

**COMMISSIONERS' MINUTES
KITTTITAS COUNTY, WASHINGTON
COMMISSIONERS AUDITORIUM
SPECIAL MEETING**

WEDNESDAY

10:00 A.M.

JANUARY 20, 2010

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

Others: Catherine Dunn, Deputy Clerk of the Board; Dan Valoff, Planner; Jan Ollivier, Planning Manager; Michael Murphy, Attorney for appellant; Sean Northrup, Allison Kimball, Sapphire Skies; Marc Kirkpatrick, Wayne Nelson, Encompass Engineering; David Bricklin, Attorney for interested parties, Westside Heights Homeowners Association; and 3 persons representing the public.

SPECIAL MEETING

APPEAL OF CODE INTERPRETATION

CDS

At 10:00 a.m. **Chairman McClain** opened a special meeting to consider the appeal by Michael Murphy of an administrative interpretation dated November 25, 2009 regarding the Performance Based Cluster Plat. **Chairman McClain** read the legal notice and appeal process into the record. He swore in Allison Kimball and Marc Kirkpatrick, who planned to testify for the appellant.

Dan Valoff, Staff Planner, gave a staff presentation outlining the process of the code interpretation. He gave the basis of his interpretation as KCC 16.09.100(3) Definition of Open Space.

Chairman McClain asked Mr. Valoff if he was relying on the statement in the definition "otherwise restricted or encumbered". **Mr. Valoff** said that he was.

Vice-Chairman Jewell said that in the minutes for meetings on other plats, which included former Director Darryl Piercy, the minutes state that a Bonneville Power Administration easement was used, but not for the density bonus. **Mr. Jewell** asked if there had been a change in policy.

Mr. Valoff said that the definitions state that critical areas, residential spaces or areas otherwise encumbered by Federal or State or local government. Trails can be done on BPA property, but permits are necessary and these may be revoked.

Vice-Chairman Jewell asked if he had been involved in any of these before. **Mr. Valoff** said he had not been the Planner on any Performance Based Cluster Plats using BPA easements.

Michael Murphy, attorney for the appellant, questioned Mr. Valoff, Allison Kimball and Marc Kirkpatrick about policies in CDS relating to BPA easements.

David Bricklin, attorney for interested parties, objected to not being able to cross examine witnesses. He said his clients supported Dan Valoff's position and felt the code language is clear. He said that the fact that code was misinterpreted, doesn't make it necessary to continue to misinterpret it that way. He submitted into the record an email from BPA explaining the encumbrance.

Michael Murphy said Mr. Bricklin states his clients were the developers of Westside Heights, and members of the Westside Heights Homeowners Association and did not know of any representation by Mr. Bricklin. **Mr. Murphy** submitted into the record Assignment of Development Documents and Warranties between Cle Elum's Sapphire Skies and Northland Resources LLC; Declaration of CCR's by Cle Elum's Sapphire Skies and First Amendment to CCR's.

In his closing arguments, **Michael Murphy** said prior staff had looked at the whole Code, as directed in Campbell Gwinn, and Dan Valoff had looked at individual portions of the code. Therefore, prior staff used the correct method to determine number of lots.

After a discussion of legislative intent, **Vice-Chairman Jewell** moved to continue the hearing for Board Discussion and Decision to February 2, 2010 at 2:00 p.m. in the Commissioner's Auditorium. **Commissioner Crankovich** seconded the motion. Motion carried, 3-0.

Meeting adjourned at 11:00 a.m.

DEPUTY CLERK OF THE BOARD

KITTITAS COUNTY COMMISSIONERS
KITTITAS COUNTY, WASHINGTON

Catherine Dunn

Mark McClain, Chairman