

Benton County Planning Department

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**BENTON COUNTY BOARD OF ADJUSTMENT
REGULAR HEARING – NOVEMBER 6, 2014 – 7 P.M.
PLANNING ANNEX – 1002 DUDLEY AVENUE
PROSSER, WA 99350**

**THESE MINUTES ARE A SUMMARY OF THE BOARD OF ADJUSTMENT
HEARING AND NOT A VERBATIM TRANSCRIPT**

The Chairman opened the Board of Adjustment Hearing.

CALL TO ORDER

PRESENT:

Aimee Bergeson
Brent Chigbrow
Bob Page

ABSENT:

Dean Burows

STAFF PRESENT:

Clark A. Posey, Assistant Planning Manager
Michael E. Shuttlesworth, Planning Manager
Steve Donovan, Senior Planner
Carel Hiatt, Recorder

APPROVAL OF MINUTES:

MOTION: It was moved by Bob Page and seconded by Aimee Bergeson to approve the minutes of the August 7, 2014 Board of Adjustment Hearing. Motion carried.

Clark A. Posey, Assistant Planning Manager, read to the Board ex parte communication questions pertaining to all actions before the Board tonight. The Board members stated that they had no ex parte communication with regards to any of the actions being presented to the Board tonight.

The Recorder then administered the Oath of Testimony to any of those present tonight at the Board hearing.

CONSENT AGENDA ITEMS:

EXTENSION REQUEST – CUP 12-03 – NOLAN/KIM MURRAY

EXTENSION REQUEST – CUP 07-07 – KEITH/TERRY BURKHART

MOTION: Bob Page made a motion and seconded by Aimee Bergerson that the Consent Agenda Items CUP 12-03 Nolan/Kim Murray and CUP 07-07 Keith/Terry Burkhardt be granted a one year extension request. Motion carried.

**NULL AND VOID:
CUP 2014-004- ADAN LANDIN DE LA MORA**

The Assistant Planning Manager – Clark Posey - informed the Board that this action had come before them on August 7, 2014 for the operation of a fence manufacturing, repair and paint/powder coating business. The Board continued said action to allow the applicant the opportunity to contact the Benton County Fire Marshall and Benton Clean Air Authority. The applicant was to address the concerns of the Board to these two agencies and then submit additional documentation to the Board for a decision.

The Planner continued to state that a letter was sent to the applicant on August 14, 2014 outlining the decision of the Board of Adjustment. The applicant did not respond. In addition, the Planner stated that the applicant's property was up for sale and no action has been conducted on site.

MOTION: Bob Page made a motion which was seconded by Aimee Bergeson that CUP 2014-004 be declared null and void due to the following: (1) applicant did not supply requested documentation to the Board, (2) the property was up for sale, (3) no business was being conducted on site, (5) applicant did not respond to the Planning Department's letter of August 14, 2014 and (6) the applicants have relocated their business. Motion carried.

NEW BUSINESS:

VARIANCE REQUEST – VAR 2014-003 – The applicants are requesting a variance to BCC 11.16A.080(2) to add on to their existing house with a 12.5 foot setback from the rear property line instead of the required twenty five (25) feet. Location: The Northwest Quarter of the Southeast Quarter of the Northwest Quarter in Section 17, Township 8 North, Range 30 East, W.M. on Block 1, Lot 5 of Hillview Estates. Applicants: David/Deena Price.

The Planner – Clark Posey – summarized said action for the Board of Adjustment members and entered the following exhibits into the record by reference: BOAM 1.1 to BOAM 1.7 and BOAR 1.1 to BOAR 1.2. The Planner continued to state that the residence had been constructed and approved with a portion being in the Columbia Irrigation District easement. The applicant had obtained approval from CID to vacate said easement. The applicant had already begun the Subdivision Vacation process with the Board of County Commissioners.

APPLICANT TESTIMONY: David Price – 20107 S Spruce Street – Kennewick, WA 99337 stated that when he purchased the property the residence was already overlapping into the CID easement. He contacted CID and had begun the process with a Subdivision Vacation. He continued to state that the area in the back of the residence was the only area compatible for an addition.

The Chairman asked the applicant if he had read and understood the conditions of approval.

Mr. Price questioned the inability to apply for a building permit until Condition No. 5 "If the variance is approved, a Subdivision Vacation would be required to remove the existing irrigation easement within the 25 foot back yard setback of the Plat of Hillview Estates prior to the variance being issued from the Planning Department."

The Chairman deferred that question to the Planner who explained the reasoning for the necessity for a Subdivision Vacation which the applicant had applied for and would be going to the Board of County Commissioners on December 2, 2014.

NO PROPONENT OR OPPONENT TESTIMONY WAS PRESENTED AT THIS HEARING EITHER WRITTEN OR VERBAL

The Chairman closed the public portion of the hearing.

MOTION: Bob Page made a motion which was seconded by Aimee Bergeson that the Board of Adjustment, pursuant to the aforementioned controlling factors, finds that the application of David/Deena Price for Variance Request – VAR 2014-004 should be approved with the conditions as outlined in the staff report dated, October 9, 2014 and that the Chairman, in conjunction with the Secretary of the Board of Adjustment, prepare and adopt written findings and conclusions that articulate and are consistent with the findings, conclusions and/or decisions made by the Board of Adjustment tonight. Motion carried.

The Chairman opened the public portion of the hearing.

CONDITIONAL USE PERMIT – CUP 2014-005/EA 2014-022: The applicant is requesting a conditional use permit for the construction of an 110,000 square foot middle school on 27 acres with two softball fields, two baseball fields and one football field. Location 1907 South Clodfelter Road in the West 700 feet of the Southwest Quarter of the Northeast Quarter of the West 335 feet of the Northwest Quarter of the Southeast Quarter of Section 12, Township 8 North, Range 28 East, W.M. Applicant: Kennewick School District No. 17 c/o DesignWest Architects – Brandon Wilm.

The Planning Manager, Michael Shuttleworth – summarized said action for the Board of Adjustment members and entered the following exhibits into the record by reference: BOAM 1.1 to BOAM 1.17 and BOAR 1.1 to BOAR 1.9. The site was outlined on the aerial provided – BOAH 1.1

APPLICANT TESTIMONY: Paul Knutzen – 3602 W 36th Avenue – Kennewick, WA 99337 was the Civil Engineer – DesignWest – working on this project. He explained to the Board why the school district chose this site for the construction of the middle school.

The Chairman asked how close this site would be to the Amon Wasteway.

Paul Knutzen replied that the site to the wasteway was a distance. He continued to explain the road alignment pertaining to Clodfelter Road, the amount of dirt to be

moved would be minimal, explained access onto Clodfelter Road and the project will eventually be annexed into the City limits.

The Chairman asked Mr. Knutzen if he had read and understood the conditions of approval pertaining to this action.

Mr. Knutzen replied that he had and addressed the concerns of the Public Works Department with regards to the driveway and spacing requirements.

The Chairman stated that the applicant would need to discuss the driveway and spacing requirements with the City of Kennewick and Benton County Public Works Department.

NO PROPONENT OR OPPONENT TESTIMONY WAS PRESENTED AT THIS HEARING EITHER WRITTEN OR VERBAL

The Chairman closed the public portion of the hearing.

MOTION: Bob Page made a motion which was seconded by Aimee Bergeson that the Board of Adjustment, pursuant to the aforementioned controlling factors, finds that the application of Kennewick School District No. 17 – c/o Designwest for a Conditional Use Permit – CUP 2014-005 should be approved with the conditions as outlined in the staff report dated, October 23, 2014 and that the Chairman, in conjunction with the Secretary of the Board of Adjustment, prepare and adopt written findings and conclusions that articulate and are consistent with the findings, conclusions and/or decisions made by the Board of Adjustment tonight. Motion carried.

The Chairman opened the public portion of the hearing.

CONDITIONAL USE PERMIT – CUP 2014-007 – The applicant is requesting approval to amend Condition No. 7 of Special Use Permit – SP 07-14 by eliminating the word “only” and “non-transferable” to “transferable” for the operation of a commercial kennel. Location 127701 West OIE Highway on Lot 1 of Short Plat 1599 in the Northwest Quarter of Section 36, Township 9 North, Range 24 East, W.M. Applicant: Lou Hamilton.

The Senior Planner – Steve Donovan – summarized said action for the Board of Adjustment members and entered the following exhibits into the record by reference: BOAM 1.1 to BOAM 1.9 and BOAR 1.1 to BOAR 1.4.

The Chairman stated that generally when the Board approves an action it is non-transferable.

The Planner replied that Benton County Code does allow for actions to be made transferable, but it would be site specific.

Michael Shuttleworth, Planning Manager stated originally the zoning district allowed for the operation of a commercial kennel, however, the current zoning classification does not. He continued to state that the Planning Department does not have a problem with allowing the operation of this commercial kennel to be made transferable.

The Chairman asked the Planner what type of assurance the Board has that the new owners would abide by the conditions of approval.

The Planner responded that Benton County does have a Code Enforcement Officer. The Board could add a condition that this application be placed on the Benton County Code Enforcements inspection list.

The Planner, Clark Posey, also informed the Board that the Benton County Code Enforcement Officer was also the Benton County Animal Control Officer.

APPLICANT TESTIMONY: Betty "Lou" Hamilton - 127701 West OIE Highway, Prosser, WA 99350 stated that she would like to sell the business.

The Chairman asked how many dogs were permitted under this special use permit for the operation of a commercial kennel.

The Applicant replied 51, but currently has 14 on site.

The Chairman questioned the applicant about critiquing potential new owners with regards to the operation of the commercial kennel utilizing the same guidelines.

The applicant replied that a set of Rules and Regulations would be passed onto the new owners with regards to the operation of the commercial kennel. She would inform the Code Enforcement regarding the change of ownership of the kennel operation.

NO PROPONENT OR OPPONENT TESTIMONY GIVEN OR SUBMITTED ON THIS APPLICATION

The Chairman closed the public hearing.

MOTION: Bob Page made a motion which was seconded by Brent Chigbrow that the Board of Adjustment, pursuant to the aforementioned controlling factors, finds that the application of Betty "Lou" Hamilton - CUP 2014-007 should be approved with the amendment to Condition No. 7 to state that Special Use Permit - SP 07-14 is transferable to future owners of the property." Add Condition No. 8: "Conditional Use Permit CUP 2014-007 - be placed on the Benton County Code Enforcement Officer/Benton County Animal Control Officer inspection list for two unannounced inspections per year." Adhere to existing conditions as noted in the staff report dated, October 23, 2014 and that the Chairman, in conjunction with the Secretary of the Board of Adjustment, prepare and adopt written findings and conclusions that articulate and are consistent with the findings, conclusions and/or

decisions made by the Board of Adjustment tonight. Motion carried.

APPEAL OF THE PLANNING MANAGER'S DECISION ON COMMUNICATION FACILITY – CF 2014-005/EA 2014-024 – An appeal was filed on October 8, 2014. The communication facility application is for the installation of a 65 foot antenna support structure with antennas, an 11 foot 6 inch by 24 foot ground equipment building within a 50 x 50 foot fenced area. Location: 18716 S Clodfelter Road in the Northeast Quarter of Section 14, Township 8 North, Range 28 East, W.M. Applicant: AT & T Wireless by Smartlink, LLC

The Chairman opened the public portion of the hearing.

The Planning Manager – Michael Shuttleworth – gave an overview to the Board. He referenced the appeal letter and informed the Board that an appeal of the SEPA determination would need to go to Superior Court not to the Board of Adjustment. The determination made by the Planning Staff was that the Communication Facility did meet the criteria imposed upon this action. The Planning Department submitted the Environmental Checklist to various reviewing agencies with no comments being received. He then entered into the record the following exhibits by reference: BOAM 1.1 to BOAM 1.15, BOAR 1.1 to BOAR 1.18, AL 1.

The Chairman asked about the height of the tower and the proposed equipment building.

The Planner replied that the cell tower height would be 65 feet which would be surrounded by an 8 foot high wall.

The Chairman asked the Planner if any comments were received pertaining to wildlife in the immediate vicinity. The Planner responded that no comments were received and a critical area review was done on this proposed location.

Mr. Page asked if the current property owners where the tower was to be located were also the original owners of the property. The Planner replied that to be correct.

APPELLANT TESTIMONY: DARRELL/COLEEN RAINES – 11802 E PINE HOLLOW – KENNEWICK, WA 99338 submitted two pictures of the site – BOAH 1.1 and BOAH 1.2. Ms. Raines stated the construction of the proposed tower would be in direct line of their view. She stated that the pictures submitted outline the location of the tower in relationship to her residence.

The Chairman asked Ms. Raines about the approximate distance of the trees noted in the picture in relationship to her residence.

Mr. Raines stated about 300 feet from their deck.

The appellants stated that with the construction of the cell tower in this proposed location their property values would decrease.

The Chairman asked if the appellants had any documentation to present to the Board that the installation of the cell tower would indeed decrease property values. The appellants stated that they did not have any documentation to that affect.

Ms. Raines continued to inform the Board that the SEPA document was full of inadequacies, especially when it affected property values, esthetics of the area and housing impacts.

OPPONENT TESTIMONY:

TERRY/MICHELLE LUCAS - 20817 S CLODFELTER ROAD - KENNEWICK, WA 99338, had the following objections to the proposed cellular tower: the tower would be in their direct line of vision, decrease in property values and microwaves affecting people's health.

JAN/GREG ROWELL - 111702 E 217 PR SE - KENNEWICK, WA 99338 - stated that the installation of this tower would also be in their line of site, destroy their view, decrease property values and the SEPA document was inadequate.

LORI CRAWFORD VAN ZUYEN - 18708 S CLODFELTER ROAD, KENNEWICK, WA 99338 had lived in area for 19 years and now if the cell tower is approved her view will be ruined. She also expressed concern over health issues affecting her family and animals due to the microwaves emanating from the tower.

BRIAN/MICHELLE DURY - 18716 S CLODFELTER ROAD - KENNEWICK, WA 99338 expressed concern over the dangers of the microwaves affecting people's health, especially her young child.

APPLICANT TESTIMONY

APPLICANT: DONYA BURNS - BUSCH LAW FIRM - 1001 4TH AVENUE STE. 3200 - SEATTLE, WA 98154 - ATTORNEY REPRESENTING THE APPLICANT wanted to confirm that the appeal response letter was in the record with the listing of exhibits - BOAM 1.16.- NIER Exhibit No. 1 states that the proposed facility are well below the maximum FCC exposure levels. Under the Federal Telecommunications Act, Benton County is prohibited from considering concerns about the potential health effects of radio frequency emissions of a proposed site if the site will operate in compliance with federal regulations. Aesthetics BCC 11.65.010 are addressed and in compliance. Property values not a code consideration. The applicant had met all the criteria as imposed by BCC 11.65. No CCRs, view easements or any other legally enforceable view rights in the record connected to these properties. The Board should dismiss the appeal because BCC clearly states, "appeal of threshold determination of non-significance are not allowed." BCC 6.35.115(c).

The Chairman asked the applicant to explain property values being affected.

Donya Burns responded that property values are not code criteria and should not impact the Board's decision due to federal case law.

The Chairman asked what the Telecommunication Act states with reference to compatibility.

Donya Burns responded that this was a Communication Facility application and does not fall under the Conditional Use Permit criteria, but administrative granted by the Planning Director. The code was 11.65 and more specifically 11.65.040 is the physical characteristics of communication facilities of which none are subjective.

The Chairman asked Donya Burns to address how a determination would be made with regards to acceptable levels.

Donya Burns directed the Chairman to BOAR 1.2 and 1.3 application narrative which explains how AT & T goes about selecting its site.

The Chairman asked if AT & T had discussed the proposed location of the tower with surrounding property owners.

Donya Burns stated that in looking for a willing landlord AT & T would discuss the installation.

The Chairman addressed again compatibility.

Donya Burns responded that compatibility was not a code requirement. See BOAR 1.5

Mr. Page asked in Donya Burns opinion could the tower height be shorter.

Donya Burns replied that she could not offer an opinion, but directed the Board to BOAR 1.3. Sixty-five feet would be the minimum height necessary to meet the coverage gap.

Ms. Bergeson addressed the Planner that the Board decision tonight was whether or not to uphold the Planning Manager's decision on this action.

Donya Burns walked the Board through BCC 11.65 criteria of which the proposed tower does meet. The tower will be 65 feet not 70. BOAR 1.4 addressed setbacks. BCC Chapter 6.35.115 provides that an administrative appeal of a threshold determination of non-significance is not allowed.

APPELLANT REBUTTAL: COLEEN RAINES – 11802 E PINE HOLLOW – KENNEWICK, WA 99338, stated that the AT & T Emission Report dated October 24, 2014 did not use the right factors as it should have been based on occupation population not general population.

The Planning Manager stated that many suggestions have been made tonight that

because the SEPA checklist may not have been 100% accurate that it was not useful. He explained the SEPA review process. No environmental issues were addressed pertaining to the site for the location of this tower.

The Chairman brought up the compatibility issue again.

The Planner responded that if the application does meet the criteria appropriated to this action then the tower would be compatible with the surrounding properties.

The Chairman closed the public portion of the hearing.

MOTION: Brent Chigbrow made a motion which was seconded by Bob Page that the Board of Adjustment upon hearing the appeal affirms the decision of the Planning Manager to issue the Communication Facility Permit – CF 2014-005 to AT & T Wireless by Smartlink, LLC. Motion carried.

PLANNING DEPARTMENT REPORTS AND DISCUSSION:

The Planning Manager informed the Board about the progress of hiring a Hearings Examiner.

The Benton County Board of Adjustment Hearing was adjourned at 9:15 p.m.



BRENT CHIGBROW, CHAIRMAN
BENTON COUNTY BOARD OF ADJUSTMENT

12/9/2014

DATE

Recorder: Carel Hiatt