

Board of Okanogan County Commissioners
Monday, October 11, 2021 PM

JD—Jim DeTro
AH—Andy Hover
CB—Chris Branch
LJ—Lalena Johns-clerk to the Commissioners
PP—Pete Palmer—County Planner
DG—Dave Gecas, Civil Department Prosecutor
SK—Shelley Keitzman, HR Analyst

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Summary of significant discussions

Public Hearing on Ordinance 2021-8. After hearing testimony from many people, some of whom have suffered economic hardship from the building moratorium, the BOCC votes to continue the moratorium but to work quickly to resolve the issue for the approximately 235 parcels owned by people who have invested time and money in obtaining a building permit, but are unable to because of the moratorium. Other parcels affected will be not be considered such a high priority.

Shelly Keitzman updates the Commissioners re: increased insurance costs with Aflac and Delta Dental. She also discusses adjustments to the pay rates and grades.

Cari Hall, County Auditor, has emailed the Commissioners, saying the Superior Courts need an addition to their budget of \$77,000 or they won't be able to meet the payroll this month, and will need a total of \$101,700 for the remainder of the year. The Commissioners are taken aback. AH says they will approve the money to meet the payroll, but Dennis Rabidou, Court Administrator, must come and discuss why the courts need so much more and why they've waited until the last minute to request it.

JR and Chantry Leslie are interviewed by phone for two open positions on the Fair Advisory Committee. They are approved and will attend the meeting on Monday evening.

2:39:55—Public Hearing Ordinance 2021-8 Building Permit Moratorium-Director of Planning Pete Palmer

CB—Having a public hearing today. Commissioners can continue with the moratorium as adopted, change it or rescind it. Staff will speak first. Then testimony. Then we'll deliberate about what we'll do about the moratorium.

AH—Limit testimony to 3 minutes? CB—OK. AH will keep time.

PP—I've sent the previously received 52 comments to the board. I recommend continuance of the moratorium until dispute with DOE (Dept of Ecology) is resolved.

Board of Okanogan County Commissioners
Monday, October 11, 2021 PM

DG—I'm here to answer any questions if I can be helpful. I agree with PP.

2:44:55—Scott McFee—We own 5 acres on the East County Road, but we can't build on it. Always been our dream to live in the valley. We're trying to be the best stewards of the land but we need to be able to live on it. Having a well dug, irrigation water right, etc. have cost us a lot of money. We need to be able to build.

2:48:26—Isabelle Spohn—Twisp. Extremely difficult situation to all involved. Proposed resolution should be amended to inform owners of affected lots that having approved well and septic system doesn't mean that a building permit would be issued. Also require developers should be aware of this and must inform prospective buyers. But this won't help people caught in this situation right now. BOCC should prioritize this problem, both short term and long term.

2:50:50—Linda Bustad—Husband and I in the same boat as the McFees. Bought property in 2012 in Tellerud Estates with a well. Irrigated, put in septic, power, obtained a building permit for a bath house in 2018. But when tried to get a permit to build a home a couple of weeks ago, learned we can't build on the property. Shocking. Plus property value lowered. Should have been notified by the county when it happened. We think you should repeal the moratorium.

2:53:00—Casey Ruud—Don't own a lot, but I think they're really getting chiseled. I've look at the AG letter, written by DOE. Interpretation by AG isn't law. Only court ruling is. Two issues—I'm a strong advocate for protecting water resources. #2—I believe in the fair use of water resources. Approved irrigation systems. I proposed metering on wells, and they'd have to come out under 5000 gallons for the subdivision.

2:56:40—Doug Robinet—14 months ago, bought land on Wolf Creek. Did our homework. The water system is in, stubbed out to three lots, approval from DOE, approval of water system from Public Health and also from the County. All in writing. We're on a fixed income. This is bringing me to my knees, financially. The other two lots were bought by young people assuming they would be able to build. They have huge financial jeopardy now. Know there are water issues, but if the County could get faced in the same direction as the state to conserve ground and surface water, that's a good starting point. Then talk about the second issue—honoring commitment to people who relied on it. Not enjoying being collateral damage. Government should be reliable. Finally, precedent with Kittitas County. Five year look back for properties that had approval from DOE. They were approved. If we get governments all facing the same direction, we could protect the water resources and the small people being damaged by this.

3:00:05—Methow Valley Citizens' Council, Jasmine—We submitted written comments and I'll wait to go last.

3:01:10—Earl Campbell—Born and raised in Methow Valley. In 2019 bought property. Drilled a well, build a shop, septic, bathroom, shower, washer & dryer. All permitted. Now retired and I wanted to add a 16'X24' kitchen. But permit denied. I'm camping in my shop. I'm asking for a 16'X24' addition that will use no more water than I'm using now.

3:05:20—Ms. Gable—Support having moratorium dissolved. Sister and I are trying what to do with our parents' farm that's been in the family for years.

3:12:30—Heidi Dunn—It's apparent that the County is late to the party with a proper system of water rights allocation. Support Ordinance 2021-5 which stops new subdivisions of property. But 2021-8 is retroactive and forces individuals to carry the fallout resulting from miscommunication and negligence between the county and state. Now sovereign aboriginal nations as well as public interest groups have taken up the struggle to take up water allocation issues. Don't see timely problem solving. Those are gains, but the losses are having highly detrimental impact. Legal analysist, who's my son, says judge in Campbell & Gwinn says you can permit wells with a draw restriction and metering to have compliance. Drop the law suits and give those people a path to build their homes. Also, I encourage other litigants to

Board of Okanogan County Commissioners
Monday, October 11, 2021 PM

celebrate the victories we have and turn focus to more righteous battles. Community should come together and lift the moratorium ASAP.

3:15:45—Sarah Conover—I'd like to hear MVCC. I can't say anything better than Heidi just did. Disappointing if true if the BOCC isn't discussing things. I'd like to hear MVCC's solutions to the people that are being hurt.

3:17:10—MVCC, Jasmine Minbashian—I'm Exec. Director of MVCC. Created in 1976. Thanks to the BOCC for recognizing the challenges we face. It's important to pause to evaluate the situation. Original intent of the Methow Rule is understood to we can see how to move forward. In 1976, residents of the time very concerned that rural and agriculture character should be maintained. Concerned with late summer instream flow and meeting the needs current needs and worried about future development that might endanger future usage. If there's many subdivisions, will there be enough water?

Two step plan. #1—we're not alone. Happening in other counties. Redirect county to work with Ecology to create water banks and mitigation. Dungeness exchange is a good example, as is Kittitas.

#2 is to participate and create a stake holder.... (Jasmine is cut off because she was over the three minute limit.)

3:21:26—CB—That closes the public testimony. We received written comments we're taking into account, too. BOCC will discuss the ordinance.

AH—WRIA 48 is complicated. We have low flows in the winter, we can't convert ag water rights into domestic water rights like Kittitas County did. The Foster Case, in Yelm, says we can't. Water has to be in time, in place.

AH—We're looking for solutions to this problem. If it was as simple as requiring water meters and placing a water allocation on the plat, we'd do that in a heartbeat. Whether 5,000 gal/day for one lot or 5,000/day for 6 lots.

Beyond that, we'd either have to rewrite the rule (and Methow Watershed Council is trying to get stakeholders together to address these issues to rewrite the rule) to get DOE to add the words "group use". If those two items don't work, we have to figure out projects to store water through the winter.

AH—My proposal is that for any salmon related project if the county is a part of that, then a small portion of that water be put in a water bank for domestic use because it's being stored. I'd like to see the county embark on projects like Chelan Co. They looked at minor tributaries to see how much water is stored by man-made beaver dam analogs. All these things take time and money and we don't have a lot of either right now. My priority is the 235 individuals affected by this right now. I think that's JD & CB's priority, too. Beyond that, with new subdivision, that will take a larger stakeholder group and a larger conversation.

AH asks DG—If we remove this ordinance right now, what could be legal ramifications to the county if we issued building permits?

DG—Probably special interest groups or DOE telling us we're violating state law and pointing to court's order. That order, the one we're currently trying to get them to clarify and reconsider, doesn't address the issue of 2002 to present. It only addresses the part about the two lot subdivision exception. Shouldn't take too long to get the clarification. Once we do, and court says we're not allowed to approve building permits, whoever is suing us would be able to point to that comment as well. If it's not binding on property owners, it's still binding on us. Some said it's advisory only but we're the ones that brought it to get guidance going forward.

AH—Basically, whoever was first to get a building permit would be named in the suit along with us?

DG—Not necessarily. They might want to intervene because they have an interest.

AH—I talked to former Kittitas County Commissioner and discussed specific issues of the Methow. He didn't know about that.

Board of Okanogan County Commissioners
Monday, October 11, 2021 PM

DG—DOE would have to agree to change the rules to match Kittitas situation, but I don't know if they're receptive to that argument.

AH—I'm willing to say every new house has to have a meter & water allocation table. We're willing to do things, but some take a long time. Storage projects take time and money—who will maintain it, etc. We need to delve deeper into these projects. Also need to be a part of salmon recovery projects and take account of water bank we hope to have soon.

DG—Interpreting Campbell and Gwinn, which says group users have to share the 5,000 gallons that would normally go to one, but the problem is that if you apply that definition of group use in the Methow where we have the 2 cubic feet per second (cfs) allocation and the Methow rule (WAC 173-548-030) that says group use is below instream flow in priority and you have low instream flow, you get nothing, because they're an uninterruptable source. You didn't have to deal with this in Campbell and Gwinn.

AH—Another thing is that a lot of people in the county who get drinking water from Culligan if there's arsenic in the water. Why can't we get cisterns? Why aren't we pushing the Health Department to allow cisterns? My cousin in Montana has one. It's how he gets his water. If the water doesn't come from the Methow Valley, or comes from another legal source in the Methow? To say we're not working on it isn't the case.

JD—I agree with Andy on all those points. I don't see any objection to water meters. And he's correct. It's very complicated because of the 2 cfs and instream flow. Don't know if rewriting the rule will solve the problems we need to solve. With salmon projects, we can do some mitigation, have set-asides for domestic use. Cisterns? We have lots of legal cisterns in the county so they could prove water adequacy. But we don't want to make a mistake and get the situation tied up in litigation, who knows how long it will last? These 235 people might not get any relief for a decade, and that's dangerous territory.

AH—One more thing. The county is not in an adversarial play with DOE. It's to clarify a point they made. Working with DOE going forward, I want to do that. Storage projects are great. Operations and maintenance on storage projects are another problem. Paying for a pump, repairs, etc. for the whole time.

JD—And even if you said "Go" tomorrow, with permits, etc. it'd still be 6-7 years.

AH—I think DOE could fast-track that. Natural reservoirs or beaver dam analogs. Chelan Co has data to show how much water they're storing and DOE agrees they're storing that much.

3:39:05—CB—Well, first, I agree that the BOCC has doing talking about this a lot. Most of it in executive session until today. I'm frustrated that lawsuits take away our ability to talk about things in the open, but I understand why they threaten to sue. In recent years there's lots of talk about Campbell and Gwinn and the Methow Rule, but lots of people have their own opinion about what those say. I don't think what we're doing is consistent with what Kittitas County is doing.

CB—As a planner, I've relied on the vesting doctrine. The way it's been applied in recent years troubles me because courts have gone back and forth in recent years. What troubles me the most about the moratorium on lots that have been approved, we'll determine whether there's adequate water to serve the subdivision. In later years, state also adopted water adequacy at the building permit level. In the Methow Valley, commissioners declare there's water to serve the subdivision. There seems to be an abandon to the vesting that was presumed when the subdivision was OK'ed. Confusing to know when we are vested. This case troubles me. If we fix this problem now, and the moratorium should be on any further subdivision that establishes water adequacy. If we go back to 2002, I'm bothered by that. It's really bad for the vesting rule and we need to fix it. The lawsuit we have now about DOE interpretation of the law. There are water problems to solve, but people do invest in their property and need to have some predictability. And Health Department is approving improvements, and people are spending money on these improvements, going forward thinking they are vested.

Board of Okanogan County Commissioners
Monday, October 11, 2021 PM

CB—I think we can resolve this with mitigations, water banking maybe. But every move we make is countered by some litigation. In the meantime, we’re doing everything we can to make people whole.

3:49:25—AH—One more thing to add. I like math. 235 homes would use average through summer & winter, Aspect (consulting company) figured they’d use (roughly) 250 gal/day. That’s 65 acre-feet/year or .0689 cfs for each house. Those are the small amount of water the 235 house would use. But because we have low flow in winter and there’s no irrigation water rights in the winter, that’s the situation that exists.

CB—I agree with AH. One issue I have with just the numbers, I think the biggest issue we have is interpreting the laws. Most water is used outside the house and that doesn’t fall in the 5000 gal/day. Biggest argument we have in Methow Valley is the technicality liking Campbell & Gwinn with the Methow Rule. But we everybody seeing eye to eye in regards to water management and the growth of the Methow Valley.

AH—The growth portion of that? I agree. I’ll agree to keep the moratorium except for the people who already have properties, the 235 properties. So we need to know what kinds of mitigations do we need for that? Methow Valley is different in another way. Before any subdivision, they had to show DOE they could provide water adequacy for all the lots they’d divided. So DOE knew they’d build houses. Once they did that, the county relied on the fact that DOE said they had enough water. All I want to do right now is find the quickest, best available science to allow those 235 to use their property. Then it’s an issue of managing growth. I don’t want the Methow Valley split up into tiny little lots. How can we do that? But let’s not go backwards.

3:56:13—CB—So, I want to ask the board, should the ordinance stand or be changed? I want to ask for a discussion about the fact we have a moratorium on building permits. They apply to subdivisions since 2002. If there are others out there that would qualify for a building permit, why would we have a moratorium?

AH—Having a moratorium for future subdivisions is good—stopping until we have better planning. But if I go to Building Dept and say I’m building a cistern. I could get one. Cistern filled with water purchased elsewhere.

CB—The cistern water comes from somewhere else. So we’d have to verify the water—where it came from.

AH—if I have a tanker truck and find someone on the Okanogan side to sell me water...

CB—If you buy water somewhere else, who will raise the issue where I got the water.

AH—But we’re only talking about 235 parcels.

CB—I’m not saying you can’t do it, but if something changes today, you might find yourself under a microscope.

AH—But lots of people today say BOCC aren’t doing anything to fix the problem. All I’m saying today is: does the moratorium need to be in effect for the 235 parcels. Even if we say that today, we can’t do anything until we convene as the Board of Health, and we say that we need a cistern law and what does it look like?

CB—You’ve put out a list of things that might happen.

AH—I’d like to rewrite the moratorium to allow the 235 to build if they’ve got an alternate way to get water. Here’s another idea: what if I find a tiny parcel subdivided before 2002. What if I buy it and put on a title restriction, saying that I’ll never build a house to use water on this parcel, but transfer the water to my other lot down the watershed.

PP—Keep in mind the breakdown between the county departments and Health Department. It’s hard to get them roped into these things. If you change the rules on cisterns, the moratorium still isn’t stopping people from getting septic permits, etc. We need to get the Health Department to stop putting property owners in this situation.

Board of Okanogan County Commissioners
Monday, October 11, 2021 PM

AH—You brought up the point—do we need to have a moratorium on this?

JD—What does DG say?

DG—I thought it was written so only a moratorium on new building permits when the water came from a permanent exempt well, not from a cistern with water coming from somewhere else.

PP—I think it is written that way.

AH—to PP—so you have to tell people that can get a building permit if they can get alternative water to their house.

PP—The restrictions come from the Health Department, because it's not just as easy as finding another source.

CB—Suggestion from Kittitas that things run their course, if you can't prove water adequacy, what do you need a moratorium for? But with Methow Rule, Planning Dept has to make ruling of water adequacy every time. Do they have to do that now if someone comes in with an alternative?

AH—The question is "Are you going to use a well?" Yes. "Sorry, you can't build." But if the answer is No,...

DG—But there still is the possibility that the court will come back and say—I agree with the county on the 2002 undeveloped lots.

JD—In your conversations about this, is there a time frame you predict?

DG—I don't know how long it'll take.

4:10:20—AH—So the moratorium runs out.

CB—We could continue it as it's written until we figure out what modifications we could make to perfect it.

AH—Does that include the future subdivision, too.

PP—It's a separate moratorium on the subdivision.

AH—The moratorium runs out at some point.

DG—You renewed it without a hearing, so this hearing is within 60 days of renewal. If you want to affirm to keep it in place for the next 6 months, you have to say why.

AH—Can we rescind it without a public hearing?

CB—Law says you need a hearing to extend but not rescind it. If we had resolution next week, we'd rescind it then. I'm saying if we want to refine it, we continue with the moratorium, and when we're ready, we rescind the old one and adopt a new one. That requires a hearing.

CB—There are a number of things that might work.

DG—Hirst fix might work, (RCW 19.27.097(1)a & b for everyone with an approved well pre-2018. If court agrees, that would be huge.

AH—Our priority is people who've already sunk money into it. JD & CB agree.

CB—If we rely on that law, be smart to go ahead and implement the suggestions of these limitations on these residences, that'd be a gesture of good faith.

AH—Like a water meter? Everyone would agree with that.

CB—Then we'd have to do our due diligence and manage the water.

AH—And Okanogan County took the initiative back a while ago to put water allocation tables on the plats. But the AG at the time said they couldn't do it.

DG—How does water meter solve the problem of group use?

AH—It doesn't. But lots of people say that without meters now, we don't know how much water is being used.

JD—Where I lived, we had a group use meter on the well and we reported it. The Association tried to adhere to the domestic exempt rule.

Board of Okanogan County Commissioners
Monday, October 11, 2021 PM

AH—Most of these small subdivisions, there's no Home Owners' Association. With large lot segregations, it's different. Different that subdivisions. Meters won't solve everything, but could help with some of these properties. No one would object to meters.

CB—I think that's correct.

DG—Does that include water used outside?

AH—It's water pumped, not consumed use. So with 6 lots, you'd have to have a really small lawn.

DG—But another case said there's no limit to stock watering.

AH—Single domestic use is same priority as stock watering.

CB—New word I've heard a lot is optics. What people are seeing. In cases DG is bringing up, and the outdoor watering isn't controlled.

AH—But outdoor irrigation of ½ acre isn't included in the 2 cfs.

AH—I'm not talking about future subdivisions.

CB—I think we're getting sideways with the Health Dept because they're considering drinking water issues and not water consumption issues.

AH—I know if a water bank was established right now, water would go into it. I've talked to some about storage that exists already. If you could find a water right and the county issued a water purveyance, and people had to pay just like into the city, you may get the money you need to pump into reservoir for winter use. Water use is a lot less in the water.

AH—You'd have to divide the 710 gal/day summer use, but only the consumptive winter use.

CB—So, what to do with the moratorium.

AH—I think we have to keep it in place until we can rescind it or get some feedback on this discussion.

AH—With great angst & not liking it, I move to continue moratorium as it stands right now.

JD—I second.

Passes 3-0.

AH—I think through this discussion, there are at least 30 people who know we're working on it. Trying to make whole just those 235 parcels.

CB—I'd like to see an agreement with DOE and maybe litigants that we need to respect vesting status under certain conditions. We'd say how much water was allocated to particular uses and it's interim. Not what everyone wanted.

AH—Gene, with GIS and Assessor's Office, we could quickly generate a table that shows water allocation table for each parcel.

CB—That would be the easy part. The hard part would be convincing people to agree to that.

AH—I know it's hard. But let's try to fix this issue and move on with life.

4:35:05—LJ—I contacted J.R. and Lesley with regards to their interview. Told them the hearing would end by 3:30 or 4:00, but we have someone before them.

CB—The hearing is closed.

Heidi Dunn—I listened to the whole thing. I'm in full support, but if you think about cisterns—we could get water from the neighbor's cisterns.

AH—No, that's group use.

Heidi—I've been an environmentalist my whole life. But the entire community knows that the MVCC is on the wrong side of the line and they're losing money as we speak because of it. Ed Welsh sent you guys a letter, he was a founder of MVCC, and Ed is on my side. Kathleen H. a sitting board member of MVCC...

AH—All we have to do is come up with a policy that says "this is how we'll operate with the 235"...

Board of Okanogan County Commissioners
Monday, October 11, 2021 PM

Heidi—And if they decide to take up litigation, they are going down. Honestly, the public is....
CB—I'd love to talk to you later, but hearing is over.

4:38:35—Shelley Keitzman. Discussion of insurance rates with Aflac, Dental Dental rates and how the county needs to adjust the wage steps and grades because of the salary threshold for exempt employees. The salary schedule needs a major overhaul, which will take some time. They will use the adjustments today to fix the immediate problem.

4:58:00—LJ—The Board just got an email from Cari (Hall, County Auditor). There's a request for a budget amendment of \$77,000 from contingency reserve to Superior Court for contract commissioners, operating supplies, rentals, leases, law books and retirement. They won't be able to make payroll at the end of the month unless a budget supplemental and adjustment is approved.

AH—Commissioners Branch, I'd love to discuss with Dennis (Rabidou, Superior Court Administrator) why the budget is so short and why it is on such short notice that we have to deal with it.

CB—Good question.

AH—Somebody should be managing the budget. It fries me. Discuss with us your budget request. Not just "You have to approve this adjustment." No we don't.

AH—I'll do it for payroll, but nothing else if they won't come here and talk about it.

Discussion of when to put this discussion on the agenda. AH won't be here until 1:30 tomorrow.

LJ—He needs \$101,700 for the remaining part of the year, according to the budget adjustment request.

AH—Then somebody needs to come and talk to us.

5:06:05— Fair Advisory Committee Appointments-Telephone Interview JR & Chantry Leslie

CB—It's not a hiring situation.

AH—Mostly a formality.

Chantry is on the phone, but JR stepped out.

CB—You want to be on the Fair Advisory Committee? You both do? Why?

CL—We're inadvertently involved in way, with kids in the fair. Taking over team roping and throwing next year. We're familiar with that. And we want to volunteer.

CB—Planning to attend the meeting this evening?

CL—Yes.

Discussion of who might be related to them in the county.

AH—to LJ—we direct you to create the appointment letters and we sign them?

LJ—Yes.

AH—What about tonight's meeting?

LJ—if you want to sign the letters today, you could sign them and we'd be all set.

AH—We're glad you volunteered to be on this committee. It's hard sometimes to get people to do it.

CB—I'll see you at the meeting tonight.

AH—We direct LJ to create the letters.

JD—Tomorrow, there's an appeal of a septic decision at tomorrow's (Board of Health) meeting. It's for my mother-in-law. I'll recuse myself from the vote but not the discussion. They won't let her attend, but I don't know why.

CB—I wonder if these appeals are considered land use decisions. And there are specific rules how to conduct them. I don't know what the attorney thinks.

5:20:20—AH—Water use issue in the Methow is a big one. Is there a strategy to move it along?

Board of Okanogan County Commissioners
Monday, October 11, 2021 PM

JD—Some of the questions brought up today should be posed to DOE. Will you allow us to do this stuff?

AH—With my calculations of available water, it'd been good to have someone to do a rough calculation, what would be the consumptive use. Learn the overall impact of the 235 houses. If we know all of this down on paper, we could show scientifically there's enough water available.

CB—There's the mathematically part & the scientific part. We have lots of data because we don't know how much water really is available in something we can't see. And also the question of WILL we have enough water?

AH—Will we have enough?

CB—To talk to people about growth and water allocation, we need to ask them what resolution would you have to the situation. Ask what are we trying to achieve? First—do no harm to the people who have invested in the property. Really surprised me that someone said he didn't want to help someone make money off the sale of land.

CB—The point is being vested and it's a government trust issue.

AH—To get a subdivision, you have to drill a well. They make you.

AH—I think we hire a hydrologist and see how much water the 235 houses would use. Then we could give building permits if the amount is very little.

CB—That's one approach. But Heidi suggested—do we first see if this is the way we say it is, or do we want to go through a reasoning process.

AH—It's great, but it's hard to figure out what they really want when you're at the table.

CB—I've never been to the table. Facilitated meetings can help.

AH—We have the discussion—we need to fix this problem. On the other side of that discussion they say—but there's not going to be enough water in the future due to climate change.

Rhetorical question. How do they know that? How can I make an argument to help these 235 people when your argument is: Well, there might not be enough?

CB—That's something I'd want to know. What are you basing your concerns on? Not to argue about it, but to list those things.

AH—Totally agree. If somebody says not enough water for fish, can I get the scientific paper that says that? I'm not a fish biologist, I'd like to know where the best available science. If the tribe is saying the water's getting warmer because of tree cutting on the river bank, I want to learn more about it. The WDFW and tribes do the best science and so I need to get the best solution from that.

AH—Talks about similarities with zoning in the Comprehensive Plan

CB—With collaborative process, we need to know what our goals are, what are we trying to achieve. We want a good picture of that from MVCC.

AH—Pare it down. How are we going to fix the problem for these 235 people? Plus, there are a lot of parcels out there subdivide before 2002.

CB—Yes. Fix this problem, and then we'll know what we face going forward.

AH—Again, the future subdivision of property, I know it's going to take a while.

AH—Move to approve Appointment Letters for JR & Chantry Leslie. Both approved 3-0.

CB—We should have updates to let people know the progress on the building permit moratorium.

AH—There's also the marijuana moratorium & subdivision moratorium. They'll be easy ones.

JD & AH leave.