

Board of Okanogan County Commissioners  
Monday, April 5, 2021 AM and PM

JD—Jim DeTro, BOCC, District 3  
AH—Andy Hover, BOCC, vice-chair, District 1  
CB—Chris Branch, BOCC, chair, District 2(absent during the morning session)  
LJ—Lalena Johns-clerk to the Commissioners  
PP—Pete Palmer, Director of Planning and Development  
DG—David Gecas, Attorney for the county

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*Summary of significant discussions:*

*1:01:45 Commissioners accept the legal newspaper bid from the Methow Valley News and the Okanogan Valley Gazette Tribune.*

*2:01:30 Commissioners discuss changing the name of Beach Villa Place back to its original name of Stennes Point Drive. In the end, they decide to make the name change.*

*2:49:45 Commissioners hold a public hearing concerning Ordinance 2021-3, A moratorium on certain Building Permit applications. After public testimony and much discussion, they decide to keep the six month moratorium.*

**14:40**—AH discusses prospective rules for an accounting system for receiving American Recovery Act funds. The Commissioners will hear about this from the county Auditor, Cari Hall, and the county Treasurer, Leah McCormick, tomorrow, but AH won't be able to attend.

**23:10**—LJ—I'll be gone this Thursday and Friday. Chrystal has an appointment and may be gone for two weeks.

**25:30**—LJ—On the consent agenda, regarding the reappointment dates for the Methow Valley Communications District, some of the expiration dates are incorrect. The correct date is December 31, 2021.

**33:20**—AH—Where's the boat launch at Leader? Wide ranging discussion of fishing and boating on Leader Lake and on lakes in general, rules of boating, law enforcement on lakes, noise levels, building on lakeshores and shoreline violations.

**1:01:45**—Discussion of Legal newspaper bid award. Commissioners accept the bid from the Methow Valley News and the Okanogan Valley Gazette Tribune. They did not consider the bid from the Oman-Okanogan County Chronicle because it lacked some of the documents required in the bid. Discussion

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concerning whether to include a check-list with requests for bids so bidders will be better able to know if their bid is complete.

**1:23:40**—In preparation of the 11:00AM discussion of an address change appeal, CB reads aloud from Okanogan County Code (OCC) 12.25 concerning changing road names.

**1:42:40**—AH—After we get through this discussion, we need to do a code amendment because there can be people whose property doesn't abut the road, but they can be affected by a road name change.

**2:01:30**—Discussion concerning the Stennes Point Drive, a private road. Discussion includes the history of the road's name, the Commissioners right to take action on the name of a private road, provisions in OCC 12.25, emergency response (911) regulations concerning road names.

**2:38:50**—AH—I move to reverse the Planning Department's decision to rename a portion of Stennes Point Drive to Beach Villa Lane, and return the name to Stennes Point Drive. Discussion follows.

**2:45:25**—Motion passes 3-0. Adjourn until 1:30.

**Afternoon session begins.**

**2:49:45**—CB—Convenes the public hearing concerning Ordinance 2021-3, A moratorium on certain Building Permit applications.

PP—I've provided a staff report to the commissioners along with the seven written comments.

Recommendation of the Planning Department is to continue with the moratorium on the issuance of building permits in WRIA 48 with the exception of the Columbia River influence until it's extended or repealed on the basis of the outcome of the county's efforts to resolve a dispute with the Department of Ecology over the interpretation of the application of WAC 175.548.

**2:53:45**—The commissioners discover their mics have been muted and those attending the hearing via zoom haven't been able to hear them. CB restarts the meeting. PP reads the ordinance aloud.

**3:06:48**—Public testimony from Lorah Super of MVCC, Heidi Dunn, Peter Gurche, Melanie Rowland, Doug Robnett, Sarah Conover, Richard Kiene and Dick Ewing.

**3:31:40**—CB—Public testimony is over and the Commissioners will discuss the decision to continue, end or modify the moratorium.

AH—I don't think there's anything we can do to provide relief now to any of the people we're heard from. If we repeal, there will be law suits. Priority rests in these properties that have gone through LUP-A (Land Use Permit—application) DOE's requirement for water adequacy, many were given start cards by Ecology to drill wells to determine water adequacy. So I think we should stay the course right now. I believe the case will be heard within that time and we'll get an idea of what's going to go on.

JD—I think if we don't stay the course, it will cause nothing but confusion. Some people will get hurt economically in the process, and I agree with AH. Hopefully, Ecology will give us a result so we can make a decision.

CB—Just to address a few comments. This board inherited something that had had a lot of uncertainty over a long period of time. Even when we see Ecology citing laws about subdivisions and telling us to pay attention, there wasn't good understanding regarding that. And subdivisions in Washington were

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treated that way for a long time. Under the subdivision statute in the state, RCW 58.17, you have to verify water adequacy (quantity and quality) at the time of the subdivision. I think there was the assumption by many local governments across the state that there's water there and also the assumption that Ecology would step in if there wasn't enough water. The Hirst decision and other water decisions have changed water law for us.

CB— Another issue is the exempt segs (segregations) that are occurring. One thing for sure, as we look at a law today, we have to respond to the law, not what we feel. For instance, exempt segs are exempt from RCW 58.17 so 58.17 does not speak to verified water adequacy at the subdivision process. But we all know that they are subdivisions in that you're taking a parcel and making more than one parcel out of it. But again, they're exempt from subdivision law. So that's why we allow the subdivisions to occur and can't guarantee the property owner will be able access the water made available under the Methow Rule. AH may explain this a little differently, but this is the way I see it unfolding.

CB—I will take one of these comments from MVCC and make people aware that there's a clear disclosure when anything is approved to date. We'll struggle a little bit with the Health Department, but we can do that. And we need Health to understand what they approve may not be usable until there's a water right that goes along with the development. And every one of us is aware that the moratorium, or even without the moratorium, the decision to determine water adequacy is really a terrible burden. We all are miffed that Ecology would continue to issue start cards without making that clear. I'll take those comments very seriously. Anyone have more to add?

AH—I'll just go back to the definition in the 1976 Basin report. Single domestic use is just water serving one single house. Campbell Gwinn has contorted what this was supposed to be by pulling in the ground water rule, and saying if you develop several different properties at the same time, you're subject to 5,000 gallons per day. But it doesn't clarify whether or not, under the Methow Rule, the single domestic use isn't water going to one single house. That's where the technicality or wording that was not appropriate at the time. Wasn't based on the ground water rule. Didn't have the idea that all of the ground water was hydraulically connected to surface water. The hard part is that we commissioners are willing to look at zoning and planning ideas and make changes that are appropriate to this county. People want to say we aren't doing anything. But we're taking water resources more seriously. I don't think we should go through law suits. Instead, I think we should sit down at the table and say "this is what I'd like to see. This is the level of development I'd like to see."

JD—I've been here 11 years. This board is the most aggressive board in trying to solve these problems.

CB—I'll add there are at least two tracks now. One is to initiate a board planning effort in WRIA 48. Then there's the court. I don't know what will happen but it'd be wonderful if we can decide this without the courts. Maybe a third track because within the planning track, there's an effort to account for the water been allocated under the Methow Rule. ]

AH—I don't know that those tracks are separate. I would never say if we won in court against Ecology that we shouldn't go through a broad CRM process. There are so many fights that will go on, so we'll need to do that no matter what.

CB—Maybe you misunderstood me.

AH—Not really. There aren't two tracks for the answer. One track is saying we don't agree with you legally. You're not following the WAC. Dick Ewing said in his testimony about 173-548-100 that Ecology shall modify things if conditions change. They're just throwing out statements that keep changing. On the other hand is the track of water resources management. That's a whole separate thing. We do need to go through that. But I know you think that. I just wanted to elaborate a little bit.

CB—It's more complicated than most people understand, (JD interjects—Boy oh boy.) especially when you start making legal arguments. Judging from what I've heard, lots of folks were very financially affected by this and their dreams were affected. We're doing everything we can to resolve the issue.

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**3:46:25**—CB—Is the board ready to make a decision?

AH—Yes. I move to keep 2021-3 in place for the period of six months, as written in the ordinance.

CB—Any discussion. One point to consider is to put in the ordinance exactly what it applies to. Maybe clarify the exempt subdivision segregation issue in the ordinance?

AH—No, because what I read in the law—single domestic use is at the crux of what we’re developing now. If 20 acre lots aren’t sufficient for water use in the Methow Valley, then I don’t know what is.

CB—My suggestion was to clarify that segregations or in other words it’d be like any other subdivision subject to 58.17, because the determination of water adequacy works at two stages: at the building permit stage and the subdivision stage.

AH—But remember, we’re talking about building permits specifically.

CB—Yes. I understand.

AH—There’d be no need to put exempt segregations in there because this is the actual putting a moratorium on the building permit itself.

CB—But it only applies to certain lots, right? Not every lot in the basin.

AH—Applies to every lot created through subdivision code post March 28, 2002.

CB—Correct. Is there any further discussion? All in favor say “Aye”.

Motion passes 3-0.

CB—One thing we can do is put out an information sheet so people understood the application of this moratorium. So we should put out an information sheet that clarifies exactly what the moratorium applies to. The other thing we can do is to make sure our departments are connected with each other, and there aren’t permits, especially septic permits, that are issued and the applicant isn’t in full knowledge of the situation.

AH—And I guess I find that difficult to understand. Because when I talked to the Health Department, they said that to get a permit issued, there had to be a site analysis done first.

PP—The Building Department requires that, but I don’t believe the Health Department does.

AH—We should probably check on that.

PP—Because I know that Dave (Hilton, Environmental Health) is still issuing permits. I’m not going to go any farther than that.

CB—The other thing that would be helpful would be communication with Ecology about any well they’re approving. At least, that Ecology verifies with us.

AH—I didn’t think they were doing that anymore. In this county, that was the only way for a well to get drilled—for Ecology to issue a start card.

CB—So I think these suggestions that would be helpful that some of the issues testified about would be addressed. With that, the hearing is closed.

**3:52:15**—Melanie Rowland—I’m totally confused. The way it’s written...

CB—I’ll talk to you outside of the meeting, but I did close the hearing.

Discussion between commissioners and Rowland about her question for clarification.

Rowland—The only question you have to answer is: Are building permits on lots previously created by exempt segregation or large lot segregation covered by this moratorium? Yes or no?

AH—Large lot segregations are different from exempt segregations in Okanogan County. Which one are you asking about? Large lot segregation is 5 or more lots 20 acres or greater. Exempt segregation is 4 or less, 20 or greater.

CB—Neither of them fall under 58.17.

Rowland—I’m asking if the moratorium applies to lots created by either or both of those processes.

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CB—This is on building permit applications, right? So the moratorium on building permits doesn't address exempt segregations. If there's some uncertainty there, we can address it at a later time. We'll have to talk about it because my view of it can be different from Commissioner Hover's and that will make some confusion. When a building application is made, there has to be a determination of water adequacy at that stage. We know that those applications for lots that were made after 2002 are challenged under Campbell Gwinn. If somebody comes in with a building permit application on an exempt segregation, there's a different view of what water adequacy is because it wasn't part of a subdivision made after 2002 under 58.17, which is very connected to the determination of water adequacy at the subdivision stage.

AH—And wasn't deemed to be a project by the Department of Ecology.

Rowland—You haven't clarified. You haven't answered my question. If someone comes in and wants a building permit on a lot created by an exempt seg or a large lot seg, is that building permit subject to your moratorium?

CB—No. Water adequacy is, though. So at that stage of the game, water adequacy has to be determined.

Rowland—Even if the lot was created by an exempt segregation or a large lot segregation?

CB—Melanie, during that process, where did it require the county to determine water adequacy?

Rowland—It didn't and that's not what I'm saying. I'm saying this is something that applied only at the building permit stage.

CB—I think I answered your question and it's the feeling of the board that the answer is the answer. If you think we're wrong, so be it.

Rowland—Thank you very much, Commissioner Branch.

CB—Thank you.

**3:58:25**—PP—I didn't prepare anything more for the commissioners.

CB—I'd like to continue this conversation a little, taking business a little bit further. One issue has to do with well tracking. We want to see where we are with the Methow Rule.

AH—I would really like to press Aspect as to what are the assumptions that used to build the tracking database, identical to what Chelan County uses that can tell us how much water out of the reserve of each reach is being utilized based on assumptions. How many gallons per day are we using? We don't want the number to be challenged. Compare it to the Watershed Council has it its report and come to a consensus. Spit out a number and send it to Ecology.

CB—I agree there have to be some assumptions made and we absolutely need to know where the numbers came from in the first place, or we'll get challenged. But my point is that's the focus—to determine where we are with the Methow Rule. And that's going to take intense conversation with a lot of people who have their own views of what the assumptions might mean. I don't know what it would look like if I were to say, "We're just going to apply the 5,000 gallons per day over all just as a benchmark."

AH—I can tell you where it would put you.

CB—If I see a report that I'm going to have to make a decision on, I'm going to want to see that as part of the report. Because that would be basically just a starting point where people might make the assumption that everybody's using 5,000 gallons per day and entitled to 5,000 gallons per day.

AH—Remember that 5,000 gallons per day is withdrawal.

CB—I know the difference between that and consumptive use.

AH—But I don't think a lot of people really understand that. To be exempt from the permit, you have to withdraw less than 5,000 gallons per day. But that's not what you're utilizing. It's like when the courts adjudicated water rights. For us, the courts adjudicated 5 cfs because it was flood irrigation and it was

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going down a canal and there was a lot of evaporation. So they were considering the conveyance method, and they still do.

CB—So what everything leads to is—you have 2cfs for each (reach) so you have 14 cfs—everything leads to that much water being omitted from the flows designated for the Methow.

AH—For consumptive use, yes.

CB—To me, all technicalities aside, if one could imagine knowing what part of that 14 cfs has actually been omitted from the river system today. No matter how the rule might look, that 14 cfs is dedicated to be utilized, and how that leaves the Methow River for flow. It's not going to be the same. We all know that, but in the end, that's why the planning effort is to me the most important effort because if the courts decide something in that regard, it could look not so fishy.

AH—The thing I think people need to look at is the overall percentage of what we're talking about. Again, I have the numbers that Ecology sent to me that told us how much water they had in the Methow for dedicated trust water. It was ten times that amount. So it was 142 cfs dedicated in trust. From 1976, it's changed by a positive 142 cfs put in trust. I'm not disputing the fact that climate is changing and we need to look at different options. But let's look at things in perspective. That's all I'm saying.

CB—So when we look at things in perspective, if I have a lot in the Methow Valley and I apply for a building permit on a lot that's not under moratorium, you have to tell me whether I can have that water under the rule. Can we do that today?

AH—Yes. Are you using it for anything other than domestic use inside a single residence?

CB—Whatever is going to get me that permit, that's what I'm going to say. We can put a restriction on it, but I'm asking the question today because there are those lots that are exempt from water adequacy at the time the segregation occurred. They've still got to go to Building Permits.

AH—I'll give you my overall view. In Whatcom Hirst allocation of water, there was no reserve set. So all that county did was keep on giving out building permits, figuring Ecology would stop them saying—hey, the river's too low. Well they already had. There was no reserve set up. Over here, there's a reserve. We are capped at a certain amount. We have taken the stance that it's going to be the highest amount that someone could ever pull out for consumptive use. 710 gallons per day based on this report. We could get the report redone and see if that changes anything. But I'm looking at 14 cfs versus 142 cfs being put back in the trust water system. We as a county have to make the decision as to whether there's legally available water. And I would say there is. That's my opinion.

CB—Yes. But it transmits over to those people who say—Yes you have enough water. You can have a building permit.

AH—But we've put moratoriums in place. I've stayed the course. But in my opinion, WRIA 48 set the maximum of number of houses that could be built here a long time ago by putting a water allocation on.

CB—So, anything that wasn't a lot before 2002, there's going to be water available for an application for a building permit?

AH—Yes.

CB—You agree with that, Jim?

JD—*(Notetaker unsure if JD nodded yes or didn't nod at all.)*

AH—I think it's silly that we're talking about a court case because are we talking about real water or whatever.

CB—I'm not talking about a court case right now. I'm talking about a decision for a building permit.

AH—I understand. I'm just saying yes, I agree with you.

CB—You're confident we're going to have this water even if we have 10 more exempt segregations with 20 more lots each?

AH—Yes. I'm absolutely confident that we have enough water within the reserves to feed those lots. We have some time. Gene's got this thing all set up. He can probably....

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CB—Here's what I'm asking for. You're asking for assumptions from Aspect because those assumptions drive the...

AH—Sorry, CB, but it's not what drives everything from now on, not even from a couple of years ago on. We've got good detailed records when Hirst decision, about wells that were going in. The database has to account for everything that happened that wasn't recorded. Ecology's records get fuzzy if you go back to the early 1980s.

CB—So what do you think of a process where there's been data generated. You're using some of that data and asking the question of that same consultant about assumptions. If we make that assumption (You call it a hard decision. I call it an assumption) that we have that water, maybe we should have just one professional review of that assumption.

AH—Let's divide this into two different categories. Properties that are pre-1976 are grandfathered in. 1976 to 2020. We need to know the number of houses that are more than likely using water. Are we going to use the \$10,000 improvement value to say everything that is not covered under a Class A water right and has an improvement value of \$10,000 or greater is using water? So you get a number and apply 710 gallons per day to all of that data and you come up with what's been used. Going forward, it's pretty easy because we've been keeping track of all of our wells and we apply the 710 gallons per day to that and then calculate how much we have left.

CB—So that information and those assumptions made need to put in a report as findings of fact for every building permit we issue. That's your defense.

AH—Then do we need to hold a public hearing for the findings of fact?

CB—No. The findings of fact that I'm talking about are relative to the issuance of a building permit.

AH—To say that's this is how much we have in the reserve.

CB—We made our decision about water adequacy based on these findings of fact.

AH—One thing we could do to be on the cautious side, is to say—there are X lots within this reach covered by a Class A water right. Can the 2 cfs reserve handle the rest of that?

AH—I'll make a statement. I don't want to make a plan based on the maximum amount of lots that could be served under the 2 cfs reserve. That's not necessarily going to be prudent for everything else we've discussed—transportation, services, all those other things. So I'm not saying that just because we can build 2,300 houses that we should.

CB—I wouldn't think you'd say that. But I do think the justification, the rationale, it would behoove us for that to be the finding of fact and it would be a fairly standard finding of fact.

AH—Then we need to then....(To PP)—have you heard from Aspect about their....

PP—Not lately. Angie did.

AH—On Friday, if it's OK with the rest of the board, I would like to set up a phone call with Aspect. Actually, I'll send an email and cc everybody, saying we really do need this because it's important information to put out our building permits.

CB—Let's put our intent to them. To have finding of fact to validate our issuance of building permits.

AH—Yep.

CB—Any more business? No? I hereby adjourn.