BEFORE THE STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

In the matter of: )
Application No. 2003-01 )
SAGEBRUSH POWER PARTNERS, LLC, ) Prehearing Conference
KITTITAS VALLEY WIND POWER PROJECT ) Pages 1 - 25

A prehearing conference in the above matter was held in the presence of a court reporter on April 24, 2006, at 1:00 p.m., at 925 Plum Street S.E., Building 4, Conference Room 401, in Olympia, Washington, before Energy Facility Site Evaluation Councilmembers.

* * * * *

The parties were present as follows:


COUNSEL FOR THE ENVIRONMENT, Michael S. Tribble, Assistant Attorney General, 1125 Washington Street S.E., P.O. Box 40100, Olympia, Washington 98504-0100.

KITTITAS COUNTY, James E. Hurson, Kittitas County Prosecutor, Kittitas County Courthouse, Room 213, Ellensburg, Washington 98926.

Reported by:
Shaun Linse, CCR #2029

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Appearances (cont'd):

F. STEVEN LATHROP, Jeff Slothower, Attorney at Law, Lathrop, Winbauer, Harrel, Slothower & Denison, LLP, 201 West Seventh Avenue, Ellensburg, Washington 98926.

ECONOMIC DEVELOPMENT GROUP OF KITTITAS COUNTY, Debbie Strand, Executive Director, 1000 Prospect Street, P.O. Box 598, Ellensburg, Washington 98926.

RESIDENTS OPPOSED TO KITTITAS TURBINES (ROKT), Ed Garrett, Lay Representative, P.O. Box 1680, Ellensburg, Washington 98926.

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JUDGE TOREM: We will call the Energy Facility Site Evaluation Council to order. It's now a couple minutes after one o'clock on Monday, April 24, 2006. This is the Kittitas Valley Wind Power Project Application No. 2003-01, and we'll quickly go down the roll of the EFSEC Councilmembers who are present both on the phone and in person.

Chairman Luce is absent. Dick Fryhling is here in person. Chris Towne is absent.
Patti Johnson, you're there on the phone; is that correct?

MS. JOHNSON: Yes, that's correct.

JUDGE TOREM: Tim Sweeney, there on the phone?

MR. SWEENEY: Roger.

JUDGE TOREM: Hedia Adelsman?

MS. ADELSMAN: Yes. If you could speak up a little bit, it would be good.

JUDGE TOREM: Okay. We'll try to do that.

MS. ADELSMAN: Thank you.

JUDGE TOREM: Judy Wilson absent. So we do have barely a quorum, four out of seven.

Around the room you guys are going to test my memory here. We don't have a new Counsel for the Environment, do we, yet today?

MR. PEEPLES: Yes, it's Michael Tribble.

MR. FIJKSDAL: Who just joined us on the line?

Mr. Taylor: This is Chris Taylor with Horizon.

JUDGE TOREM: All right, Chris. Michael Tribble?

Okay. For the Applicant which is Sagebrush Power Partners but is now doing business under a different name; is that correct?

MR. PEEPLES: No, it's still under that name. Zilkha got changed to Horizon.

JUDGE TOREM: All right. Darrel Peeples is here as is Tim McMahan, and I don't recognize the gentleman.

MR. PECK: I'm Dana Peck. I'm the new project manager for Kittitas Valley.

JUDGE TOREM: All right. Dana Peck.

MS. POTTER: Joy Potter, project manager.

JUDGE TOREM: All right. You guys are stepping in for Chris Taylor; is that correct?

MR. FIJKSDAL: Chris is on the phone.

MR. PECK: That's correct.

JUDGE TOREM: But Chris is also joining us on the phone I understand. Chris Taylor, are you out there on the phone?

MR. TAYLOR: I am but I'm needed because I just landed in an airport.


Jim Hurson is here in person from Kittitas County and, Darrell Piercy, you're on the phone out there; is that correct?

MR. PIERCY: That's correct. I'm on the phone.

JUDGE TOREM: For Renewable Northwest Project?

No one from Renewable Northwest.

Phoenix Economic Development Group is Debbie Strand, and you're out there on the phone. Debbie Strand?

MS. STRAND: Yes, I'm here.

JUDGE TOREM: Excellent.

Sierra Club Cascade Chapter, do we have anyone representing today?

And Residents opposed to Kittitas Turbine or ROKT?

MR. GARRETT: Ed Garrett.

JUDGE TOREM: Ed Garrett is on the line.

Anyone else?

All right. For Mr. Steven Lathrop I heard Jeff Slothower ring in. You still there, sir?

MR. SLOTHOWER: Yes, I'm here.

JUDGE TOREM: Is your client present today also?

MR. SLOTHOWER: No, he's not.

JUDGE TOREM: Did I miss anybody out there on the phone?

All right. Hearing none, then let's take a look at the adoption of the proposed agenda. It's really pretty simple today. We're going to talk about the status of where we are, maybe scheduling some additional submittals, and maybe set a next prehearing conference. Were there any other items that needed to be added,
members of the council?

and from the applicant any other items?

MR. PEEPLES: No.

JUDGE TOREM: Then I'd ask, Council

Mr. Fryhling, you're here so would you move that we adopt

the agenda?

MR. FRYHLING: I move we adopt the agenda.

JUDGE TOREM: Councilmembers on the phone
can we have a second?

MS. ADELSMAN: Second.

JUDGE TOREM: Call the question. Anybody opposed?

Hearing none, then I would assume the rest
say Aye.

COUNCILMEMBERS: Aye.

JUDGE TOREM: So we're ready to ask for a
status update, and I'll turn it over to Darrel Peeples,
see what you can tell us as to where we're going.

MR. PEEPLES: Essentially I don't know how
much we can tell you today, and I think I'm going to turn
it over to Tim at this point. He has been more involved
on the local process than I have. You mind going over it?

JUDGE TOREM: Mr. McMahan.

MR. McMAHAN: Tim McMahan for the record and
I may turn it over to Dana in a minute. We have, Horizon

Wind has been engaged very actively locally to try to seek
consistency with local plans, regulations, and ordinances.
We've been involved in a series of hearings where one
seemingly endless hearing gets continued I guess, but
we've been involved in the hearing process with the County
before the planning commission, and we're currently still
involved in the hearing process before the Board of County
Commissioners.

As Your Honor may know, we don't know if the
planning commission recommended denial of the wind
resource permit and the related approvals. That decision
is now pending on recommendation to the Board of County
Commissioners. We had the Board deliberating after
another round of presentations.

The Board deliberated the application a
couple weeks ago, and in some ways we're encouraged by the
record, the transcript from the deliberation. A lot of
the issues that have been controversial from some of the
opponents the Board seems not to be going there.

But I would also say that we're somewhat
discouraged by some of the things in the record in terms
of being able to successfully navigate the consistency
process. The Board is taking this up again on Thursday.
They've asked us for some additional information regarding
setbacks and some information about how or whether the

project could be reconfigured in some way to address some
of their concerns with regard to proximity to local
residences.

In terms of how we feel I personally am not
full of optimism that we're going to get through this
expeditiously. I'm not sure if we'll get through it
successfully so that's I guess what I have to say.

Is there anything Darrel or Dana or Joy
would add to that?

MR. PEEPLES: I don't think we can give you
anything tentative today at all, and I think the closest
statement was we're not going to get through to anything
expeditiously either way if any of this goes, and I think
that's a pretty objective statement.

JUDGE TOREM: All right. Do I understand
though that the reasons for what we've done now we struck
dates I believe that were going to happen last month
immediately upon my return so that this process could go
forward with the County?

MR. McMAHAN: Correct.

MR. PEEPLES: Correct.

JUDGE TOREM: Also the preexisting request
for preemption has been formally withdrawn.

MR. PEEPLES: Correct.

JUDGE TOREM: So now we're back to the
typical statutory and regulatory requirement that you get
land use consistency certification from the County or back
to where you were requesting preemption again.

MR. PEEPLES: Correct.

JUDGE TOREM: Certainly the goal is to avoid
that latter choice.

MR. PEEPLES: Yes, that's correct.

JUDGE TOREM: Is it your feeling,
Mr. McMahan, Mr. Peeples, that when the county
commissioners meet on Thursday that will be the end of it?

MR. PEEPLES: We don't know.

MR. McMAHAN: What we can say I think--and
Mr. Hurson's better able to answer this than I. What we
know to be true is that it certainly won't be fully
concluded on Thursday one way or the other. The County
would certainly need to adopt findings and a decision by
resolution or ordinance one way or the other or if there's
some opportunity to engage in some negotiations they may
more directly engage us or staff to do that. It's very hard to
predict right now, but I would again say I can't imagine
us being completed within I don't know weeks.

JUDGE TOREM: The next thing comes to mind
is whether or not the modifications that have been made to
the project I understand was cut down over the last year
in size from over 100 potential turbines to around 65 or

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<td>MR. PEEPLES: Sixty-five.</td>
<td>is significantly different than what was recommended for</td>
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<td>JUDGE TOREM: And that perhaps there might</td>
<td>rejection by the planning commission?</td>
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<td>be additional modifications to the layout of the turbine</td>
<td>MR. HURSON: No, it's the same.</td>
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<td>strings or the number of turbines to satisfy these</td>
<td>JUDGE TOREM: All the modifications that we</td>
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<td>negotiations with the County for land use consistency?</td>
<td>talked about, the cutting down in size or anything else</td>
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<td>MR. McMAHAN: Well, that's a question.</td>
<td>went to the planning commission as such.</td>
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<td>That's a question as to whether it's feasible to do that</td>
<td>MR. PEEPLES: Correct.</td>
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<td>further now in a way that would be meaningful for the</td>
<td>JUDGE TOREM: Now it's the same or perhaps a</td>
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<td>Board of County Commissioners. That's the big issue right</td>
<td>very similar project with the modifications being</td>
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<td>now.</td>
<td>negotiated assuming that the Applicant wants to make any</td>
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<td>JUDGE TOREM: Mr. Hurson, do you want to</td>
<td>additional changes that will be voted on by the county</td>
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<td>chime in and tell me what your client might be thinking,</td>
<td>commissioners. It's been hard for me to keep track of</td>
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<td>if you know?</td>
<td>given the geography.</td>
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<td>MR. HURSON: Well, Jim Hurson for the</td>
<td>MR. HURSON: I understand. The one that was</td>
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<td>record. I don't have any more direct conversation with my</td>
<td>presented to the planning commission they said they were</td>
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<td>clients about what they're thinking or doing than the</td>
<td>asking for up to 80 turbines. I think the original EFSEC</td>
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<td>applicants do. That's just the way the local land use is</td>
<td>application said from 82 to 123. Same project boundary is</td>
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<td>set up. Where we are though is the planning commission</td>
<td>proposed in this one as proposed in the initial EFSEC</td>
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<td>had their hearings, sent a recommendation to the Board,</td>
<td>application.</td>
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<td>and the Board of County Commissioners then held their own</td>
<td>JUDGE TOREM: Okay. Councilmembers, the</td>
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<td>set of hearings. They met a couple of weeks ago. There</td>
<td>summary I guess would be that negotiations are ongoing,</td>
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<td>were some issues that they felt needed to be addressed,</td>
<td>and there's a Thursday night session with the Board of</td>
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<td>and there was no formal vote of the Board. So you</td>
<td>County Commissioners, and there may be a vote. There may</td>
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<td>basically have three different members suggesting issues</td>
<td>be some further deliberations to be had. There may be</td>
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<td>that they thought were of concern and wanted the Applicant</td>
<td>further direction for negotiations and alterations. So no</td>
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<td>to look at. I think they're looking for the Applicant to</td>
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<td>come back on Thursday, discuss those issues, and see where</td>
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<td>we go from there.</td>
<td>one really knows either from the County or from the</td>
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<td>I don't know if--I just don't know where the</td>
<td>Applicant what those three elected members for the County</td>
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<td>discussion is going to go because I haven't been able to</td>
<td>Board of Commissioners might want to do Thursday night.</td>
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<td>talk to my clients directly about it for appearance of</td>
<td>Much might depend on what's presented to them. We have</td>
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<td>fairness purposes, and I don't know what the Applicant is</td>
<td>dates on the calendar for this hearing for the week of</td>
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<td>going to say. So we go from there. We see where the two</td>
<td>August 14 and the week of August 21 which are now I guess</td>
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<td>what they can agree or not agree on and go from there I</td>
<td>three months away or a little bit less.</td>
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<td>mean there won't be any final decision paperwork done by</td>
<td>Mr. Fryhling, anybody else on the telephone</td>
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<td>Thursday obviously because approve or deny this is going</td>
<td>line as Councilmembers, any questions for the Applicant or</td>
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<td>to take some time to put things together. Both of them</td>
<td>for the County at this point?</td>
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<td>would take time to put together.</td>
<td>MR. GARRETT: Ed Garrett, ROKT.</td>
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<td>If it's been approved, it's going to take</td>
<td>JUDGE TOREM: Hold on, Mr. Garrett. I'm</td>
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<td>working on the development agreement, lots of little</td>
<td>going to ask the Councilmembers first.</td>
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<td>details about various mitigations and issues like that. A</td>
<td>MR. GARRETT: Okay.</td>
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<td>denial would take time to put together the final</td>
<td>MS. ADELSMAN: No, I'm okay.</td>
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<td>documents.</td>
<td>MR. FRYHLING: I guess I just have a</td>
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<td>So I'm just not in a real good position to</td>
<td>question of what kind of dates are we going to have? What</td>
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<td>be setting specific this is when we will be concluded</td>
<td>are we looking for as dates? This 14th are we going to be</td>
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<td>because I'm not sure where the negotiations are going to</td>
<td>able to meet that? Is part of our job today to look at</td>
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<td>go on Thursday.</td>
<td>setting some additional possible dates?</td>
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<td>JUDGE TOREM: Would it be fair to say that</td>
<td>JUDGE TOREM: What I was going to recommend</td>
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<td>the project in front of the Board of County Commissioners</td>
<td>Mr. Fryhling, is that if we don't have--I think we're</td>
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<td>going to get nods of disapproval from both the Applicant</td>
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<td>and the County that they'll be ready to go with all bells</td>
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<td>and whistles as needed. No one knows which bells or</td>
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whistles will be, whether it's preemption or a certificate. None of that will probably be ready by the August 14 dates is my guess unless they tell us otherwise.

My recommendation was going to be if that is the case strike the hearing dates and not set additional dates until perhaps a month from now when we get together and see if the picture is any clearer because it seems that we've got weeks at a time of people's calendar, and we continue to hold those dates and then strike them, hold those dates and then strike them. Rather than try to schedule everybody again today, I would suggest we come back in a month and find out what the Board of County Commissioners did on Thursday and where they think they're going in the several weeks that would occur after that.

MS. ADELSMAN: I think that's a good idea.

JUDGE TOREM: Mr. Garrett, had a question or a comment as well.

MR. GARRETT: My question is if the BOCC decides to deny this project, I would like to know what the intent of the Applicant is, if they are going to pursue the application through EFSEC or just drop it.

JUDGE TOREM: Mr. Peeples.

MR. PEEPLES: We'll pursue it through EFSEC.

JUDGE TOREM: So it sounds as though they still intend to pursue it which I assume would be a resurrection of sorts of the request for preemption to reflect the current state of the facts.

MR. PEEPLES: The current state. That's correct.

MR. GARRETT: That answers my question.

JUDGE TOREM: All right. Other intervenors on the line, any questions or comments on the suggestion I was just making about what to do with setting new dates or just saying we'll set a date to set new dates at this point?

MR. SLOTHOWER: This is Jeff Slothower. I want to make sure I understand it. So you're striking the hearing set in August--I think August 14 is the day it commences--and then waiting a month to reset dates; is that correct?

JUDGE TOREM: That would be my suggestion to the Applicant and to the County. That's correct.

MR. SLOTHOWER: Thanks. That clarifies it.

MR. PEEPLES: Just let me reiterate. I mean the question of whether we go for preemption I believe we probably will. We're trying to do all that we can to obtain agreement with the County, and we've tried real hard. If you look at what we've done in the past, we've changed the project, we've cut down its scope, its nature, and we're still talking and we're still very hopeful that we can get those issues resolved.

I think for the purposes here of our planning you would have to make the assumption on my statement. I mean those I think are the parameters we're dealing with right now, but I don't want to have that P word in people's face because it's not meant that--we're really doing the best we can to work it out with the County, and that's where we are.

JUDGE TOREM: Mr. Hurson.

MR. HURSON: As far as striking the current hearing dates, I agree that would be appropriate. There's so many uncertainties as to where we're going with the EFSEC process right now. I think it just would make more sense when we have better certainty and then we can set a date with schedules as needed. It could be a shorter schedule, longer schedule just depending upon what the course was.

MR. TRIBBLE: This is Mike Tribble, Counsel for the Environment. I've got a question. Is there any chance that the hearings will be sooner than the currently scheduled hearing dates or are we deciding now that if they're stricken they'll almost certainly be after that two-week schedule?
I also am a realist about the time it's going to take to move this case forward, especially in opposition. So that is what it is.

One thing I would just say for the record and probably goes without saying is that in the event that we are in a total limbo situation a month with the County and things aren't moving forward, we may come back in and ask for a hearing date, not August but just be set even though we may not be concluded with that process. I'm not naive enough to think that pouring heat on the County with an upcoming hearing is making any difference because I think they're going to do what they're going to do with their process and that's fine, but just to understand that we may be in that position a month from now.

JUDGE TOREM: Well, the two choices I see are we either keep the hearing dates we have and wait to strike in case something happens or we go ahead and strike them today and decide to wait to reschedule rather than reschedule without knowledge of what you're going to get.

MR. McMAHAN: I'm not arguing with striking the hearing dates. It's just too hard to orchestrate witnesses and the like and holding them all on strings in the middle of the summer months.

JUDGE TOREM: Okay. Council, it sounds as though the Applicant and the County are in agreement with

my suggestion. Are there any other parties on the line, intervenors of the like that want to comment on being for or against striking the hearing date and waiting another month to determine new dates?

MR. GARRETT: Ed Garrett, ROKT. For the record, I would just like to say that I agree with the previous comments that this proceeding has been dragging out and in such there has been many more people moving into the area even though they know or do not know about the wind farm project; that the density has been increasing and there's more and more people that will be affected; and I would like to have that reflected in coming up to the adjudicative hearings that we have an opportunity to be able to update the record on those proceedings.

JUDGE TOREM: All right. Thank you, Mr. Garrett.

Anyone else?

MR. TRIBBLE: Mike Tribble, Counsel for the Environment. I think this is a good plan.

JUDGE TOREM: Mr. Slothower, anything?

MR. SLOTHOWER: I have no comment other than--nothing.

JUDGE TOREM: Debbie Strand?

MS. STRAND: No comment.

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opposition to striking the hearing dates as they're now set?

MR. PEEPLES: As long as when we know the dates, when we know what we have we can get it set, and if we have consistency, I just want to state we can probably be within weeks of where we presently have it set if not in that August.

JUDGE TOREM: All right. My thought is that if it's going to move, September we know for Ellensburg is the rodeo.

MR. PEEPLES: Oh, that's right.

JUDGE TOREM: Through Labor Day; is that right?

MR. HURSON: I think it's August 30 or 31 through September 4.

MR. McMAHAN: Tim McMahan, for the record. I think that is probably what we're left with. For the record, I just have to express the angst of our client that this has been an unbelievably lengthy process and it's just frustrating that it's not moving quicker, but I
JUDGE TOREM: Did I miss anybody else out there this afternoon?

All right. Then, Members of the Council, I form a motion on your behalf that we strike the hearing dates and set another prehearing conference toward the end of May to determine the way forward in the Kittitas Valley case. Anyone want to adopt that as a motion?

MR. FRYHLING: I would adopt that as a motion.

JUDGE TOREM: All right. Thank you, Mr. Fryhling.

Is there a second?

MS. ADELSMAN: Second.

JUDGE TOREM: Thank you, Hedia.

Is there any discussion?

Hearing none, Councilmembers, state your agreement or disagreement by saying first Aye.

COUNCILMEMBERS: Aye.

JUDGE TOREM: Any opposed?

All right. Then our hearing dates are stricken for August, and we'll free up everyone's summer vacation calendar.

Dates for a prehearing conference the last week of May, the last available spot I think for me is Tuesday, May 30, if you want to do that that afternoon by phone. It would simply be a scheduling hearing. If that works for everybody, great. If not, then Irina can take your suggestions for times the previous week. But if Tuesday, May 30, after the holiday weekend works for folks, and I see some nods around the room here, then we will tentatively do that. Please communicate with Irina Makarow and let her know if you can do that Tuesday afternoon May 30, and we'll have our calendars out and see what's available.

Perhaps Irina anticipating that we might push it back a month can check availability in town for accommodations starting the first full week of September after the holiday weekend, and we can start looking anytime after that holiday weekend forward as to what might appear.

Mr. Peeples, if you have an update that you want to send out by e-mail to all the parties saying if there's going to be land use consistency that would help people note that the hearing might be shorter or if you're going to need more time what your proposed dates would be.

If you could circulate that in about two or three weeks, that would be fantastic, and Mr. Hurson can issue his concurrence or nonconcurrence on your predictions for his client.

MR. PEEPLES: That sounds fine. Jim and I will work together on that.

JUDGE TOREM: Councilmembers, does that sound adequate?

COUNCILMEMBERS: Yes.

JUDGE TOREM: Any other business to schedule today then?

All right. Hearing none, I think that we can be adjourned at about 1:25.

*****

(Prehearing conference adjourned at 1:25 p.m.)