COMMISSIONERS PROCEEDINGS
AUGUST 5, 2003
CLARK COUNTY, WASHINGTON

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

PLEDGE OF ALLEGIANCE

The Commissioners conducted the Flag Salute.

BID AWARD CRP 320722 & CRP 320822 - SIGNALS

Reconvened a public hearing for Bid Award CRP 320722 – Signal at NE 78th Street at NE 5th Avenue; and CRP 320822 – Signal at NE 99th Street at NE 130th Avenue. Mike Westerman, General Services, read a memo from General Services requesting that Bid CRP 320722 & CRP 320822 be awarded to the lowest bidder. There being no public comment, **MOVED** by Stanton to award Bid CRP 320722 & CRP 320822 to Mill Plain Electric of Vancouver, Washington in the total bid amount of $262,018.00, including Washington State sales tax, and to grant authority to the County Administrator to sign all related contracts. Commissioners Pridemore, Morris, and Stanton voted aye. Motion carried. (See Tape 30)

PUBLIC COMMENT

There was no public comment.

CONSENT AGENDA

There being no public comment, **MOVED** by Morris to approve items 1 through 11. Commissioners Pridemore, Morris, and Stanton voted aye. Motion carried. (See Tape 30)

PUBLIC HEARING: 94TH AVENUE APARTMENT FLOOD PLAIN ISSUES

Held a public hearing to consider the applicant's appeal from the flood plain conditions imposed pursuant to Clark County Chapter 18.327 on a proposed 141-unit apartment/townhouse complex located at 7906 NE 94th Avenue.

Rich Lowry, Prosecuting Attorney's Office, stated that he had talked with Mr. Sellers last week and had reminded him that the matter would be coming before the Board today. Lowry said that Mr. Sellers' understanding was that the property had been sold to a third party and he doubted that anyone would show up at the hearing. Lowry recommended that the appeal be dismissed on the basis that it was not pursued by the appellant.

Stanton commented that she had read that they would be doing single-family housing instead of apartments.

Lowry said he believed there was an application.

Morris asked if that whole thing would have to come back through again.

Lowry said it is in process again – there's a new application.

Pridemore asked if the issue would come up again.

Lowry said they are also in court in Cowlitz County on an appeal, but he didn't know if that was going to be pursued or not.

There being no public comment, **MOVED** by Morris to dismiss the appeal regarding 94th Avenue Apartment Flood Plain Issues. Commissioners Pridemore, Morris, and Stanton voted aye. Motion carried. (See Tape 30)

PUBLIC HEARING: ROAD IMPROVEMENT REIMBURSEMENT AREA 2003-02

Held a public hearing to consider the establishment of Road Improvement Reimbursement Area 2003-02. This proposed Reimbursement Area would be established in accordance with Clark County Code Chapter 12.36 (Road Improvement Reimbursement). A Resolution relating to the Sufficiency of the Reimbursement Area proposal was adopted by the Board of County Commissioners on May 27, 2003.

The proposed Reimbursement Area would consist of Tax Lot 159108-000 of Section 11, Township 2N, Range 2E, WM. The establishment of the Reimbursement Area was requested by Autumn Properties, L.L.C., which is developing a residential subdivision to the west of Tax Lot 159108-000. Autumn Properties was required, as a condition of development approval, to construct intersection improvements at NE 152nd Avenue and SR-500. Under the Reimbursement Area proposal, any future developer of Tax Lot 159108-000 would be responsible for reimbursing Autumn Properties for the proportional costs of constructing the intersection improvements for Tax Lot 159108-000. The amount of the reimbursement would not exceed $72,305.83.

Steve Schulte, Department of Public Works, presented. He referenced the map and explained that Autumn Properties, which consists of two different tax lots, had to make approximately $82,000 worth of intersection improvements at 152nd Avenue and Fourth Plain Road as a condition of approval. He said they have requested that the Toedtli property, which is a single tax lot, pay a prorata share as a latecomer for those intersection improvements. Schulte said in regards to issues that came up in the Legacy latecomer hearing, clearly the dot (referenced on the map) is adjacent to the Toedtli property so that statutory requirement for adjacency is met in this instant. He said the Toedtli property would utilize 152nd Avenue for ingress and egress. There's a chance that there may be a second roadway coming down to Fourth Plain on the

eastside of the Toedtli property, but certainly a percentage of the Toedtli traffic would use that intersection on the west side. Schulte added that they have had discussions with Mr. Toedtli.

Bill Huyette, spoke on behalf of the Toedtli family. He said the family was surprised when asked to pay the bulk of the costs of intersection improvements that were required for another property. He said in reading the staff report and the Hearings Examiner's report the improvements were not well delineated; although the left turn lane was well delineated, the illumination was not well delineated. Mr. Huyette said that when you look at the cost breakdown and with the lack of a master intersection plan for what will be access for emergency services, the actual signalization of the interchange in the future, and illumination, the Toedtli family is being asked to pay twice. He said the Toedtli property was going to develop and the applicant has made a minimal proposal to fulfill what they are required to do. He further explained. He said the Toedtli's will actually end up paying triple. He said the property is currently zoned R18, but is comp-planned for mixed use. Huyette further explained. He said that negotiations broke down between the Toedtli's and Mr. Carno when the Hearings Examiner's report came out. The Toedtli's property is currently used for an agricultural use and his position was that the children and animals should be protected from his property/use by fencing. Mr. Huyette said he didn't have a "cure" for the situation except for having the applicant bond the improvements. He explained that if they have the opportunity to do the master intersection plan, there would be a contribution that would be paid once by all parties instead of potentially 2-3 times by the Toedtli family.

Morris asked what the Hearings Examiner's condition of approval was that generated the improvements.

Schulte replied that it was simply that the applicant had to comply with state intersection standards at 152nd and Fourth Plain; the improvements were not defined. He said he didn't believe illumination was specifically mentioned.

Pridemore asked Schulte what the nature of the improvements were.

Schulte said the initial improvement was an eastbound left turn lane, and because it's a state route it required raised curbs to help channel traffic. He said whenever there's curbing, there's an illumination requirement. He said there were also some miscellaneous site features on the north side, e.g. junction box, electrical features. Schulte said there was a ripple effect off that initial requirement to build an eastbound left turn lane.

Pridemore asked how far 152nd goes.

Schulte said it goes to the top of the yellow property (referring to the map). He further explained.

Lowry said the actual condition is very ambiguous and reads – "the applicant shall coordinate with the proposed improvements for the intersection of NE 152nd Avenue, SR-500, with the Washington State Department of Transportation."

Schulte said that speaks to Mr. Huyette's concern that the state has no plan for that particular intersection that they can give to either Autumn Properties or the Toedtli's. He said they don't know for sure what would happen if the Toedtli property came in for development review right now.

Morris asked where the idea of a reimbursement area came from.

Schulte said it was requested by Autumn Properties.

Mark Ericksen,1111 Main Street, Suite 402, Vancouver, Attorney representing Autumn Properties, referenced earlier comments regarding illumination in which it was argued that the illumination was not sufficiently delineated. Mr. Ericksen said if you look at the exhibit to the resolution, it shows that it is delineated. He said it's true that there may be possible access when the Toedtli property develops, but that's not what the code provision says. It says if they're adjacent and would benefit from it, then they join in the latecomer group.

Morris asked if the code says "they join" or "you have the right to request."

Ericksen said it reads – "you have the right to request." He said he found it amusing that Mr. Huyette was present if the Toedtli's have no near-term development plans. He said if they have no near-term plans, perhaps the 15-year sunset gets them out of it. If they're within 15 years, that's what the code considers to be sufficiently near term to pay a proportionate share. He asked the Commissioners to consider the kind of condition they were stuck with and give direction to the Examiners' as to what they think of that condition because it may have some due process problems in and of itself. He further explained.

Howard Stein, CTS Engineers, 3300 NW 11th Terrace, Hillsboro, Oregon, presented a drawing. He said to some extent there is a master plan for this area. He provided further background of the process. He then addressed Mr. Huyette's comments that the Toedtli's are paying the bulk of the share. He said that's true because when they develop they will be generating the bulk of the traffic using the road. Mr. Stein then referenced the double- and triple-dipping issue if the Birtcher property develops on the south side. He said if Birtcher develops on the south side and if the Toedtli property develops, the next kind of improvement that would again directly benefit their additional traffic would probably be a traffic signal. He said whether paying more or less it's a qualitative assessment, but it's done in a very objective manner – it would be fair, which is the whole reason for the process. Mr. Stein added that one other cascading effect was that WSDOT didn't install the junction boxes in the proper place.

Morris asked Mr. Ericksen why he didn't ask for Birtcher to be a part of this.

Ericksen said the improvements are on the north side and it's a left turn lane going north onto 152nd; there's no traffic analysis that could conceivably make Birtcher a burden on that route.

Morris said they just heard that there's a left turn lane on the west bound side that was added and, therefore, would benefit the Birtcher property.

Ericksen said they weren't building it.

Morris asked who was.

Stein said it was part of the overall improvement. He said the actual nexus for the need was not the left turn lane; it was the eastbound left turn lane. He said if they were on the other corner they would be talking about Birtcher, but the need is the eastbound left turn lane that then triggers something else.

Pridemore said he didn't think that was the trigger. The trigger is the benefit received. If the Birtcher property to the south is receiving a benefit, then they have a proportionate share of the responsibility.

Stanton said as far as illumination, there may be some benefit to the property that's to the south.

Ericksen said there may be; there's illumination to the left turn lane. He said the boxes and illumination would very likely be changed at a later time when the new intersection is built. He further explained. Ericksen then stated that they sited the state law in their initial materials, but it is their conclusion that the state law doesn't reach to Birtcher based upon what they're required to build.

Schulte said that Mr. Ericksen had referred to the last page of the staff report where there was a line for illumination, and explained that the staff report had been prepared within the last few weeks. It was not necessarily known at the time of development approval for Autumn Properties. In regards to Birtcher, the Birtcher traffic study for full build out of the Birtcher site is indicating that a signal is not yet warranted at 152nd/Fourth Plain. Schulte said that county staff has not reviewed the Birtcher study to validate that finding, but that's what the traffic study is showing right now. As far as how much of the junction box improvements and turn lane channelization improvements are saveable and should be considered permanent, staff just doesn't know at this time. He said with the respect to the concept that there should be some sort of a master plan in the area that would assess a prorata amount to each future developer, in a perfect world they would probably do that. He said it's called a signal participation arrangement. He further explained. Schulte said they have those situations throughout the county in which there are signals and intersection improvements on the horizon, and to go to each of those locations and set up a benefit area would take a lot of resources. He said they are left with

the firstcomer paying for the improvement and then the firstcomer has the option to propose setting up a latecomer area.

Morris said that paying for improvements that allow someone to develop is in many instances the price of doing business. She said these were safety requirements and the Hearings Examiner could have turned it down had they not agreed to fulfill them. She said it doesn't seem fair for someone to develop their property and then expect their next door neighbor to pay three quarters of it.

Stanton agreed and said that was particularly true in this case since the three quarters turns out to be for illumination of the intersection.

Pridemore said there was good justification for an appeal on this finding and that Mr. Ericksen's comments about not knowing exactly what the impacts of this requirement were going to be are appropriate. He said this is not requiring the neighboring property owner to pay this amount; it is saying that should they develop, these requirements very likely would have been required of their particular development and this is simply planning in advance. He said he can think of a lot of appeals in which they have required some of the offsite improvements where having the latecomer options would have resolved the issue. He said if they were simply saying that they must pay $72,000, then he would have a problem with that; however, saying that if they development then they would have to pay for a portion of the impacts of that – it's fair.

Morris asked – "what if Toedtli bought the vacant parcel to the east and don't use 152nd?"

Schulte said what is likely is that the Toedtli property…some traffic would use 152nd. He referenced Section 4 of the draft resolution where it sets a cap of $72,000, which is then adjusted downward based on the actual amount of traffic. If the Toedtli property using 152nd came down to equal the Autumn property using 152nd, it would be a 50/50 split on the cost.

Pridemore asked what the odds that the state would grant additional access onto that road, as he thought they would limit that as much as possible.

Schulte said they didn't know.

Lowry said if it's a safety issue they can deny the project, but they can't condition it with a disproportionate fix.

Pridemore said the lighting in and of itself wasn't required; it was required as a result of the required improvements.

Schulte said everything cascaded. He explained that what happened 2-3 years ago when Autumn Properties was approved was that there was no north leg – there was nothing. So, the

state held all the cards because they had to approve an access break and make a north leg there. They didn't know what they wanted of Autumn Properties.

Pridemore said the issue to him was that if they were to deny the latecomers, then the windfall to the Toedtli's would be significant.

Morris said it would set a dangerous precedent to suggest that someone can agree to any number of road improvements knowing that they're not going to have to pay them – the adjacent property would have to pay them. She said the bottom line is that Autumn Properties would not have developed if they hadn't been able to build the road, which required that they had to build the intersection and left turn lane. It was for their benefit. If Mr. Toedtli would have come through first, then he would have had to pay for it.

Lowry stated that the latecomer agreements statute was enacted for this type of situation so that if developer #1 puts in developments that developer #2 would have had to put in, there's a sharing.

Morris said they don't routinely do this. She said unless they set up guidelines, it seems unfair for someone to come along, do expensive improvements and be able to charge it off to someone else. She suggested they might want to set up some kind of system. She said that the Toedtli's probably do benefit and some sort of fair share would be appropriate, but to make an assumption without a traffic study…that they're going to use three quarters of it is aggressive.

Stanton added that if the adjacent properties to the south develop, they would be off the hook but would still gain from the improvements.

Lowry said he didn't know if that was entirely true. He asked if Birtcher would have been required to put in lighting, but for the fact that it's already there.

Stanton said not to limit it just to Birtcher. She asked why it was only the one property on the north side of Fourth Plain.

Schulte said they don't have a benefit area type arrangement.

Stanton said the whole cost includes pieces that others will benefit from. Yet, the reimbursement area was only the one property on the north and that's the part that doesn't seem fair.

Pridemore said it seems fair to him that everyone who benefits from expenditures pays a proportionate share. He reiterated that the Toedtli property is not paying unless they develop and derive a benefit and then at that time, the benefit that they would derive from the improvements would be calculated; they are not being required to pay three quarters or 86%...

Stanton said she didn't disagree with that, but what was unfair was the fact that it doesn't include all of the properties on the south who could benefit.

There was further discussion.

Morris stated that it would be helpful for them to have guidelines on how to manage these kinds of reimbursement areas.

MOVED by Morris to deny Reimbursement Area 2003-01. Commissioners Morris and Stanton voted aye. Commissioner Pridemore voted nay. Motion carried. (See Tape 30)

The Commissioners adjourned as the Board of County Commissioners and reconvened as the Board of Health.

MOVED by Stanton to approve items 1 through 7. Commissioners Pridemore, Morris, and Stanton voted aye. Motion carried. (See Tape 30)

Hearing adjourned.

BOARD OF COUNTY COMMISSIONERS

Craig A. Pridemore/s/
Craig A. Pridemore, Chair

Betty Sue Morris/s/
Betty Sue Morris, Commissioner

Judie Stanton, Commissioner

ATTEST:

Louise Richards/s/
Clerk of the Board
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