COMMISSIONERS PROCEEDINGS
MARCH 30, 2004
CLARK COUNTY, WASHINGTON

The Board convened in the Commissioners' Hearing Room, 6th Floor, Public Service Center, 1300 Franklin Street, Vancouver, Washington. Commissioners Stanton, Pridemore, and Morris, Chair, present.

PROCLAMATION

Commissioner Morris read a proclamation declaring April 5 through 11, 2004 Public Health Week in Clark County, Washington. Kay Koontz, Director, Clark County Health Department, accepted the proclamation.

PLEDGE OF ALLEGIANCE

The Commissioners conducted the Flag Salute.

The Board of County Commissioners' adjourned and convened as the Board of Health.

PUBLIC COMMENT

There was no public comment.

CONSENT AGENDA

There being no public comment, **MOVED** by Stanton to approve consent agenda items 1 through 4. Members Morris, Stanton, and Pridemore voted aye. Motion carried. (See Tape 86)

Adjourned

BID AWARD 2358

Reconvened a public hearing for Bid Award 2358 – Annual Furniture Bid. Mike Westerman, General Services, read a memo recommending that Bid 2358 be awarded to the lowest bidder. There being no public comment, **MOVED** by Pridemore to award Bid 2358 to Corporate Express of Portland, Oregon in the total bid amount of $958,403.13, including Washington State sales tax and to grant authority to the County Administrator to sign all bid-related contracts. Commissioners Morris, Stanton, and Pridemore voted aye. Motion carried. (See Tape 86)

PUBLIC COMMENT

There was no public comment.

CONSENT AGENDA

There being no public comment, **MOVED** by Pridemore to approve consent agenda items 1 through 12. Commissioners Morris, Stanton, and Pridemore voted aye. Motion carried. (See Tape 86)

PUBLIC MEETING: PLD2003-00048; PUD2003-00005; SEP2003-00092; WET2003-00033; HAB2003-00188; FLP2003-00041; EVR2003-00054; EVR2003-00055; ARC2003-00056 – CEDAR 49 PUD

Held a public meeting to consider an appeal of the Clark County Land Use Hearing Examiner's decision in the matter of a Type III application for preliminary plat approval of a 23-lot residential Planned Unit Development (PUD) subdivision on approximately 5.32 acres zoned R1-6 and a related SEPA appeal. Hearing continued from March 23, 2004.

The Board received no public comment, oral or written, at this meeting.

The Board certified reading the record.

Morris noted that they don't have conditions of approval sent by the hearings examiner. She said they would request that if the hearings examiner sends a denial, that he also send conditions of approval.

Rich Lowry, Prosecuting Attorney's Office, explained that there are alternative conditions of approval that are attached to the staff report, which apparently were appended to the examiner decision, but not sent out with the examiner decision.

Pridemore suggested that they start by addressing the applicant's request for oral argument.

Stanton said she didn't think oral argument would help as far as her particular concerns.

Pridemore said he had one area of concern regarding the question of whether or not it was 30% or more forested. He said he would like to see more evidence submitted to make that determination. He suggested that was something worth having oral argument about.

Morris said she thought it was factual evidence rather than legal argument. Morris asked if someone could point out in the code how it is that you automatically get an increase in density.

Lowry responded that this was processed as a PUD. He said the PUD ordinance authorizes, but doesn't guarantee, additional density. You would still have to meet the standards of the PUD ordinance.

Morris stated that she didn't see an entitlement to increased density – she saw only a discussion about how it would be processed if you had it.

Lowry agreed and stated that the section talks about if there is increased density, then it would go to the hearings examiner rather than staff. Lowry said that this application had to go to the hearings examiner anyway because it was a plat application.

Morris said a person would have no entitlement to an increased density just because doing a PUD…

Lowry said there is nothing in the PUD ordinance that states that a person would automatically get "x" amount of increased density if doing it as a PUD.

Morris asked – "under what authority is there increased density in this application?"

Lowry said the concept for increased density in this PUD application was very similar to the transfer development rights provisions in that they are setting aside open space and that set aside is a justification, as the PUD ordinance has been historically construed, for additional density.

Morris stated that she felt there was no clarity in a lot of things, e.g. no clarity about how you get a bonus density under a PUD. She said there is also a lot of confusion between the hearings examiner and Keith Hirokawa regarding the habitat ordinance. How does one construe the habitat ordinance? Morris said she recalled that the hearings examiner made some of his own decisions about what type of wetland it is. She asked if he had changed the stream typing.

Lowry said it was the wetland typing.

Morris said she couldn't figure out how you automatically get increased density in a PUD, or how the hearings examiner believes he is qualified to change the classification of the wetland. She said she couldn't deny the application based on a hearings examiner who doesn't know the habitat ordinance and assumes there's increased density because of a PUD, when there isn't.

Lowry referred to increased density and said that because the hearings examiner denied the PUD on the basis that it was not adequately protecting the critical areas, he never got to the issue of whether there was a justification under the PUD ordinance for an increased density. So, there are no findings or analysis from the hearings examiner on that issue. Lowry further stated

that in his judgment the board is limited to those issues that have been contested below and appealed to the board. Specifically, that there are code revisions that state if an issue isn't presented to the hearings examiner, then it can't be presented to the board. Lowry said the code is very clear that the board is sitting in a limited capacity on those appeals.

Stanton said there's no information available in the record to identify or classify the wetlands, whether it's a 3 or 4. She said there are arguments from the experts on both sides. She added that the arguments are incomplete.

Pridemore referenced the big issue of the canopy – how much of the wetlands does it actually cover, does it shade? He asked if it mattered whether it was rooted inside or outside. Pridemore said the only thing he got to in the end was whether or not this was a category 3 or 4, and that question came down to whether it was 30% forested or not.

Lowry said there is substantial evidence in the record from the opponent's experts indicating that there's at least 30% canopy cover. What appears to be missing is the extent to which that canopy consists of trees that are over 20 feet tall. Lowry said the examiner relies on pictures that indicate to him that some of the trees look like they're over 20 feet tall, but it's only those trees that you count in determining canopy cover. He said if the board is going to remand on the basis of lack of substantial evidence, they need to indicate where the gap is.

Pridemore said there is essentially substantial evidence to have concluded one way or another. He said the hearings examiner found as a matter of fact that, indeed, there was 30% or more coverage and whether the board has the ability to overturn, he didn't know. He said he always gives strong deference to the hearings examiner in terms of making findings of fact. However, he also gives strong deference to county staff, who don't agree in this case.

Lowry said given that if – and only if – there's substantial evidence in the record, you have to side with the hearings examiner; you have to accept his findings of fact. Lowry said what may support a determination to bring it back is that there seems to be an absence of substantial evidence in the record that the 30% canopy cover found by the examiner consists of trees that are over 20 feet in height.

Morris said she thought staff had gone onsite. She said she thought the photographs were taken in 1983, the layers themselves, and that it was the GIS layers that seemed to persuade the hearings examiner in his final decision. Morris noted that she was looking at Exhibit 38.

There was brief discussion regarding the date of the photographs.

Pridemore said that the date on the attached photo was December 19, 2003.

Stanton said she read it to be the system that sets the lines in place…the coordinates. She added that the part she never really resolved was whether or not it was an isolated wetland.

Lowry said that's an issue that wasn't appealed. The only appeal they have in this case was from the applicant, and the examiner ruled in favor of the applicant on that question.

Pridemore said in looking at it terms of is there substantial evidence, it appeared that everyone had somewhat agreed that it was an isolated wetland. The bigger issue was the coverage.

Morris stated that she was in agreement that the habitat issue was well documented and that the hearings examiner erred in denying the habitat permit.

Commissioners Pridemore and Stanton concurred.

Morris asked if they had to then send it back for determination on the wetland.

Lowry said if the board concludes that the current evidence in the record doesn't support the examiner's conclusion that it is a forested wetland and there's not substantial evidence, then the board would remand for further evidence on that issue.

Stanton said if more evidence is needed, it's precisely with the question of whether or not it qualifies as a forested urban wetland.

Pridemore said it's a big question for him. There's plenty of substantial evidence to go either way.

Lowry said although you could go either way, there is substantial evidence for the examiner's conclusion that there's at least a 30% canopy. He reiterated that the examiner had concluded that the canopy met the height requirement simply by looking at photographs. Does that constitute substantial evidence?

The Board agreed that it does not.

There was further discussion.

Lowry said he thought the board could remand that issue also. It's not a factual issue, but the record doesn't contain any good discussion about how the code should be interpreted as to that legal issue. The board could remand that also, but not decide at this point whether the trees have to be rooted within the wetland.

Pridemore said he was comfortable remanding it on that basis. He noted that the hearings examiner never got to the SEPA issue in the SEPA appeal.

Lowry said that if on remand the hearings examiner concludes that there isn't a 30% canopy and it is a Category 4 wetland, then that would force him to address some other issues that he didn't previously address. That would be the same with the habitat conclusions that the board has reached.

Pridemore asked if they would remand on the wetland.

Morris said they would want to remand on the rating of the wetland.

Lowry recommended that the board reverse the examiner on the habitat, remand on the wetland issue of Category 3 or 4, and for further proceedings consistent with their remand.

MOVED by Stanton to overturn the hearings examiner on his decision of adequacy of the habitat permit, or compliance with the habitat conservation ordinance, and to remand to the hearings examiner for further factual clarification on the rating of the wetland, and further proceedings consistent with their decision. Commissioners Morris, Stanton, and Pridemore voted aye. Motion carried. (See Tape 86)

Morris addressed staff and asked if they ever do workshops with the hearings examiners on environmental codes.

Mike Butts, Department of Community Development, replied that they hold meetings with staff and the hearings examiners four times a year and go over a long list of issues. He said they could certainly go over both the wetland and habitat ordinances.

Morris said that would be helpful, as well as some explanation from staff about how they approach a decision and evaluation.

Butts said they could do that at the next meeting.

Morris suggested developing some kind of internal clarity concerning the issue of when you get, or do not get, a density increase with a PUD.

Butts said that they often struggle with that issue.

Lowry said the existing ordinance needs to be repealed and a modern PUD needs to be adopted.

2 p.m. Bid Opening

Present at the Bid Opening: Louise Richards, Clerk to the Board; Mike Westerman and Allyson Anderson, General Services

BID OPENING CRP 311022

Held a public hearing for Bid Opening CRP 311022 – NE 76th Street (SR503 to NE 147th Avenue). Mike Westerman, General Services, opened and read bids and stated that it was their intention to award Bid CRP 311022 on April 6, 2004, at 10:00 a.m., in the Commissioners' hearing room of the Clark County Public Service Center, 6th Floor. (See Tape 86)

BOARD OF COUNTY COMMISSIONERS

Betty Sue Morris/s/
Betty Sue Morris, Chair

Judie Stanton, Commissioner

Craig A. Pridemore/s/
Craig A. Pridemore, Commissioner

ATTEST:

Louise Richards/s/
Clerk of the Board

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