

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

**TUESDAY**

**1:30 P.M.**

**JULY 28, 2009**

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

Others: Catherine Dunn, Deputy Clerk of the Board; Neil Caulkins, Deputy Prosecutor; Kirk Holmes, Director of Public Works and Interim Community Development Services Director; Jan Ollivier, Planning Manager; Jeff Watson, Staff Planner; James Denison, Attorney for Otto Seiber; Otto Seiber; David Nelson, Surveyor for Otto Seiber; Johnson Menninick, Yakama Nation; Dawn Vyvyan, Attorney for Yakama Nation; David Powell and Dave Woody, Yakama Nation.

**SPECIAL MEETING**

**O. SEIBER SEPA DNS APPEAL**

**COMMISSIONERS**

At 1:30 p.m. **Chairman Crankovich** opened the special meeting continued from July 6, 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 open. **Chairman Crankovich** noted that the complete legal notice had been read on July 6, 2009. He read the procedures for SEPA appeal and swore in the prospective witnesses, Jeff Watson, Otto Seiber, Dave Nelson, Dawn Vyvyan, Johnson Menninick, David Powell and Dave Woody.

**Jeff Watson**, Staff Planner explained that the O. Seiber Short Plat had been submitted on November 19, 2008. The short plat was deemed complete and was sent out for comments. One of the comments received was from the Yakama Nation regarding cultural resources and expressed that this was an extremely high cultural site. They requested a cultural resource survey and mitigation. This was included in the SEPA conditions in the Determination of Non-Significance. During the 10 day appeal of the DNS, Mr. Seiber appealed through his attorney, James Denison.

**James Denison** cross examined Jeff Watson, asking whether the short plat included any ground disturbing activities within the application. **Mr. Watson** replied that there was nothing in the application outside of the roads that he was aware of that would indicate ground disturbance.

**Otto Seiber**, applicant, stated that he had lived near the property since the 1990's and that the property in question had been part of the Larsen subdivision in the Burbank Creek area. There is a quarry at both ends of the property and the only area flat enough to develop was on the top of the ridge. There is a power line and extension road system existing on the property. There was no place to build that hasn't been disturbed already.

**Mr. Seiber** submitted 7 pictures showing the site. Exhibit #1 was an overall view of the property showing surrounding development; Exhibit #2 is a continuation of #1; Exhibit #3 is a continuation of #2 looking East to orchards and telephone poles; Exhibit #4 showed a quarry on the property as well as the neighboring orchards; Exhibit #5 (picture #7) showed roads and an abandoned trailer on the property; Exhibit #6 (picture #9) shows a survey stake at the West end of the developable portion of the property; Exhibit #7 (picture #10) shows a survey stake at the northerly edge and includes the abandoned trailer.

**James Denison** asked Mr. Seiber why he was opposed to the cultural resource survey. **Mr. Seiber** said he wasn't opposed to it but thought it strange to require it on a parcel that had been so disturbed. He wasn't opposed to doing a cultural resource study on the building area.

**Mr. Seiber** went on to say that he has developed an air park and vineyard nearby increasing the tax value. The airstrip is used by DNR and WSP in emergencies and it is impossible to grow anything there. **Mr. Denison** asked if he had been required to do a cultural resource survey on any of the other projects and **Mr. Seiber** said he had not.

**Commissioner McClain** asked whether a cultural resource survey had been required at the time the parent parcel had been divided. **Mr. Seiber** said he was not aware of one being done.

**David Nelson**, PLS said since 1979 he had been a surveyor and has only worked in Kittitas County. He said he was familiar with the activity in this area. In 1980, the Burbank Creek Ranch was subdivided and he has been surveying for Mr. Seiber in the area since 1989. He explained that the main development area on this parcel was a narrow corridor on the eastern two-thirds of the parcel which was covered with roads and quarries.

**Dawn Vyvyan**, attorney for the Yakama Nation Cultural Resource department thanked the Board for the extension of the public

hearing. She introduced the members of the Cultural Resources office of the Yakama Nation.

**Chairman Crankovich** asked when the WA ST Department of Archeology was formed. **Dawn Vyvyan** replied that she wasn't sure when it was formed as it was part of the WA ST Department of Community, Trade and Economic Development (CTED), but she thought it wasn't more than 6 years old. She said they had reported more than 22 sites of high probability within one mile of the potential development.

**Dave Woody**, 705 S 27<sup>th</sup> AVE, Yakima, WA said he was an employee of the Yakama Nation for 5 years and his role was to review SEPA documents and prepare comments. Not all SEPA reviews end in comments by the Yakama Nation. He noted that there were archeological locations and cultural sites near this location.

**Vice-Chairman Jewell** asked how near they are located and **Mr. Woody** replied that they were within 200 feet to several miles of the project. When asked what has to occur when a site is found, **Mr. Woody** said that the site needs to be located within surveys done before by Central Washington University, sent to the State Department of Archeology and placed on their data base.

**Commissioner McClain** asked about the methodology of the surveys. **Mr. Woody** said that on a specific parcel a line of surveyors walk at 10 meter intervals and look at the ground.

**Chairman Crankovich** asked if any of the 22 sites were within the development area. **Mr. Woody** said that they were on public land (BLM) that has been surveyed.

**Vice Chairman Jewell** asked if the Yakama Nation had received notice previously on this parcel. **Mr. Woody** said that he didn't think they had and it was not unusual.

**Dave Woody** said that cultural resource surveys and field investigations were pretty much the same. They look for cultural impacts as well as archeological impacts. **Commissioner McClain** asked if food and medicines were regulated under RCW. **Mr. Woody** said that in the viewpoint of the Yakama Nation they were.

**Chairman Crankovich** asked what would happen to a person's property rights if something was found in a survey. **Mr. Woody** said that it would depend on what sort of artifact it was. There was no set specific way to deal with each one.

**Dave Woody** said that the issue of ground disturbance keeps coming up but there was a site in an orchard in Wenatchee, which was one of the most significant sites in North America and it was just a tiny

bit below the disturbed area. **Vice Chairman Jewell** asked what depth that meant and was told it was approximately six feet.

**Vice-Chairman Jewell** asked how the subsurface investigation was done. **Mr. Woody** explained that once or twice in every acre an auger probe is done. It brings up an amount of material that is screened for artifacts. **Vice-Chairman Jewell** asked how much such a survey would cost. **Mr. Woody** said that for 10 acres with three people doing the survey, it would take a day and cost approximately \$1,000. He expected a site the size of the development area to cost \$2,500 to \$3,500. It would be less if nothing was found.

**Vice-Chairman Jewell** asked what percentage is a high probability. **Mr. Woody** replied that he couldn't give a percentage.

**David Powell**, Archeologist for the Yakama Nation, said he had worked in the Pacific North West for thirty years, fourteen years with the Yakama Nation. The ceded lands (those lands occupied before the treaty was signed in 1855) includes all of Kittitas County. His professional opinion was that the flat land where the development would be taking place, has a high probability of archeological material with the Yakima River nearby. His opinion was that the planners were correct to require surveys. There were dozens of sites to the east of the project and one to the west of the River. He said there was a lot of talk about the disturbed areas but sites are still found underground below the disturbances. It was always reasonable to look and there are always ways to mitigate. In considering plats and short plats, the code requires consideration of the public good. The Department of Archeology has civil penalty provisions for knowingly disturbing sites. Conditions #7 and #8 will protect any sites. They can design a survey to consider the probability of a site.

**Commissioner McClain** asked if there was a place he wouldn't recommend doing a survey. **David Powell** said with a slope over 20%, he would not recommend a survey.

**Chairman Crankovich** asked when there would be no comments made. **Mr. Powell** replied that in the Valley floor with no water or in the Yakima Canyon where there is very little flat ground, there would be no need to comment.

**Johnson Menninick**, Yakama Nation Cultural Resources Manager, PO Box 151, Toppenish, WA gave an outline of the history of the Yakama Nation and the cultural issues involved in it. He suggested that the County and the Yakama Nation work together to co-manage the resources.

**Jeff Watson**, Staff Planner, in his final arguments said that initially he was concerned that the Yakama Nation had to conduct the surveys but he has learned that there are private companies that can do the work. He urged the Board to consider Deputy Prosecutor Neil Caulkin's written comments. He said that much of the development had been done earlier and by means that did not require notification to agencies. The tribe only commented on 26 out of 100 applications. He also noted that the applicant only addressed one argument, that of previous disturbance of the ground.

**James Denison**, attorney for the applicant, said that the question is one of personal property rights. This is not an archeological site or cultural resource site. It is 2 lots that the applicant wishes to make into 3 lots. The public interest issue is only applicable in the division of the land. RCW 27.53.070 has been applied incorrectly. High probability is not a good argument. He asked the Board to strike Condition #7 on the Determination of Non-Significance.

**Otto Seiber**, applicant, said that none of the people who have testified for the Yakama Nation have come to the site and that it is always open. He could see where people would have lived on the alluvial plain across the Yakima River but not on the basalt ridge above the river. **Mr. Seiber** said that there was no BLM land within a mile of his property and no maps or charts were shown as evidence. He said they could come and look but he wasn't going to finance it. He said that Condition #8 is sufficient and the Board should protect his property rights.

**Chairman Crankovich** moved to continue the public hearing until Wednesday, August 5, 2009 at 1:30 p.m. in the Auditorium. The record is closed. Vice-**Chairman Jewell** seconded the motion. Motion carried, 3-0.

The meeting was adjourned at 3:35 p.m.

**DEPUTY CLERK OF THE BOARD**

**KITTITAS COUNTY COMMISSIONERS  
KITTITAS COUNTY, WASHINGTON**

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**Catherine Dunn**

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**Alan Crankovich, Chairman**