

Board of Okanogan County Commissioners
Monday, September 25, 2023 AM

JN—Jon Neal, BOCC, District 3
AH—Andy Hover, BOCC, Vice-Chair, District 1
CB—Chris Branch, BOCC, Chair, District 2
LJ—Lanie Johns, Clerk of the Board
PB—Paul Budrow, Sheriff
MG—Maurice Goodall, Emergency Management
PP—Pete Palmer, Director of Planning
DH—Dan Higbee, Building Department
SK—Shelley Keitzman, Human Resources and Risk Management

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Summary of significant discussions:

- Maurice Goodall, Emergency Management and the commissioners have a short discussion about fire escape routes other than the highways. MG points out that escaping to a large alfalfa field can be a successful plan.
- Commissioners and Pete Palmer, Planning Director, have a long discussion about Accessory Dwelling Units (ADUs), density, minimum lot size, water availability, the housing shortage, overnight rentals and zoning.
- Meeting adjourns at 12:24.

Meeting opens after the Pledge of Allegiance. AH says he's going to go talk to the Building Department and leaves.

CB and JN have nothing to add to the agenda.

CB—to JN:I have an open line opening (?) if you're interested—Thursday next week at 6 PM

JN—I can do it.

JN—How was your timber caucus?

CB—Pretty good. Conservation Northwest gave a presentation. A commissioner from Yakima County grilled her to death. It was on the subject of carbon sequestering. It all gets real complicated. That's why she wanted to know numbers in regards to...it was a question you really couldn't answer. It was about the future and how long into the future could... She really disagrees with her a lot. The question was about accountability. It's hard to argue the science if you don't study the sequestering. (AH returns.) There was a guy from the University of Oregon who did a presentation about it. He was reviewing the uncertainty. Many variables. I'll send you the presentation.

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CB—More interesting was the Legislative Steering Committee discussion of priorities. They've already got a list, but the staff suggested three top priorities. The very top one was raising the 1% cap on property tax. That raised *quite* a discussion. Finally, there was a motion not to consider these 3 priorities. If you look at the initiative Eyeman had that the court said was unconstitutional. So you know how the public feels about the 1% cap. They pressured the legislature into adopting the 1% cap. So putting it on the counties to be able to raise the cap was very controversial. Majority vote not to implement the top 3 priorities.

JN—Correct me if I'm wrong, but if you pull the cap, it really just benefits King, Pierce and a couple of other counties. They can penalize everybody else who doesn't implement it as far as getting funding for a lot of projects.

CB—That was talked about. That's what pushed it the other way. After I left, I decided it's not that big of a deal not to take those 3 priorities.

CB—The other thing is, if we want to add to the sales tax, the 3% cap wouldn't help us at all.

CB—You got the email from Juliana Rowe (?) about the jail study? I'll forward it to you.

JN—Did you get the email just now from Tom Lanin (?)

CB—On the Columbia River, they've got a project at Goldendale. It makes storage off the river and creates another power source. The water goes from a reservoir to a lower one and generates power. Then it can be pumped back up when power demand is lower.

14:45—No public comments.

CB—You got the announcement about the budget adjustment needed to make payroll—\$65,000—for the Fairgrounds? Proposed by the auditor.

AH—Oh, Fairgrounds? That's fine.

CB—At the Columbia River Caucus, there was the water forecast. On the map I'll forward, the Okanogan Basin is painted red. There's only two painted red—Okanogan Basin and Walla Walla. Orchardist growing season is longer and so there's more irrigation, plus climate change.

AH—The irrigation season is specific. You're allowed a certain amount of water.

CB—I know, but I think there's going to be pressure. How do you get higher demand satisfied unless they figure the irrigators aren't using all the water allocated to them?

AH—That's a bunch of crap.

JN—OTID (Oroville-Tonasket Irrigation District) is trying to surplus a bunch of acre-feet of water.

CB—That was the question in my mind. They want to do more studies and I encouraged them to do studies on the basins in the Methow. We make lots of land use decisions based on water. But it's really a 30,000 ft. view. I wondered why the Methow wasn't red.

JN—Looking at the Timber Caucus—what's CMER?

CB—Type in CMER and water supply, you get it. (Cooperative Monitoring, Evaluation and Research Committee on the Washington DNR).

29:55—CB—It's 9:30. Time for Sheriff Budrow and a discussion of Public Safety Testing Software.

PB—Public Safety Testing is what we use for our patrol and corrections hiring. Potential applicants take the test and they can send results to two agencies for free. For every two agencies after that it's an extra \$18. Some agencies pay the extra cost themselves.

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Discussion of the county paying the cost as a recruiting tool. The choices have to be made at the time of the test. Applicants can't wait until they know they passed and then chose another agency. PB asks that the commissioners fund this until the end of the year, then reassess for 2024. PB will try to get an estimate from Public Service Testing of the 2023 cost and get back to the commissioners.

40:35—CB—Any ideas for the Department Heads' quarterly meeting tomorrow?

LJ—Would you like to go over the asset policy draft?

CB—The meeting is two hours?

Several department heads mentioned who won't be able attend tomorrow.

AH—Mention the budget work sessions, but it's just—Hey everybody, sign up for a session.

LJ—Should we cancel it?

CB—Yes, and think of what we can do in that time slot.

CB—The pool conversation is popular over in Twisp.

AH—Lots of signs.

Discussion of the pool issue.

49:55—CB emails a passage from a publication talking about water use and demand during drought years. Aquifer layers are complicated in this area.

Discussion of stream flow and irrigation.

CB—Climate change is more an issue that irrigation shut-off dates.

AH—I think what's really killing us is fires clearing out the drainages. Then in the spring you've got the water ripping down, making big trenches. After a while the vegetation grows back and the water slows down.

CB—Balance comes as climate reduces the water, but people are using less of the water rights because of efficiencies.

AH—It's beneficial to the streams.

CB—Demand for instream flows has a...

AH—...negative effect on agriculture. So does the cost of agricultural production. An attorney for someone who wanted to buy a water right said—Well, water is worth a lot more up there in your county than it is down here. I said—In what universe? I can get two or three cuttings of hay and get about \$400/acre net. I can get more efficient with water, but I can't increase my acreage because it's illegal. But, if I sell it to a water bank, that guy can say—I only use 22" of water, but I'm buying 38" from up here, so I want to put in more acres down here. They can do that. It's bothersome. We get penalized up here. The state says if you don't use it, you lose it. You can't spread it, but you can sell it.

CB—That's the unintended consequence. I suppose the thinking was —you're trying to make water available to others if you're not using it. We talked about this in the discussion with the water bank. The determination of value of water, it's pretty controversial now. Based on recent sales?

AH—In my opinion, it's the number of properties you can serve.

CB—Down in the Columbia Basin, they're got huge properties they irrigate.

AH—My pump guy said they use 600hp pumps. You can push a lot of water with that pump.

59:40—MG—I'm Maurice Goodall, Emergency Management.

MG—Friday you were notified we were coming off of the burn ban and into burn restriction. Then on Oct 25, we're scheduled to go out of the restriction, but it's up to the Fire Advisory Committee when we meet again.

AH—I like this way of doing the ban.

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CB—It responds to the conditions.

MG—Last week Laurie and I went to WSEMA—Washington State Emergency Management Association conference. Good to meet the people.

CB—Do they look at projections about drought?

MG—Mostly the speakers talk about things that have happened. After-action reports but not in detail.

CB—Anybody mention escape routes?

MG—Nope.

CB—I explored a couple of the roads they talk about for Methow escape routes. Some of those roads I wouldn't suggest as escape routes. Road conditions and some uncertainties about where they go. Neighborhoods have to come up with a plan.

MG—I think you have to go by communities. Primary and secondary routes. In our county, I don't think we can designate any routes outside of the paved roads.

CB—The wildfire protection plan could tell you about it. Not necessarily designate routes. But any particular fire, you don't know what will happen next.

MG—You don't have to go to the end of the world. You could go to Mr. Hover's field. It'd have to be one heck of a situation to get you there.

MG—Most people like at the end of Twisp River are the ones talking about escape routes.

AH—People are signing up for alerts. I hear I'm in Level 1 and know there's a fire so I pay attention. Level 2, I better be ready to go.

MG—It's different with 1, 2 and 3. We use telephone, email, text but the people who are way out in the sticks, is the message getting through. MG uses Eagle Fire example.

AH—When we approve building permits, we should hand out a pamphlet about how to landscape. Some people like the sagebrush—that's a 50 gal barrel of oil just waiting to burn.

MG—We can recommend, but how to enforce it?

AH—You can enforce it during construction, but now afterwards. Plus a lot of the people in the north don't have building permits.

Discussion of water system at the Fairgrounds. Deadline (grant application?) of October 2. MG wants a map of the water system.

MG—There's a meeting on Thursday of the newly appointed committee to look into fairgrounds maintenance issues.

CB—If we submit a grant application, we have to know what we want to apply for. And we don't apply for something we don't want to do just to submit before the deadline.

MG—I think well and control house should be the focus.

1:21:04—PP—I'm Pete Palmer, Planning Department. The one thing I've got today is the resignation of George Thornton from the Planning Commission. We expected it, and he's fully moved somewhere else now. We need to advertise the position and get it filled ASAP. I think he was at-large, but I'll check.

PP—That's all until I come back at 11:00 today. You should have emails of the old and new version of the MRDs (Methow Review District) that I sent. We received emails from both Isabelle Spohn and Lorah Super who declined our invitation to be here today. Also, here's what the changes on the District Use Chart are.

AH—Can you double check that you sent the red-line version?

PP—I'll send it right now. Isabelle included a short comment with her email yesterday—about ADUs (Accessory Dwelling Unit) and extending the ...well, we can get into that when I come back. It's worth taking a look at.

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CB—She says it's not ripe for discussion, but we thought we're just going to have a discussion. Ripe is when you finally make a decision interacting with the Planning Commission. That's when it's ripe. Maybe there was a misunderstanding. We just asked them because they comment all the time.

LJ—There's a resolution for the Board to reconsider. (*Too faint to hear.*)

CB reads from a footnote concerning Conditional Use Permits (CUPs) for hardships. Hardships are hard to define. Planning Commission needs to discuss this. It comes from the MRD Planning Body. Also discuss CUPs for cell towers.

AH—Footnote #5 is ridiculous. If it's a recommendation, it would be from MVCC.

CB—We have to worry about what's enforceable and what's doable. And if it's a shop and if the vehicles are inside.

AH—If it's a nuisance,

CB—Or if it's a commercial shop... Home occupations just need a permit where you acknowledge the rules exist.

1:58:35—CB to PP—Are you guys issuing shoreline letters of exemption for accessory structures?

PP—I'd have to ask Rocky (Robbins) that.

CB—Somebody submitted a photo of a structure and asked if it was allowed. I said it might be allowed, but you'd still have to talk to the Planning Department.

CB—Dan, you're here to be a part of this discussion?

DH—Yes. I saw it on the agenda.

CB—But I saw PP said it was a priority item?

PP—Yes. We're hoping to get it to the public by the last week of October in order to meet the timeline stipulated in the order of the end of December. But we're waiting for some verbiage on the stipulation. I want to make sure we've got all of our stuff done, so we're waiting on them, and not them waiting on us.

CB—But it goes to the Planning Commission one more time?

PP—Yes. The Planning Commissions hasn't seen it yet. It hasn't been out for any public review at all. Until you guys are fine with it, it doesn't go out to anybody else.

AH—Is Larry Gilman (County Assessor) here today?

JN—No.

AH—We can discuss it and I can get an idea about what question to pose to him.

PP—I know the agenda says ADUs, but I think if it'd be more productive is if we go over the whole MRD section. It's not that many changes—four or five—and go through the District Use Chart (DUC) to see what Futurewise and MVCC proposed. We're in legal discussion right now about ADUs in the Methow. The question keeps coming up and it's surrounding the legal memorandum with Natalie.

CB—About water availability?

PP—Yes. Has to do with the deposition and the court case about the public records request for the legal memorandum we call the check list.

AH—How can an ADU be construed to be a group use. I own both and I'm not a group.

PP—Shared wells.

AH—It's not a shared well. A shared well goes to two separate parcels and an ADU is on the same parcel as the house.

PP—I can send you the legal analysis once we get it, but I'd rather not talk about it.

AH—If the DOE is going to push that, I'd want us to push back very hard. All they're doing is taking the Campbell Gwinn court case and trying to impose all their thoughts they think that means on it.

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PP—We have, through Jenna (?) requested technical assistance from DOE to tell us what their position is on ADUs and a couple of other questions based of the Attorney General’s opinion that keeps being thrown out there.

CB—Just a thought, simplifying that, it’s just basically what single family use is under the water law.

AH—That’s the only definition they’re using to try to stop the ADUs.

CB—But, to take ADUs out of it—single family domestic.

AH—Suppose my dad died. My mom doesn’t need a nursing home but needs some help. I can build a small house where she has privacy. It used to be on 5 acres in the MRD, you could build an ADU that was 50% the size of the original structure. We changed it to 1,500 sq. ft. maximum. In my mind, that’s not that big. And a maximum of 100’ away from the house on 5 acres. I don’t care if there are title restrictions saying it can’t be separated from the main house. Right now, if I build another structure connected with a breeze-way, that’s an addition to the house however big. Now I’m defeating the purpose of shrinking the additional house to 1,500 sq. ft. I can build a bunkhouse without a kitchen anywhere I want to. What they’re pushing on that—without building ADUs is in direct contradiction to our Comprehensive Plan. Plus Winthrop and Twisp have declared states of emergency about housing related issues.

PP—I guess what you’re talking about water availability determination. That’s what’s messing with the ADUs.

AH—If there’s a challenge to an ADU that’s in our code, we need to write a formal letter saying—This is what it says in our code. This is what we’re going to do.—If they want to challenge us on it, OK. We’ve done it before and we can do it again.

PP—If I get something back from the legal team, would you like an executive session, so you’d know where we’re sitting with ADUs?

AH—Yes. When Campbell Gwinn happened, I understand the court’s ruling that this was one developer and creating 22 lots and 22 wells using more than 5,000 gallons/day. The 45 ground water rule—group use, no more than 5,000 gallons/day. Separate parcels! At some point you’ll have to prove that the court ruling then is what the court would think now.

PP—I’m only telling you want the attorney’s tell me. I’m not an attorney or water expert. I would like them to have that conversation with you, so we can see where they’re getting their determinations.

CB—Because of our challenge to the determination by the DOE, we’re now in the position where the attorneys are running the show.

AH—I wonder if I can find the court ruling in my email. It’s pretty specific and says—here’s a list of things.

PP—If you start going through that list of things, it takes to into a hole clear to China with prior court cases that affected it, etc. It’s way out in the weeds.

CB—If we set aside the issue of zoning, we’re into what is single family domestic exempt. What’s the definition of that in the law?

AH—If I have a single domestic use of less than 5,000 gallons/day, if I had a group domestic use of less than 5,000 gallons/day, if I had a use of lawn and garden less than ¼ acre, if I had a commercial use less than,5000 gallons/day or stock water of any kind, I wasn’t required to file an permit application to the Department of Hydrology. They figured it would bog the system down, but it carries the exact same weight as filing for a right once you begin use on it. In 1945 they used the terms single domestic and group domestic and what were they talking about? I don’t know what group use meant in 1945.

CB—What it means today is probably more important. Water law is concerned with availability today. Then it was a limitless resource.

AH—I have no limit on how big a house I can build...

CB—The house doesn’t use the water, it’s the people that live there.

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AH—I could have a 20-bedroom house with 20 people living there.

CB—That’s why the lawyers are in charge when we’re trying to help the Planning and Building Departments to determine what’s allowed by the law.

AH—At some point when they come to a conclusion, we have to assess the risk of the decision vs. the cost of challenging the decision.

CB—If you limit ADUs, what’s the driver?

PP—A good example is from Isabelle saying it’s not ripe for review until DOE is consulted and gives their version of what’s physically available. Isabelle also says that the issue of ADU's is not ripe for decision-making nor public review until the WDOE has been consulted as to legally and physically available water. And No ADU should be permitted as an overnight (or vacation) rental. Such permits could increase the population of the Methow Valley at any given time exponentially and beyond the ability of the county to enforce effectively in regards to the environment, natural resources, and the public welfare.

AH—Right now, the only place you can get a permit for an overnight rental is in a planned development. Just because I build an ADU doesn’t mean I can permit it as overnight rental.

PP—People are doing ag buildings and using them as a residence. There are ADUs going in and then popping up on the website as overnight rentals.

AH—That’s an argument. People drive 70 mph in a 50 mph zone, but does that mean we’re going to remove the road?

PP—It comes down to being able to enforce the laws we’re making.

CB—I don’t remember the Comp Plan saying anything about the population of the Methow Valley. When we talk about zoning, we talk about the desired state of a place. It may be zoned single family residential or rural area. The question is if people want to live in a single family residency area, do they want to be able to increase the density on each and every lot? I’m backing into zoning that way.

AH—I understand. But I point out—it’s all five acres. Not what you think about as a neighborhood.

CB—So what’s the desired state of the zoning district? If I have a family member who needs to pull a manufactured home into my yard instead of being homeless, go ahead. After the home is planted there and my relative dies eventually, now I’ve got two homes on my lot. It’s not single family residential use. How do we deal with that?

AH—The size limitation of the ADUs--<1,500 sq. ft. we can regulate.

CB—So why not allow two dwelling units per 5 acres.

AH—An ADU is a defined thing.

CB—But why should it be. If I want to put a duplex on a property, that’s two dwelling units. Why not allow duplexes.

AH—to PP—in Zone Code 17A.130.060 currently it says in MRD, 5 maximum family dwelling units, is that still in our code?

PP—No. That was a comment from Futurewise. It’s not in the current code. It also gives the Planning Director the authority to determine hardships.

AH—I don’t think the hardship thing should be in there.

CB—The implications of the extra dwelling unit are the issue. It’s the future of the dwelling unit is more important than the situation today.

AH—Yes. It could be someone who works here.

CB—If there wasn’t the concern that the ADU will be used for something other than a rental...

AH—As a land owner I could rent it out more cheaply. If I want to rent my place out and keep the rent reasonable, I can do that.

JN—The biggest concern are short-term rentals.

AH—PP says they pop up. When they pop up, we haven’t been doing anything about it. It’s our fault because we haven’t done anything. We should have a civil penalty for that. Pete could issue a civil

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penalty for advertising it without a permit. That's the only thing short of not allowing it to be built that you can enforce it. Don't need the police.

CB—The concept of enforcement is interesting to me. In the towns there's the argument about having ADUs. If you buy into a single family residential zone, you know what you're getting. People buy into closed communities because they're stricter.

AH—The zone code hasn't changed. Seven years ago, you bought into a zone where you could add an ADU.

CB—If people are for ADUs, and they don't want double density...

AH—They could put in five dwellings before that, and when people noticed that, we ended it.

CB—That argument went with water.

AH—It was about water, but it was also about—we're into the hinterlands up here. Maybe an ADU is OK, but they could put in 5 multifamily dwellings.

PP—You're basically doing a subdivision without the lines.

CB—You could have had 25 multifamily dwellings on 20 acres.

AH—With ADUs, we've got a water issue. But I think it should also have a title restriction so it has to be sold together.

CB—If I've got two 20 acre lots and build one ADU, can I divide the 20 acres?

Discussion about how to dispel the fear of subdivision of lots. Also, years down the road, someone would want to put an addition of the ADU because it's only 1,500 sq. ft.

CB—I like ADUs but if we do enforcement, the more complicated we make the enforcement...

AH—I think it's pretty easily spelled out.—Less than 100' away, 1,500 sq. ft. or less. There are controls for building. But there's no civil penalty.

CB—The civil penalty—the ticket—that's a good idea, but the easier it is to enforce, the better it will be. I see many Methow Valley rules that are very complicated because you're trying to block every move people are making. If we're doing enforcement, and those moves are illegal, we have less to worry about. If people can get away with it for a time, they can make a lot of money compared to the penalty. Then there are those who don't make much money and don't have much money and those will probably be the ones we lean on. Example the Health Dept. had a lien on the property for \$30,000 when we came into office, and it's probably more than that. The guy enforcing those rules thought—well I can't go anywhere with this. The bill keeps going up, but he's an old guy and eventually the family will pay to clear the back fees so they can sell the property for \$1,500,000 or more. If you're following the law and doing enforcement, you get them before they get that deep. There are a lot of them that exist.

CB—When we make the rules, we have to make a commitment to enforce them and have to make sure the department can make the enforcement happen. The Building Department goes out to look at what's being build when they apply for a permit, but there are a lot of them without a permit. Is that fair for everybody else that we're making all these complicated rules?

CB—If we allow ADU and it's not the way it's described, it's just a dwelling unit. It's not an accessory. You can't sell it unless you sell your house, too. I don't care if it's 100'. If you can't subdivide, you can't subdivide. When people ask about the 100', I say it's so you can't subdivide.

CB—The end game—the water situation—is probably minimum lot size. Isn't that what we're dealing with when it comes to the challenges we have to the code by a couple of entities. I won't name them because of the law suits and the lawyers are in charge of that.

CB—If we allow ADUs by CUPs, what conditions would be put on.

PP—It's a permitted use.

CB—We used to call those Special Permits. I think if there's concern about density and use of water, then minimum lot size is better than these complicated rules we make. It's based mostly on complaints only. Part of the time we can't respond to the complaint.

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CB—Why are we making it so complicated, if we're allowing something that's going to happen anyway. And the costs of the Planning Department are going up. We'll have to charge a lot for the permits because they're going to need a lot of enforcement. A lot of the opportunity to make affordable housing goes back to ADUs. It's not being traded out except if it has the rental property on it, I could sell it for more. But if it has overnight rental on it, I could make 10X more. If I make so much that I'll do it illegally, it's an enforcement issue. Is everybody in the Methow worried about that?

AH—I guess. You can't make people follow the law all of the time. We need another tool to enforce the law. We've got a pretty good system now. To have overnight rentals, you have to have a planned development, and it costs money to get it.

CB—And you have to have a water right to do it.

AH—Yes.

CB—If we put it all in that context, and we get comments on it. We loosen the standard for ADU, make it easier for Planning to enforce it, and do enforce it. That's all the fears that occur, but we'll find ourselves talking about minimum lot sizes. If you allow ADUs, you're allowing double density.

AH—Everybody who challenges something only wants to look at the point they want to discuss. They say you're creating double density with that. The Comp Plan doesn't say anything about that. Well, the Comp Plan doesn't say anything about allowing the WDFW to buy private property, but they do that, too. We don't challenge any of the purchases. You've taken all that property out of...

CB—But that's not a good justification for conversation or decision like this. It's something different.

AH—Of course it is because you want to look at it that way. For every lot I take away for state or federal purchases, well, they don't want you to do that because of double density. Every lot that I take away..

CB—But you're saying that everybody who argues against double density, argues for state and federal land.

AH—They do.

CB—I can't say that.

AH—The people want absolute control because they don't want more people in the valley. You can't subdivide now.

CB—I suppose if I lived there and was thinking towards the future, I'd think about what rural land really means. I'd have to stop and think how much is too much of anything.

AH—Look at a map of the Methow Valley that shades the federal land, all the land is shaded.

CB—As far as ADUs are concerned, it can let people live and work in a rural area. I could say—we need more housing so let's subdivide the hell out of the place. Then it's up to the market to decide who can and can't afford to live there. That'd be my argument. If you're not allowed to have short-term rentals, that will allow more people to live here, but consider the minimum lot size when you do that. 20 acre minimum lot size if I allow ADUs, I'd have a higher lot size.

AH—I wouldn't.

PP—My time is up. Can I have two hours next week? We left off at the DUC. I'd like to go through the rest of the code and if there's time to go back to the DUC.

CB—That's fine. It seems like this kind of discussion is crazy but it's one that people are concerned about and it requires a discussion like this.

Discussion of when to put it on the agenda.

3:01:50—SK—Discusses fair facilities rent schedule. Also discusses changes in pay rate for LJ and Cameron Burnette because of new duties associated with public records requests. The person hired to do the requests has given notice. Cameron with LJ as backup will fill the requests, and the person leaving the position won't be replaced. The website is already set up so the workload should be less. Finally,

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they discuss how to make more documents available on the county's website so there would be no need for a records request.

Adjourn at 1:24