

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

**TUESDAY**

**2:00 P.M.**

**JUNE 16, 2015**

Board members present: Chairman Gary Berndt, Vice-Chairman Obie O'Brien and Commissioner Paul Jewell.

Others: Mandy Buchholz, Deputy Clerk of the Board; Brett Wachsmith, Treasurer; Neil Caulkins, Deputy Prosecutor; Brenda Larsen, Fire Marshal; Josh Hink, Deputy Fire Marshal; Jeff Slothower, Attorney Representing Allwest; Mitch Williams, Appellant - Allwest and three members of the public.

**PUBLIC HEARING**

**RESALE TAX TITLE PROPERTY**

**TREASURER**

At 2:02 p.m. **CHAIRMAN BERNDT** opened a Public Hearing to consider an application for the Resale of Tax Title property (Parcel #207343)- .33 acres at Sunlight Waters #2, Lot 30, Block H, Sec. 24; Twp. 19; Rge. 16.

**BRETT WACHSMITH, TREASURER** provided information on an application for Resale of Tax Title property from Raymond Knotts/RX Enterprises. He said the amount owing on the property was \$2,278.16 in addition to the cost of advertising the legal notice and any other administrative costs.

**THERE BEING NO ONE IN ATTENDANCE REQUESTING TO TESTIFY, THE PUBLIC PORTION OF THE HEARING WAS CLOSED.**

**COMMISSIONER O'BRIEN** moved to approve the Re-Sale of Tax Title property of .33 acres located at Sunlight Waters #2 Lot 30, Block H Sec. 24; Twp. 19; Rge. 16, in the amount of \$2,325.96 to Mr. Raymond Knotts/RX Enterprises. **COMMISSIONER JEWELL** seconded.

**COMMISSIONER JEWELL** said the sale is a public benefit by getting the outstanding taxes paid and it now being privately owned.

Motion approved 3-0.

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**PUBLIC MEETING**

**APPEAL OF CODE INTERPRETATION**

**FIRE MARSHAL**

At 2:07 p.m. **CHAIRMAN BERNDT** opened a Public Hearing to consider an Appeal of Administrative Interpretation of the Fire Protection Conditions in the Allwest Cluster Plat. He reviewed the procedures for an Appeal Hearing and reminded the audience all comments shall be directed to the Board.

**COMMISSIONER JEWELL** stated that he had declarations to make. He stated that he received an e-mail from the Fire Marshal copying him on her response to the request from the Appellant. He stated that the e-mail is in the record it's from 2/23/2015 @ 10:31 a.m. He stated that he also received an e-mail the same day at 10:53 a.m. from the Appellant objecting to the Fire Marshal's response and indicating his intent to appeal. He stated that he received a phone call from the Appellant on 2/24/2015 @ 3:05 p.m. which he returned later that day. He explained that the Appellant wanted to discuss the Fire Marshalls decision and he explained that any discussion would be considered "ex parte" if an appeal was filed and stressed the importance of not discussing the matter. He stated that he also informed the Appellant that he would likely be disclosing the conversation during an appeal. **COMMISSIONER JEWELL** explained that no further discussion of the appeal occurred. **COMMISSIONER O'BRIEN** stated he also had declarations of e-mails to make. He stated that he has e-mails from 5/30/2015 & 5/31/2015 from the Fire Marshal and the Appellant. **CHAIRMAN BERNDT** asked if there were any concerns with **COMMISSIONER JEWELL** and or **COMMISSIONER O'BRIEN** remaining seated. There were no objections made. All Board members remained seated.

**JEFF SLOTHOWER, ATTORNEY REPRESENTING THE APPELLANT**, requested that color pictures and an aerial photo be added to the record. He stated that he has shown them to Deputy Prosecutor Neil Caulkins and he had no concerns with them being added. **NEIL CAULKINS, DEPUTY PROSECUTOR** stated that was true and had no objections. **MR. SLOTHOWER** reviewed his Brief and explained that the Appellant (Allwest L.L.C) is appealing Fire Marshal Brenda Larsen's determination that the Wild Urban Interface Code (WUIC) does not apply to new home construction in the Plat which decision was made on February 23, 2015. He stated that the Plat was approved on February 22, 2012 by the Board of County Commissioners by Resolution No. 2012-025. He explained that Ms. Larsen outlined reasons the WUIC is not applicable to parcels within the Allwest Cluster Plat because (WUIC) regulations pertain to the construction of buildings on properties already created and have little bearing on the development of properties and the rules and precedence set for development such as the cluster plat. He stated that Ms. Larsen's determination and her logic supporting her decision is incorrect and the appeal seeks to reverse her decision. He reviewed the facts outlined in his Brief and stated that the Appellant is strictly asking that the Board of County Commissioners allow landowners within the Allwest Cluster Plat to use the same standards as adopted by the County in Resolution No.2012-025 for the administration of the WUIC requirements along with the adopted standards for the building permit submittal requirements as published in Bulletin F-001. In closing the lot owners should be able to meet the sprinkler requirement by complying with Bulletin F-001, whereas when Ms. Larsen concluded otherwise, she erroneously interpreted the law; her decision is not supported by evidence that

is substantial when viewed in light of the whole record before the court and her decision is clearly erroneous application of the law to the facts and her decision was an arbitrary and capricious action.

**COMMISSIONER JEWELL** questioned **MR. SLOTHOWER** with regard to statements made in his Brief regarding plat notes not based on law. He also questioned the relevance as well as statements made in the Brief regarding the parcel lots on cluster plats not having the same notes as on surrounding plats.

**NEIL CAULKINS, DEPUTY PROSECUTOR** presented copies for the record noting that the cover page was of the IFC Section 507 and had additional documents attached regarding RCW 36.70C.040; RCW 36.70C.030; RCW 58.17.170; RCW 58.17.195; RCW 58.17.215; RCW 58.17.300; RCW 58.17.320; RCW 9.92.120. He requested that **COMMISSIONER O'BRIEN & COMMISSIONER JEWELL** submit the e-mails noted in their declarations, for the record. **MR. CAULKINS** stated that he supports a denial of the appeal brought by Allwest LLC. He explained that the Board should deny the appeal because what is being appealed is not appealable, the appeal is not timely, and the relief sought cannot be legally granted. He stated that the plat requirement and the Fire Marshal's response are correct under the applicable law. He explained that Mr. Williams subdivided the subject property in 2012 and the IFC applies to land subdivision and requires that either that hydrants be placed upon the property or that each building be equipped with a sprinkler system. IFC 507.1, B105.1. He stated that Mr. Williams chose to do the latter; hence a note was placed upon the plat requiring sprinklers. He explained that the WUI Code only applies to building permits, not land subdivision. WUI 501.2. its map was amended in 2013, making the Williams property subject to it. He explained that for building permits, the WUI Code allows defensible space to suffice instead of requiring sprinklers. **MR. CAULKINS** stated that the plat note on the Williams property requiring sprinklers remains in effect was never appealed and the time for such appeal (21 days under the Land Use Petition Act-LUPA) has long run out. He reviewed the current legal requirement under the IFC applicable to subdivisions and stated that it still requires either the developer provide a hydrant system or that houses have sprinkler systems. **MR. CAULKINS** stated that Mr. Williams asked the Fire Marshal if the plat note requiring sprinklers meant that sprinklers were required and when told that the plat note requiring sprinklers required sprinklers, Mr. Williams brought this Administrative Appeal claiming to be challenging an "administrative determination" by the Fire Marshal. In this action Mr. Williams seeks to have the Board either declare that a requirement for sprinklers found in a plat note does not require sprinklers or to declare that despite this process not being the statutorily required means of amending a plat that the plat should be amended to remove the requirement for sprinklers or that despite the appeal time long

having run out and this not being the proper venue for such an appeal that the plat note can be challenged, or lastly that a plat note generated by subdivision regulation that is still current is no longer effective due to changes in a different regulation that does not regulate subdivision. He stated that in closing Mr. Williams seeks to bring a challenge to a plat condition he would now rather not be burdened with, despite the fact that such condition was and is required by the law regulating subdivision, the challenge to the condition cannot now be legally brought, and the relief sought cannot be granted now. He stated that the Fire Marshal's response was correct and that by the Fire Marshals reading of the plat note does not constitute an administrative interpretation. He stated that Mr. Williams challenge is time-barred and the appeal is before the wrong body because LUPA requires that challenges to a land use decision, such as the plat condition at issue be brought before the Superior Court. He explained that despite Mr. Williams claiming that this is an appeal of an administrative determination it in fact is a challenge to the plat note. He stated that the only way to challenge the validity of a plat note is to file an appeal with the Superior Court within 21 days of the challenged decision and that was not done in time and this is not a Superior Court, so the relief he seeks cannot be granted. He reminded the Board that what Ms. Larsen is stating is WUI only applies to building permit applications on existing lots as opposed to applying to subdivision. Mr. Williams Brief dwells upon what constitutes an existing lot, and misses the point, Ms. Larsen made that the IFC applies to development and the WUI only applies to building permits. He stated that the laws in place at the time of approval of this particular plat relating to subdivision and not building permits required sprinklers and so that became a plat note. He reminded the Board that this plat, like any other could not have been approved unless it comported with existing land use controls RCW 58.17.195 and this plat note is part of that comportment. The Fire Marshal's response is supported by law. Changes to the WUI code do not change or erase plat conditions. The plat notes dictate what goes on in the plat and the County has authority to enforce those RCW 58.17.320. If regulations change making plat conditions unnecessary, the appropriate means of dealing with that is to amend the plat. He stated that challenges to the plat note or to someone explain to the developer what the words mean are respectively, time-barred and not administrative determinations subject to appeal. In closing these are all reasons the BoCC should reject Mr. Williams appeal.

**COMMISSIONER JEWELL** questioned **MR. CAULKINS** with regard to his abrupt decision in his Brief and the following arguments made by **MR. CAULKINS**.

**AUDIO SYSTEM CRASHED AT 2:58 P.M. AND DID NOT COMEBACK UP UNTIL APPROXIMATELY 3:18 P.M. THE BOARD TOOK A 5 MINUTE RECESS AT 3:13 P.M TO ALLOW INFORMATION TECHNOLOGY TIME TO ASSIST WITH THE RECORDING**

**SYSTEM ERROR. ALL DISCUSSION BETWEEN BOCC AND DEPUTY CAULKINS WAS MISSED & NOT RECORDED.**

**THERE BEING NO ONE IN ATTENDANCE REQUESTING TO TESTIFY, THE PUBLIC PORTION OF THE HEARING WAS CLOSED.**

**MITCH WILLIAMS, APPELLANT** stated that new code has come in since he sold some of his parcels and at the time they were sold they met all County requirements. He expressed his concern for the County not being consistent with their expectations. He stated that some County Departments apply new code and others do not.

**CHAIRMAN BERNDT** questioned **MR. CAULKINS** and stated that "if" approved, his understanding is that the face of the plat will be changed. He stated that he didn't believe this was the correct venue to do that.

After a discussion of legislative intent, **COMMISSIONER JEWELL** moved to continue the hearing for Board Discussion, Decision and Deliberation to June 30, 2015 at 2:00 p.m. in the Commissioner's Auditorium.

**COMMISSIONER O'BRIEN** seconded. **COMMISSIONER JEWELL** noted that the record is closed, but amended to include the e-mails discussed in the declarations of Commissioner O'Brien and himself. Motion carried, 3-0.

Meeting adjourned at 3:40 p.m.

**DEPUTY CLERK OF THE BOARD**

  
Mandy Buchholz

**KITTITAS COUNTY COMMISSIONERS  
KITTITAS COUNTY, WASHINGTON**

  
Gary Berndt, Chairman