

Board of Okanogan County Commissioners

Monday, Feb. 22, 2021 PM

JD—Jim DeTro, BOCC chair, District 3
AH—Andy Hover, BOCC vice-chair, District 1
CB—Chris Branch, BOCC, District 2
LJ—Lalena Johns-clerk to the Commissioners
PP—Pete Palmer, Director of Planning and Development
DH—Dan Higbee, Building Department
TH—Tony Hawley, Sheriff

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Summary of significant discussions:

2:00:00 PP update for the BOCC includes a discussion about how best to determine the number of wells drawing water from a reserve. The number is needed for a DOE report. PP also presents a comparison of two software systems the Planning Department is considering buying: SmartGov Dude Solutions vs. iWorQ Systems.

3:18:00 Sheriff Hawley updates the BOCC on the recent Blake decision by the Washington State Supreme Court. The state law against simple possession of drugs has been ruled unconstitutional because it didn't include the word "knowingly". Sheriff Hawley and David Gecas discuss their public safety concerns as well as the legal and financial concerns. BOCC decides to gather data on the legal and financial liabilities and reconsider this issue in the near future.

1:48:10—CB asks LJ about an email from Dave Peterson concerning two appointment letters he sent. Chair usually sends out the announcements on the County's letterhead.

LJ—I was going to talk to the Board about it.

CB—He says he needs to add some information to the letters, so it's good nothing has been sent yet.

1:51:00—CB—It's 1:30.

PP—I brought Pam with me today. She has the Intermediate Plan Modification that will require the chairman's signature. We don't have the final Mylar yet, but we want to make you aware of it. It will require signature because the county owns property in the development, but the modification doesn't change the county's property at all.

AH—This is in Mazama? Yes.

AH—Move to have the chair sign the modification of the Pasayten Peak Planned Development. Passes 2-0 (JD is absent.)

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PP—Addition to my agenda. Long plat for Veranda Beach is ready for the BOCC to sign. We'd like to have it signed today. The lien was paid last Friday and we're trying to push it out as quick as we can.

AH—We don't have all three commissioners here.

CB—It's required to have all three signatures.

AH—What's the exact name?

PP—It's the Point at Veranda Beach Long Plat 2019-2 within the Veranda Beach Planned Development.

AH—I move to sign it.

JD arrives. Motion passes 3-0.

JD—Sorry, guys. I got wrapped up a little in the Gonzaga game.

PP—Quick update on parcels affected by the building moratorium. The list has been vetted and we think we've got them all. Do you want us to list the parcels on the web or continue to screen phone calls?

AH—I think the web would help. Cut down on calls from relators.

CB—You've created a public record? I'd prefer to have it out there.

2:00:00—BOCC needs the number of wells drawing water from the reserve to include in a DOE report. Discuss how to get that number. Is it reasonable to assume parcels with more than \$10,000 of improvements would be using water? Should they ask the watershed councils if they agree?

CB—Also ask Building Department if \$10,000 is reasonable limit.

DH—That's a pretty good limit. There will always be odd balls, but this will be close.

AH—Plus it's an easy piece of data to get. All parcels include that improvement number. Also, PDs with a water right. Group A. X number of parcels within a reach and Y number have a well. To see how much water is being used. This will err on the side of caution.

CB—Also need to vet assumptions with those who might challenge those assumptions.

AH—I'm talking with MVCC about this.

AH—At Watershed Council meeting Mike Fort asked about differences between water use in Okanogan vs over there. Over here, by law they use the yearly average, so it's 313 gal/day. But there they use highest instantaneous value. So its use in July is with full irrigation, 710 gal/day. Have to vet that number.

PP—Also asked if Gene could figure out the number of lots in WRIA 48 in 1972. He has to count them by hand.

AH—That will take time. Not a priority.

2:09:40—PP—Next WRIA 49 meeting on April 1. Lists who wants to continue to be in the working group, and also those who are leaving.

PP—Notice published last Thursday for building permit moratorium.

PP—I've prepared a comparison of the two software proposals we're considering, SmartGov Dude Solutions vs. iWorQ Systems.

- There's a big difference in price. Dude is \$33294 set up and \$21,183 annual. iWorQ is \$12,500 set up and \$7,500 annual.
- Dude has an interactive zoning map that's public facing by lot number, so people can check what's been permitted. Eliminate phone calls.
- Dude is totally online so people can fill out applications, pay the fee and communicate with us, schedule visits with phone app. Building officials, planning staff and public health can communicate with applicants.
- Dude can include Assessor's information and iWorQ can't.

AH—What if someone applies for a building permit? What's the process?

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DH—Explains the process. Missy inputs information into database.
AH—So people could see that someone is applying for a building permit?
DH—I assume so.
CB—You deem that application complete at certain time?
DH—Yes. When we have complete application and plans.
CB—If application is complete, that kicks in vesting. A key piece.
AH—If someone applies for a short plat? Could we get the same type of information.
PP—Yes. With Health Dept. if they applied for a septic system. One good thing is the Missy and Deb now have to use three or four databases to pull information out of for reports of permits every month. Dude Solutions doesn't require them to create all those databases.
CB—I'll ask a different way. Availability on line before or after it's complete?
PP—Don't know but I can ask. Assume it'd go live with complete application.
CB—In the past we haven't published building permit applications. Now once we have complete application that's vested, it'll be easier if there's something wrong.
PP—Right now the building permits are on line, but they're a month behind.
AH—How hard would it be to do weekly reports?
DH—Just another report.
AH—Can you ask?
CB—Any information about jurisdictions that do publish their building permit applications?
PP—I've got that info, and I can pull it together for you.
DH—My crew was impressed with Dude. It would cost me something. Buy laptops, tablets, mobile printers. Not huge expense.
AH—And pay for part of the licensing.
CB—With printers, could you print docs for the applicants in the field.
DH—Maybe. But I was thinking of inspection reports. There needs to be a hard copy at the job site.
AH—I heard from IT if any new sorts of software could be run by them?
DH—Only drawbacks I saw is if internet is down, we can't get into it. And Tech Support.
PP—Contract includes Tech Support, but I don't know how quickly.
AH—If internet is down, it won't work, but lots of other stuff won't work, too.
CB—We should always have some kind of manual plan to work without internet. Think about it in our emergency plan.
AH—Bringing in Public Health and IT?
PP—Would you like me to schedule time to bring Public Health and IT in?
Discussion to schedule meeting on next Tuesday 10AM to 11AM.
CB—Another issue to discuss with Health. About water systems.
PP—I'd like to get Dave Hilton (Environmental Health) in here and talk about nothing but the water situation.
CB—Or make it a workshop on a Wednesday.
PP—I think Building and Planning are on the same page, but we don't know about Health. Running into issues that Dave talking about water availability and Building's discussion of availability are two different things. And lots with group systems.
AH—Dave might not know about this. In the late 1990s, DOE issued an emergency ruling on WAC 173-548. For two years, (prior to Foster case), if you curtailed 25% of irrigation rights, you could move it to domestic withdrawals. So in lots of those planned developments, you'll see that letter from DOE saying they did that under emergency rule. Now you can't do that anymore.
CB—Being on the same page. I'd like to see a flow chart to be able to keep it straight.
PP—We had a discussion and decided to have a checklist instead of a flow chart.

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Discussion about process for overnight rentals licenses.

AH—So we're going to get more information about Dude Solutions?

PP—I'll have Dave and IT here to talk about it on Tuesday. Let me know when you want Dave and Dan here to discuss water situation. And I'll talk to Dave before the Tuesday meeting about Dude.

PP—We're done.

2:39:00—Short discussions on various topics.

- CDBG grants.
- Workforce development money will be available for operating expenses for food banks.
- Did the BOCC set a hearing for the petition for the dog control zone? Yes.
- Work attire for Maintenance employees. Mentioned in last Monday's BOCC meeting
- Has anyone talked to WSDA regarding distance requirements for H2A housing? No. AH will call. Topic also mentioned in last Monday's meeting.
- Dispatch being recognized as 1st responders.
- Review of minutes.
- Workforce Development Board appointment letters.
- Appointments to the Watershed Councils.
- AV Capture and Zoom broadcasts. One person is not able to get the video.
- Return to review of minutes.

3:18:00—Discussion of health and safety, law enforcement with Sheriff Tony Hawley

TH—Discussion of the Blake decision on Feb. 25. Law against simple possession of drugs was ruled unconstitutional by the Washington State Supreme Court because the law didn't include the word "knowingly" or a similar word. The court interpreted the law the way it's written rather than the way they think it's written. The ruling was made after the deadline for Senate bills to be sent to the House. SB 5468, which would fix the problem hasn't come out of committee and it's just sitting there. They're waiting to get a consensus from the House before they'll move on the deadline. But I think if we wait for consensus, there won't be a bill until next year. So, right now, a 15 year old can show me a bag of heroin and all I can do legally is take it from him. There's no legal accountability, plus overflow in hospitals, more issues in schools, users in parks, etc.

TH—I've talked to Washington Assoc. of Police Chiefs and Washington Assoc. of Sheriffs about local legislation to deal with this. Some areas have passed legislation to make it a gross misdemeanor, others to make it a felony. I wouldn't suggest that. Last week, I spoke with Prosecutor Bailey and Dave Gecas about their concerns on the legal side. I'm on the enforcement side. I want to start the conversation about what we can do in Okanogan County.

TH—I've sent you the ordinance recently passed as well as the code that was passed in Grant County last week. They've talked about the issue of preemption. (*Preemption is a doctrine in law which states that if there is a conflict between laws in a lower level of government and laws in a higher level of government, the higher laws win.*)

AH—Did they put "knowingly" in their ordinance?

TH—Yes. The Blake decision tells us that Washington is the last state to deal with this. We can still arrest for "intent to deliver" but it's difficult to prove intent to deliver without possession.

CB—I remember when the marijuana was passed, people sometimes wanted to waive it in your face.

TH—These controlled substances drive a lot more than that. Without the ability to move an investigation, we can only collect it and destroy it. But my concern is that law enforcement is just

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throwing its hands in the air because they don't know the issues we're facing. If we were to make the arrest, the arrest would be unconstitutional.

CB—Would you (Dave Gecas) like to join us?

AH—I'm ready to move forward.

CB—I'm not one to just jump on things.

TH—I'm absolutely not asking the board to do something today.

AH—We'd have to do a hearing on an ordinance, anyway.

DG—We met with the Sheriff's Office and their public safety concerns are real. But from the legal & financial standpoint, there are still remaining concerns. Not just from our officers but with other civil prosecutors I've been meeting via Zoom. So far, as good as it sounds, overall consensus among counties is that they're not moving forward with it yet because of these concerns. As important as the public health concerns are, we don't want a solution that carries it's own problems. The law is easy to fix so it won't get struck down again. But the preemption one is stickier. Reasonable minds can differ on whether the entire field being preempted by statute of drug penalties leaves room for counties to do that. Lewis County thinks it does, but concedes that a reasonable court could disagree. A lot of counties think it's the same with misdemeanors as with felonies. If you do it, and in 10 or 20 years it gets overturned, we'd be in a worse situation than we are now. If we kept the money from an RCW, the state pays it. But if it's a county law, it could be challenged on preemption and if the law was struck down, the county would have to pay. So if we know that Grant County and others are doing it right away, we almost want to wait and see what happens. Because someone probably will challenge it.

CB—Is sentencing a factor in what the judges consider? If we adopted an ordinance and it was later declared unconstitutional, do judges take that into account and how it might affect the sentence?

DG—I think it would be up to the defense attorney. And we'd argue that it wasn't preemptive. Some counties, Lewis for example, have already taken that view.

DG—And I've never seen where a law that's been in effect for years and has been used to convict thousands of defendants has been declared unconstitutional. Unknown if all the money paid in fines has to be repaid.

CB—You have to prove intent, right?

DG—Well, that's what the court said. You have to prove intent, although there was an unwitting possession defense.

CB—We have the issue you brought up in dealing with really dangerous drugs. And there's a risk to the county if we pass a law. How do we mitigate the risk?

AH—What if Okanogan County passes a law saying it's a misdemeanor to **willingly** possess drugs? What risk does that put us at.

DG—The risk I'm talking about is the risk that it would be found to be preemptive after a bunch of people were convicted.

AH—We could see the risk as the length of time it takes for the legislature to fix the situation.

DG—Grant County's law says if a state law preempts it, its law ceases to have effect on the same day.

AH—There's inherent risk but I think we should think about doing nothing.

CB—What about with marijuana? Didn't the states take over jurisdiction in that?

DG—But the Federal government didn't enforce misdemeanor possession.

DG—If the legislature acts within a year, that would mitigate the risk. Just have to pay back the fines for one year. But if the legislature drags its feet, it could be a lot of money.

CB—What is our history with arrests, etc.

TH—We can look at that. Simple possession. Probably fewer arrests if you had to prove knowingly had possession instead of just prove possession.

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AH—I'm willing to take the risk, especially if we mitigate by pushing on the legislature to do its job and change the wording. I think the risk to public health outweighs the risk of paying back the fines.

TH—We have to follow the rules.

AH—And currently due to inaction by the state legislature, we've got the rules.

CB—The deal is saying we're willing to take the risk, we have responsibility for tax payers money and also their safety. So it's a tough situation.

TH—I agree there's risk on both sides—taking action and not taking action.

AH—And my opinion is the weight of financial risk and safety risk.

CB—Think about long term ramifications and if this breaks the county, we'd be defunding the Sheriff's Office.

AH—How about gathering data?

CB—Not just to put it off, but it's good to know the facts.

TH—When this decision came down, we had two people in jail for simple possession—one for Okanogan County and one for Douglas County. We released the Douglas Co. guy to mitigate the risk of holding them after the decision.

CB—If you've got a known violator holding just for possession because it's the only one you can prove...

DG—If there's a long record, maybe there's a parole violation you can hold them on.

CB—My biggest concern—if you arrest someone for possession but you know he's a problem in society.

TH—Having the contact for possession turned into bigger charges. But without this as a starting point, can't move the investigation further.

CB—One more thing. If someone is charged with possession and they fear jail, could you use them as an informant? Would that be done with a low level offender? Someone asked me about it.

TH—Done on a case-by-case basis.

TH—Specific data you're looking for?

AH—Yearly for a five year span. People charged solely with possession. And what if you use possession to get your foot in the door to search, does that undo the charges that might arise for what you find during the search, like an illegal firearm? Also what's the risk for money?

CB—What would be useful is if you guys would talk about what you think would be useful to assess the risk.

AH—Also if the Prosecuting Attorney advises us absolutely not to do that, it's very unwise to go ahead and do it.

TH—Again, I didn't expect any action today, but I wanted to get the process going. It's been three weeks since the decision.

CB—You having brought it up, it piques our interest and we think of hypothetical situations to see what is the risk. I've watched how drug education and drug arrests work and also don't work. Users vs. pushers. And enforcement is part and education is also part of the solution.

AH—We need to figure out if it's "No" from the Prosecuting Attorney's office or if it's "here's your liability".

DG—And I've got another zoom meeting with attorneys tomorrow and maybe the consensus has changed. The last one was a couple of weeks ago.

CB—Risk pool is probably talking about this a lot.

Adjourn.