels, then he could do that. He said the access has been reviewed by the Fire Marshal and it is consistent with the needs of emergency vehicles. There have been no questions with regard to access to the parcels. Mr. Ellis is asking that the Board of County Commissioners request the Community Development Services Department to assign parcel numbers to allow testamentary provisions, and then they would not need to divide the property.

MR. JIM HURSON, representing the County went through the Telfer v. BOCC of San Juan County case, which made clear when a decedent dies how the estate is to be separated amongst heirs. The number of lots for distribution to the beneficiaries without going through the subdivision process, cannot exceed the number of beneficiaries. MR. HURSON pointed out that it would be in violation of the law to go back and re-open the probate. The County has been challenged before on this issue. He also said that the timeline was important because after the probate had been closed the appellants waited two years before going to the Community Development Services Department. Once the probate is signed testamentary doesn't apply. Once maximum parcels is created in order to subdivide into more lots the appellants would need to follow the subdivision procedures.

COMMISSIONER COE asked if there was a residuary clause in the Will? MR. HURSON pointed out in the Will it states "share and share alike", which would interpret the testamentary provisions. MR. HURSON also referred to a letter he had received from Mr. Ellis referencing Foss v. D'Annunzio case, which is an unreported case and cannot be used.

MR. ELLIS addressed the comment with regard to the number of parcels that can be separated; and felt there has not been consistent practice within the Community Services Department.

COMMISSIONER HUSTON moved to uphold the decision made by the Community Development Services Department denying testamentary parcel segregation. COMMISSIONER COE second.

COMMISSIONER HUSTON said it is clear that the Kittitas County Code didn't prevent the last wish of the property. The Telford case speaks in compliance with the Will. The property was divided in compliance with the request, the estate was closed, which shows there was satisfaction with the results. Further interest with wanting to separate the parcels would need to go through the county process. Based on testimony and

written materials it is not necessary to re-open the estate since there is nothing to prevent further separation of the parcels, as long as it is in compliance with the Kittitas County Code.

COMMISSIONER COE agreed with Commissioner Huston's comments. He wished he had more information from Mr. Ellis. If the interest was there to divide the land when the Will was executed, then it should of occurred then and not two years later.

CHAIRMAN GOLLADAY concurred with Commissioner Huston and added that the will was settled years ago and that now it is a development issue not inheritance issue. COMMISSIONER COE added that there is a process to divide property and he is compelled to believe if it wasn't a cost issue.

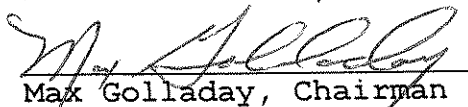
Motion Carried 3-0.

Meeting adjourned at 2:25 p.m.

DEPUTY CLERK OF THE BOARD


Shannon L. Carlson

KITTITAS COUNTY COMMISSIONERS
KITTITAS COUNTY, WASHINGTON


Max Golladay, Chairman