

Board of Okanogan County Commissioners
Monday, January 10, 2022 PM

JD—Jim DeTro, BOCC, District 3
AH—Andy Hover, BOCC, Chair, District 1
CB—Chris Branch, BOCC, chair, District 2
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:

Director of Planning, Pete Palmer, presents a lengthy update to the Commissioners. She covers several minor topics as well as:

Ordinance 2020-3, concerning the lower Tunk Valley. It expired in Dec. 2020, but it's still included in the County Code, which is an error that Code Publishers should correct.

Ordinance 2021-1, prohibiting new subdivisions in WRIA 48 was discussed.

Ordinance 2021-8, establishing a temporary moratorium on issuing building permits. The BOCC voted to repeal it by a vote of 2-1 instead of letting it expire in 30 days.

Ordinance 2021-4, the District Use of Chart Moratorium. It has expired and PP has a draft to be adopted in the zoning code when the BOCC considers that.

Ordinance 2021-9, the Cannabis Ordinance. It expires on Feb. 24, but AH would like to extend it until the County gets a good grip on subleases, etc.

2:02:00—JD hasn't yet returned from lunch but AH decides to start the Planning Department update.

PP—First, a couple of easy thing. Another invoice for \$577.50 for Methow Watershed Council. It matches up with what's in the contract. The amount is only for hours worked.

AH—Sarah must have been working on grant stuff.

PP—Newsletter, financial report, outreach on Resilient Methow meeting, water banking, tax preparation.

AH—There's a line item for Mazama Water Quality Fund. I think we need a resolution about using that money for what we're doing. I'll draft it.

PP—Next is agenda bill and request for promotion for Camden (Irwin) from GIS Technician and move him into GIS Analysisist position effective January 6. I talked with Tanya (Everett, HR). GIS Tech was temporary, with caveat that he'd move up to the Analysisist position, but that isn't funded anymore. He's met all the requirements for education and experience. He passed everything with flying colors.

AH—Discusses how the feat will be accomplished.

Board of Okanogan County Commissioners
Monday, January 10, 2022 PM

PP—Tanya said I need to draft a resolution. It's in your packet.

CB—Move to approve Resolution 4-2022 to promote Camden Irwin from GIS Technician to GIS Analyst effective January 6, 2022. Passed 2-0.

2:09:30—PP—Next, On 2020-3, an ordinance which imposed interim controls on water study availability area in the lower Tunk basin. Expired in 12-2020. Revisited in 2-2021 and no action taken at that time. I've received something from Code Publishers and it looks like it was all codified. So my research is that it's expired.

AH—Moratorium on subdivision? It shouldn't have been codified.

PP—Prohibits subdivisions until they can determine if:

1. current use of permit exempt wells has impaired the ability senior water rights holders to obtain surface water they're legally entitled to,
2. projected use of permit exempt wells will likely impair senior water rights holders to obtain the surface water they're entitled to, or
3. current or projected use of permit exempt wells has contributed to the inability to meet in-stream flow appropriations as identified under WAC 173.549.

PP—Couldn't tell if any action was taken or not.

JD arrives.

AH—This doesn't address physical water availability. We need to look at zoning in the Tunk. USGS study on availability of water up there. Call Trevor at DOE and see how to get a study done on water in the Tunk.

CB—The water master might know. Can't think of his name.

AH—We need to find out if there's a problem with physically available water.

CB—Gina McCoy did a study.

Discussion of various studies.

CB—Things aside from lot size can determine water usage. I think only one person opposed it—Mr. Green.

AH—The question is physical water availability and how do we figure that out. Maybe hire a company like Aspect

CB—I think there's real value in the report prepared by Gina McCoy, P.E.

AH—I'll talk to the water master, too, but I can't remember his name. (Lorah Super provides the name in the Zoom chat box—Mark Schuppe.)

2:20:20—PP—Next is the Subdivision Ordinance 2021-1, Prohibition of Subdivisions Within WRIA 48. Expires on January 26. There were six objectives we wanted to come out during the one-year period. The first two were dependent on Dave Gecas, the next three were dependent on the DOE and the last was dependent on the well tracking software, which we now have.

AH—Is the appeal period us up? Asks LJ to ask DG to come to the meeting.

AH—I've got two questions. If the appeal period is up and it said subdivision couldn't happen on the reserve water, that would answer the question on the moratorium.

LJ—DG will be here.

PP—My department would like clarification on the six objectives. She reads them from 2021-1:

1. Determine the legal extent of WAC 173-548 for single family domestic use for subdivision of land.
2. Determine the applicability and relationship between WAC 173-548 and legal precedence set forth in the case Campbell and Gwinn vs Department of Ecology.

Board of Okanogan County Commissioners
Monday, January 10, 2022 PM

3. Determine the types of mitigation measures necessary to meet the objectives of protecting the closed surface waters from further appropriation and impairment.
4. Consult with the Department of Ecology to determine if WAC 173-548-050 allows the appropriation of groundwater consistent with the restrictions of RCW 90.44.050 if the water consumptively used is replaced.
5. Consult with the Department of Ecology to determine if water appropriated from outside of the restricted areas may be used within the restricted areas.
6. Determine how much of the 2cfs reserve is available under WAC 173-548.

AH—We have answers to the first two if this is finalized. The middle three—We talked about mitigation but how would it be done. Look at the projects done in WRIA 49, the DOE signed off on them as mitigation projects. We have to start looking at those projects and keep track of them. Maybe we should call Sarah (Lane, Administrator) from the Watershed Council and ask her to come over. I'll try to get a priorities list for water banking for 48 from the Watershed Council.

CB—In the whole process, we have 200+ lots in the queue to get building permits.

AH—We can deal with them now. When they're built on, they're debited against the allocation.

CB—One argument is these folks were vested. So I wonder if going forward with additional subdivisions....

AH—I didn't say go forward with additional subdivisions.

AH—Dave, is the appeal period on our court case up?

DG—I think so.

AH—So basically, all the lots created and were in the queue were vested with water. So for the lower reach, it's first come, first serve. There are more lots in the lower reach than can be supplied by the 2cfs water. But from the 21st on, no subdivision can rely on the 2 cfs reservation. The only way for new subdivisions to occur is if the county or person mitigated for it. Or we get the legislature to change the rule.

CB—Community process. Why didn't they appeal?

AH—I think it was a compromise (to deal with the people in the queue). People saw it was something they could live with.

JD—to AH—Anything to back that up?

Discussion about who would appeal the decision going forward.

AH—Absolutely. Invite our opponents of what we do in, MVCC and Futurewise, and say—here we are. We know what water we're using through our debit system. We know we're not going to subdivide anymore. What's it going to look like going forward.

CB—It is time to have that conversation.

AH—Should happen with us. Trying to get the Watershed Council to do a CRM process (Composite Risk Management. Process to help in decision making.) Get all the stakeholders together.

CB—Time to have that conversation. Lots of people had their subdivisions approved. People were freaked out about having all those lots with building permits.

AH—I want to move forward with building permits on the existing lots immediately. Basically rescind the moratorium.

CB—But hold true on the subdivisions?

AH—Yes. That's decided in court.

CB—It sounds like your views are similar to mine.

AH—No subdivision based on the 2cfs reservation. If there's a water right someone can convert, there's mitigation.

CB—Then that's the conversation we need to have about development in the Methow Valley. That's what people want to have.

Board of Okanogan County Commissioners
Monday, January 10, 2022 PM

AH—I've heard lots of people with conservative views who wanted the existing lots fixed but worry about the subdivision question later. Nobody's put money into future subdivisions.

CB—And there's still the issue of closed basins.

AH—Let's just let it expire. If someone applies for a subdivision relying on the reservation of water isn't going to get one.

AH—We could discuss future plans. How much water will we need in the next 20 years? Should we try to get the legislature to change the rule? Try to mitigate as much as possible?

PP—I want to point out the difference between water adequacy and water availability. The Health Department verifies there's water adequacy to serve the subdivision, and it's not until you want a building permit that you have to show availability. We need language in our paper work that says proving adequacy doesn't mean you'll get a building permit. The Health Department needs to be on board with this.

AH—As part of the Board of Health, we can move to stop all subdivision applications in WRIA 48.

CB—How does Health determine adequacy?

AH—They have to drill a well first.

PP—If there's a well already, even though it hasn't been put to beneficial use, they just see that there's a well there.

CB—They do a pump test. Read the well log.

AH—I'm confused. Where does a person go first to start a subdivision?

PP—They come to us. Once they get the preliminary approval. One of the conditions of that is to prove water adequacy. Then they go to the Health Department.

AH—Why is there preliminary approval when you know there's not legally available water for them to subdivide?

PP—Because all we're looking at is the land. The Health Department has to verify the water. Part of that whole circulation process is to get their sign-off.

AH—But they just worry about the health aspect and physically available water. Planning has to worry about the legal availability of water.

PP—It's actually the Building Department looks at looks at that.

CB—I think I remember: subdivision on a long plat, it's up to BOCC to determine adequate water. But over the years, the BOCC had never checked. The Health Department does comment, but they don't respond to water adequacy until the building permit for the house. Right?

PP—I think Health have had to sign for adequacy. They could drill a well and we wouldn't know about it until they came to us for a permit to build.

AH—Asks DG again to make sure the appeal period is up.

DG—Yes.

AH—Then I want to repeal the moratorium on building permits.

Discussion of repeal or let it expire.

AH—This is the moratorium on subdivisions? Let's just let it expire. Is that OK?

JD and CB—Yes.

AH—But at some point a person has to come to Planning to say "I want to subdivide in the Methow Valley." We know they can't. Where do we stop them so they haven't spent any money yet?

PP—Heidi Dunn is an example. She got a septic permit and a well permit from the Health Department and spent a lot on infrastructure. Then she came to us and we told her she can't construct.

AH—But that's on building permits. It was an existing subdivision. From now on, there will only be brand new subdivisions.

CB—If I come to Planning and want a subdivision, I think the first question is—Where are you going to get your water.

Board of Okanogan County Commissioners
Monday, January 10, 2022 PM

AH—I'll get my water from exempt wells.

CB—Then I'd say you haven't proved water adequacy unless you can provide it through the allocation.

AH—If I'm John Doe, I don't understand what that means.

CB—Exempt wells are limited to allocation to water in the Methow Valley because of the rule.

AH—And a court case that we just went through. So it's not possible to use exempt wells to do a subdivision now. End of statement.

CB—We know the answer to "Where are you going to get your water," and Planning knows the answer. It's not the Health Department that tells you because they don't know anything about it.

AH—That's what I was hoping, but Pete said they could start at the Health Department and not get that answer.

PP—Because there are two terms used in the regulation—water adequacy (in the subdivision process that the Health Department deals with) and it's not until the building process that they have to provide water availability.

AH—In the subdivision process, a portion of the code says you have to prove available water.

PP—It's adequate water. That's how I remember it. I'll go back and look.

AH—Then we have to put something in place right now that keeps people from doing anything not knowing they can't subdivide property. The only way you can subdivide is if the second lot will never require any water. Just be a dry pasture.

CB—Reads from RCW 58.17.110: **Approval or disapproval of subdivision and dedication—Factors to be considered—Conditions for approval—Finding—Release from damages.**

(1) The city, town, or county legislative body shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. It shall determine: (a) If appropriate provisions are made for, but not limited to, the public health, safety, and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, **potable water supplies**, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds, and shall consider all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and (b) whether the public interest will be served by the subdivision and dedication.

(2) A proposed subdivision and dedication shall not be approved unless the city, town, or county legislative body makes written findings that: (a) Appropriate provisions are made for the public health, safety, and general welfare and for such open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, **potable water supplies**, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; ...

AH—Shall not be approved!

CB—At one point subdivisions were made in the county, assumptions made by the Commissioners that there was plenty of water everywhere. And DOE would say—make sure you have adequate water supplies. Nobody was getting into physical availability of water.

AH—Or legal.

CB—Because they hadn't a clue.

AH—They did about adequacy because you had to drill a well and show you pump out X gallons/day. But nobody got into legal. And CB shows that a permit "shall not be approved" unless there's potable water.

AH—The Board of Health has to make sure there's adequate clean water because of the Clean Drinking Water Act. (*Note taker thinks they're referring to the Safe Drinking Water Act of 1974.*)

PP—I'll research it some more to see what the County Code says of all this. And I'll see what Dave Hilton, (Environmental Health) says about it.

CB—Be careful about that.

Board of Okanogan County Commissioners
Monday, January 10, 2022 PM

AH—There is no question for Dave.

CB—Senator Morton asked this question in 1992 and that’s where the AGO came from. Opinion about adequate water supply and building permits. (Requirement of Adequate Water Supply Before a Building Permit is Issued | Washington State) CB tells a story about a well test at Lake Osoyoos that was inaccurate

AH—The Health Department has absolutely zero to do with legally available water.

CB—This AGO is a good one to look at, Pete. AGO 17-1992.

AH—We can fix that because we’re three members of the Board of Health.

3:02:26—PP—On to the next topic. It’s 2021-8. It’s an ordinance establishing a temporary moratorium on the issuance of building permits within water resource inventory area #48 on parcels of/and that were subdivided post March 28, 2002 with the exception of the Columbia River influence. It expires February 10.

AH—We can repeal that ordinance.

CB—If Joe Public applies for a building permit on an existing parcel. Building Department says you’ve got adequate water because you’ve got a well, and it’s in a closed basin.

AH—I think they know where they are, but we can check tomorrow.

PP—I think the DOE wouldn’t issue a start card in a closed basin.

CB—There are already some wells then.

AH—I think we issue the building permit if they’ve got the letter.

PP—When it’s all over, I’d like a check-list to give to the staff, so they’ll know what to do.

CB—Maybe we can resolve a few questions before they pop up. And see where Dave stands on this.

PP—Repeal or let it expire?

AH—I want to repeal today.

JD—So moved.

CB—Here’s my discussion. It expires in 30 days. 30 days for the Planning Department to get a plan together doesn’t seem like a long time.

AH—to PP—I hope you bring staff questions to us, questions involving closed basins, etc.

CB—I don’t want someone to figure it’s all over but there still are new issues—like water adequacy. I’m hesitant.

AH—Remember, all the WRIA 48 subdivisions required adequacy. I bet almost all have wells drilled and tested.

Motion passes 2-1. CB votes no. Says he’d vote instead to let it lapse in 30 days. The papers will say I’m against it, but I’m only against it for 30 days.

3:15:15—PP—Next is the District Use Chart Moratorium. 2021-4. It expired. Referred to multiple family dwellings in the Tunk. Board decided to do it in the zoning code. I’ve got it adopted for the zoning code update.

AH—Are we looking next at Critical Areas. Somebody took my words out of context, saying that I didn’t think the working groups over there were a priority. But what I said was the zone code and the Critical Areas Ordinance (CAO) were my priority because they are controlling documents with regulations.

PP—On Dec. 29 we talked about what was next for work load for the Planning Department. We talked about six different things: riverbanks, permit database, the zone code, CAO, these moratoriums and the advisory committees. I don’t remember any priorities. The Planning Department was going to get together to plan what order to set and let you know.

AH—Right now we’re time lines on our zone code. And CAO—we’ve been putting it off for a while. I’m willing to fund an outside source to look at the CAO and see what needs to be done.

Board of Okanogan County Commissioners
Monday, January 10, 2022 PM

PP—WDFW is champing at the bit and offered their technical services. It's gone through the 60 day comment period once but I think we need to take a step back. It was the 2016 draft we tried to push forward and it was a mistake.

CB—What were the problems?

AH—A lot of wildlife issues.

PP—A lot of the best available science was a big...

AH—When we identify critical areas for mule deer migration, that the state and federal governments adhere to those things. When they start putting in trails and all this other stuff, that they coordinate with our CAO. That's frustrating. I see new ski trails all the time. How do they get in those places? You don't see any notice in the paper about them doing something that could have an environmental impact.

3:19:00—PP—Last one is the Cannabis Ordinance, 2021-9. It expires February 24, 2022.

AH—So we have to decide if we want regulations to keep from having multiple leases.

PP—I can report tomorrow how many have met with us, how many have sublets, etc. One thing I want to look at is what kind of code changes this warrants. One thing I'd propose is an annual renewal fee, so they have to come in and meet with us.

AH—You should prepare an extended moratorium so we can get all our ducks in a row.

PP—Will do. And that's all I have today.

CB—On priorities, I suggest you use a decision matrix, and include a category for dates. Like the zoning code has a date to get it done. Use the dates to decide the priorities. And there are a few things that can happen simultaneous. And we can amend parts of the zoning code in pieces and not have to put the whole thing out.

AH—I'd like to ask the stakeholders and agencies if they could amend the zoning code, what would they change.

CB—Comments help to. The Comp Plan tells us where we guide growth, and a zoning district that allows minimum five acre lots, that may be fine. There's lot size, but then there's density. You can have multi-family on top of lot size. And density requires infrastructure—roads, water, etc.

AH—Maybe it'd help to get GIS to create individual maps of each zoning area, starting with the smallest lots.

CB—Looking at it as sub-basins because they typically have one road system.

AH—And when you get down to the valley floor you have a different ability.

CB—The Comp Plan says that between transportation systems, there's a connection with density. If we go by sub-basin. Do we want to improve a road system to serve higher density?

AH—If someone wants a large development, we can say they must improve the road. Take Sun Mountain Lodge. Those people are ultra, ultra-rich and they took a road and widened it for miles.

CB—And they put in a sewer system. But it didn't increase density.

AH—Remember how it used to be going around the end of the lake?

PP—That was a comment from DOT to Josh to evaluate the road system.

AH—Some places shouldn't have had the development they do without improving the infrastructure.

CB—Pete just reminded me. We were talking about Capital Facilities Plans (CFP) and Capital Improvements Plans (CIP) and she talked about levels of service for infrastructure. This is Growth Management Act stuff. See if the development exceeds the level of service and you have something to guide yourself by. Developers are used to doing these standards.

AH—I hear people ask why the roads aren't getting widened fast enough. Development is spaced out a long way in this county.

CB—For the Sheriff's Department, there's a level of service.

Board of Okanogan County Commissioners
Monday, January 10, 2022 PM

JD—Look what happened when they built the casino. They had to buy two ladder trucks because it's multi-storied. One for Okanogan and one for Omak. By RCW, they were *forced*...

AH—Response time for the Sheriff's Department depends on density. For people who live way out there, do they feel like there's adequate protection. The county OK'ed houses way out there and at the same time, people decided to live way out there.

AH—There's no hospital in the Methow Valley. I take on that responsibility.

CB—EMS bonds pass in the Methow because people want a higher level of service, but in JD's district, in Chesaw, people pay less.

PP—We need to keep an eye on this because the Colville Tribe is going to build another casino south of here.

AH—What!

PP—Down near Pateros, near the border between Okanogan and Chelan Counties. Don't know which side it's on. I've already got a complaint from an Okanogan County resident about it.

AH—On the highway?

PP—A little bit off the highway. But it will increase the need for fire, police.

AH—There's an agreement with Chelan County and they'll have to take care of that.

PP—One last thing. On the priority list, we need to add the Clearing and Grading Ordinance. I have that drafted. Josh reviewed it and it's waiting.

AH—I want to keep things up to date. The CIP hadn't been updated forever and now it's all updated and it's easier to keep it updated.

PP—I'm gone.

3:39:00—LJ and AH discuss a voucher from Michael Beaman for the Twenty Year Proposed Building Plan. \$148,845. For scoping.

AH—We haven't decided to do a twenty year plan but we need a formal vote on it. We'll look at it tomorrow.

Adjourn until Tuesday morning.