

Okanogan County Board of Commissioners' Meeting

November 8, 2016

Present:

Jim DeTro (JD, BOCC)
Sheilah Kennedy (SK, BOCC)
Jim DeTro (JD, BOCC)
Albert Lin (AL, Deputy Prosecuting Attorney)
Debbie Hilts (DH, Human Resources)
Tanya Craig (TC, Human Resources, Risk Management)
Sandy Mackie - (SM, Attorney on contract with the county)

Contents: Union contracts; Premera rates; wine & cheese event; hearing room: ADA compliance; Hearing Con't: Title 20 OCC Code; Exempt wells: Hirst analysis, Comp Plan/Zoning, EIS; Interim Control, Ord. #2016-5, hearing cont'd.

9:04 - Staff Meeting: Jim DeTro starts meeting

Tanya Craig - Been working with inspectors getting quotes for audit of Juvenile Detention facility. OPD money \$61,159 awarded to us. Aggravated murder expenses of Office of Pub Defense. Info being gathered. Received report from Shawna for costs. Will be gathering data in Dec. \$750 from risk pool awarded to us for training. They have never awarded to any county for training materials, but they are supporting us because they were impressed with the proposal. A little under half of what we had asked for, but executed because it's a first. Had incident at jail Sunday evening. The person escaped the hospital. Spoke with ..(?) It was not on our watch that this happened, so not our problem.

DH - Union contracts - have received all back signed and completed with the exception of the contract that was denied. It will go back to negotiations next year.

SK - Denied by whom ??? Silence from all. SK - Unions? (answered - Yes.)

No rates on Premera or prosecutor district rates. Shawna (?) will be calling tomorrow to update me as to what is going on with Premera. Folks were taken aback at increase in rates.

Pub Wks - Josh, others - applicants interviewed by roadway maintenance coordinator. We had 65 applicants. Will make those decisions today (Josh and Ben.)

PH and AL - re-enter together, 9:06.

TC/DH - Prosecuting attorney has hired victim witness advocate. She is well-rounded, a lot of different background. All of open positions, including Clerk, planning, solid waste, temporaries - all closed this week, so next week will be busy with hiring. I will be gone Wed, Thurs, Fri.

Perry - Holds up a sheet - this is your follow-up for wind and cheese events for security requirement waiver. Re those who have overindulged and need a cab. Scope of insurance described. Security officers - they will provide their own security. Tanya has a copy. *Asks her for*

comment. Normally the requirement re Agriplex etc. and when serving alcohol, we ask that they have security present. BOCC is waiving the requirement.

AL - There is a waiver in the agreement too utilize the property?

TC - Yes, they are supplying insurance, etc.

PH - county has history of waiving these types of events.

SK - Wants to know if we have copy of their insurance

PH - not sure.

SK - Didn't Omak cab go out of business??

JD - No. They run at night for these types of events.

TC - They do have things in place for these incidents.

Note taker note- Mics seem to be on at both front table and BOCC desk for the first time I remember without someone asking (excluding public hearings. - after TC used mics at front table last week so the public could hear.)

SK - Sheriff is attending on his own time, along with others. There will be notes on the table that if they cannot drive, transport will be supplied to them.

JD - no problem.

RC - No problem.

SK - Moves to approve contract for wine and cheese event and waive security. Will need to attach info we talked about yesterday (contract.)

PH - The contract we have is the old contract...I believe it contemplated a waiver.

TC - Has a spot that says BOCC has waived.

SK - Wants relevant copies.

PH - We have a file drawer that will duplicate so that all correspondence, deposits, receipts, etc will be in those files in a drawer in my records room. Getting away from binders and clip boards, etc. I will get copy of these minutes to TC.

RC - And history

PH - Went through that this morning.

DT - motion passes.

PH - My business picks up at public hearing . Any questions on process?

SK - Will hold my questions until then.

9:15 - Dan Beardslee enters.

Confusion. RC explains to JD, who was gone yesterday.

PH - Will see proposed interim control from legal folks - will probably take the shape of Amendments to Title 20, which is why you have copies, etc.

PH - Cruz electric is looking at boiler to swap out thermostat. Will take a look at the heat in the annex, although it seems we just have problem in the control box.

9:17 - Sandy Mackie enters.

PH - I will have report on that later.

SK - Since we have a couple of minutes, shall we talk about Joe's__?

LJ - He received 2 quotes, one from DNR for the cost of the door and all those mechanicals. They can install it, maintenance crew can install the door. The 15.08 was for the items DNR will be installing. Cruz electric has given quote for electronics to bring electricity across ceiling and to the door rather than using the plug in here. Maintenance didn't think the expense was necessary.

RC - Wants clarification of exposure of wire.

LJ - They would do it right. Conduit or whatever is required.

RC - Stated reason as to why they thought it was necessary?

LJ - Didn't read the whole quote to find this out. Knowing what Joe knows about the electricity here at the door, he said it was unnecessary.

SK - One of Cruz's bullitt points....reads from document about electrical codes. Maybe the main question is are these under scope of work, where it says install conduit, etc. reads details of construction and L&I items. Asks if those are required? Maybe Joe needs to follow up by double-checking this part. RC agrees.

LJ - Schmidt electric is included. I believe they could do the electrical part for the 1158. ,,,,We are going to assist them. so they are reducing the cost.

(ADA compliance in re the doors to hearing room and getting power to the door so it is compliant. Accessibility is the issue - Tanya Criag leans back and tells me this. Second time she has facilitated public understanding and audience's ability to hear while I have been here.)

9:24 - TC and PH leave.

PH, Mackie, LIn, maybe Beardslee in back hallway talking.

9:24 - Angie Hubbard enters.

RC, LJ, TC - discussing details of electricity, etc. at BOCC desk. Discussion of electrify in other parts of building. Number of circuits. RC questions whether they will be used at same time. Others realize these are important considerations: could it trip the whole building? All decide it needs to be checked.

9:28 - PH passes out packets for Title 20 to BOCC and LJ. None available to public.

PH - heard in back with Mackie, Lin, talking about GMA. AL comes in, leaves again and joins conversation in back. They are also talking about "court" and Columbia River.

DH - Dan Higbee (?) enters.

9:29 - Group from back enters again: PH, SM, AL, DB (Dan Beardslee.)

Mackie - Whispering to PH - something about "We have issues here."

9:30 - Title 20 hearing, OCC 20 Admin Code, continued.

PH - You are in a continued public hearing, etc. Recorder is going. The reason we continued was to give legal staff an opportunity to prepare interim controls in form of an ordinance, that respond to the new rules in re Hirst. Asking you to review the ordinance, findings and conclusions to consider. Reason we are doing it this way is because Title 20 is already in the review process....water supplies *Unintelligible*. Related, but not specifically to this, also in response to the ruling - we have done a review of the zone code and Comp Plan, addendum to EIS analysis of impacts, etc. I will issue a ruling in re the addendum as SEPA responsible official. We are talking about interim controls tied to.. Also, because there are interim controls., having given notice to the public ...have to notice a public hearing within 60 days. In terms of process, if you decide to implement, will request that we continue the public hearing so everyone has an opportunity to comment on Title 20 and the interim controls. That is the game plan .

Turning over to Mackie and Lin:

SK - Has the Hirst decision been appealed?

SM - It was a Wa. State Supreme Court ruling. Could ask for reconsideration, but that is rarely granted. This is the law of the land at this point. If we do not respond, if a permit gets approved without the requirements this is unlawful. Permit applicants are now in limbo. We need to be sure that if someone wants approval for an exempt well it is lawful. At this stage with decision of Supreme Ct, we actually are beyond the deadline for request for reconsideration. We are 32 days after, so the time for that motion has passed.

SK - What happens to the people who have permits prior to the date of that decision?

SK - There is no vesting to a water right of process, so even if you are presently in the queue, you will need to get into process to be sure it is legal water. This has nothing to do with what a county has done.

SM: **History:** In 1970's the DOE under later laws was given responsibility for identifying base flows, which are vested right to the state in re stream flows. You are in WRIA 48, and that rule was that water was available unless it affected downstream owners. So exempt wells are available to any applicant, but no way to show that the water would affect the Columbia or any other river. So this stood for 50 years. So due to Septema, it changed the burden of proof so that if you are hydrologically connected, we will presume an impact exists. One well doesn't make a difference, but there were thousands of wells...we know there will be an impact. Therefore, if you are hydrologically over the limit, you cannot get a water right.

Comp Plan - 36.70, PEA - responsibility to protect water, etc. In Hirst, what we did in Com plan and Zoning, we said we are required to link up with DOE in 528 (?). 2 cfs available in 7 reaches. If we are consistent, we cannot say the water isn't available; we can presume that we are entitled to that presumption. In the Methow, if we find groundwater withdrawals are a problem, we will issue a ___?___. We relied on 2 cfs. But now the SC says No. Hirst - says in respect to Wilson Ck, closed to both exempt wells and certificated. ..Legal interpretation: If we have a specific criteria here, and a different direction (?) here, the difference is presumed. (*notetaker not sure of wording.*) We assumed that until Ecology shuts off, it's set. They said DOE has a responsibility to determine that water is factually and legally available. They can issue a certificate. But the county has to determine this, aside from Ec'y. The court said you cannot presume the water is available if the river typically runs below base flow. So the Court turned around and said to the counties - it is all yours. You have to make a determination that the water is factually and legally available. Looking at the (?), we can make our own determination. But USGS studies shows that the Methow has typically been below base flow. Some statistics say the Ok is below base flow 430 days a year (? can't be right). My guess - in different reaches, they are probably below base flow - we have to ask.

Twisp - In one year, below base flow (*not sure whether Methow River to Twisp River*) a tiny amount just one time, one year. We need to put it back to Ec'y - is water available in Twisp or not? They just went along with MVID - they reported that if leaky ditches were gotten rid of, they would reduce flow between Twisp and Carlton (*could not follow*) because the ditches were not there anymore.

WDFW was pulling water out of the valley, adversely affecting people.

We need to reach out (to Ecology?) saying we have a problem, Supreme Ct says we need to do this. Need to make a record of what we have done. Perry is pulling up all the presorts available. Beardslee (HE) needs to make a finding that this water is available or not. We are making Ec'y a part of all this. If Ec'y wants to put a moratorium on all of the county because all rivers are below base flow, then they need to tell us that. Otherwise...stops talking.

Comp Plan says we need to start using water banks. (?) Yakima picking a lot of this up. For example - Wagner home is for sale. Huge water rights dating back to 1919 (?) Whole series of property owners on that ditch who have ag rights but stopped irrigating. But they have no material agriculture going on. If they lose those water rights, the rights disappear. If someone could

get those water rights and put them together (*in trust?*)What we are doing today. Ok county has misfortune of being under the gun. We are already being sued for failure to protect water.

We have said in our EIS:

#1 - It is not the zoning that affects water. We have said "as long as there is adequate water." That is what we'll say. No reason to change zoning by reason of this

#2 - Comp plan says - make sure we have legal process. The ordinance is an interim ordinance that says we are going to do this. PH - can take other duties as assigned. Assigns Beardslee to say whether water is legally and physically available. County will supply flow data, etc.

Will ask DOE to say whether there is certificated water available. if they are going to close to certificated water, IT IS CLOSED TO EXMPT WELLS.

My guess is they will not close Ok county. If they do, they will close all rivers in the state. Will ask them: tell us what to do.

Interim Ordinance - done on an emergency basis. We want to make sure we have a process.

RECOMMENDATION: Want to schedule a hearing. People need time to hear what it's all about. Recommendation is that the new ordinance become part of Chapter (Title?) 20. To exempt that we can get new info, we can change the ordinance in view of the info - creates a process that guarantees us that we have a process that gives us a lawful process for later, etc.

HIRST, WHATCOM, GMA: People will argue it's just for GMA counties. But under your statutes (*Planning Enabling Act, etc,*) the Comp Plan is required to address water quality/quantity also. In 1920 - Required lawful water for building permits. It is not limited to GMA counties. When you look at 1920, applies to every permit in the state. Every subdivision, not just in GMA counties. The argument that it is only for GMA counties doesn't fly.

The Puget sound issue didn't apply to Ok county; bad punctuation - does not apply. (did not understand.)

New Ordinance:

- 1) Ordinance takes it to Hearing Examiner (HE)
- 2) Parties would be DOE, DOH, certified holders in the area, and neighbors who are directly affected. It is not to become an open hearing. Specially says you have to have a direct and immediate interest. A very specific water right that's affected.
- 3) If HE approves, those parties (above) are the only people who can appeal. Not Future-wise, etc. If denied.. if water in river is below minimum stream flow, it is unlawful. County denies the permit. Hydrologically connected water approved was illegal (*didn't quite get this.*)

- 4) We will get into a lot of _____ about what is hydrological connected. My own well (Mackie's) rises and falls with the river. Most of people in the lower valley floor are all sitting on top of Methow. River. It will be interesting to see which rivers are open or closed. For example, Lost River is closed - it goes underground (DJ - that's why it's called Lost River.) Will be hard to get water in Lost River unless you can get it (buy it?) from a holder.
- 5) The findings - the ordinance has the standard recitations. We will work with HE. Dan (HE) says I'm ok hearing this. How do I do it? We will go before him and talk about burdens of proof. HE is better able to hold truly contested cases, but DOH cannot. Not critical of Board of Health, but it struck me as a LUPA case in which one would expect the first few to be appealed. First few will be major contested cases.
- 6) Mackie talks about state agencies - they need to be careful before shipping water outside of the valley. 1990 challenge on MVID 93-94 - river was below base flow - something about finding the pipes. Ec'y took a lot of water and took it downstream.
- 7) Process - emergency ordinance because Supreme Court changed the rules. The rules are effectively in place today. We have to have a mechanism in place. 45- 60 days before public hearing so we can get info and facts. Char Beam is already identifying the reaches, who has water, etc. All the letters from Ecology - we will bring them forward and if there is a well application before the 60 day period.....(Didn't catch.) Staff recommends ordinance be adopted. It is a stand alone ordinance.... not a part of the code. Over next 60 days, if we get more info from DOE..... courts, associations of planners are all huddling to see what we do. Right now, have to do something for our county.
- 8) As Perry mentioned, we did an addendum to EIS asking if it causes an problem for Zoning, Comp Plan - we will have a process in place for legal order, which is what it says. (Unclear to note taker.)

Questions

RC - There were years of work in watershed planning - dictated by legislators to go forward. which we did. in 1999 - many hours of work gathering info as to what we had. How do we protect the future? These recommendations.... a benefit ..fought to keep this in place. (unclear) A lot of research, etc. but that morphed into the Watershed council. Does it have any bearing on this?

Mackie - Didn't get thrown out window, but all kinds of data about all kinds of wells. A lot of water. All exempt wells approved are a small fraction. Evidence here that water should be available. But in each reach, how many days does it fall below instream flow? A few days may not be grounds to deny wells. Start to (?segregate?) instream flow over a weather cycle - in my opinion the way it should be done - as opposed to whether it rained in October but none now - a one-day fluctuation may not be relevant. But if we have a reach running below minimum flow 100 days in a row in one reach - no way.

Will start looking at reaches. We have a legally defensible process for determining . Will put county into position for making decision. Will include Ecology, but in the final analysis - it is your decision.

RC - There is evidence in some areas that there isn't water. There's is a lot of variation.

SM - A friend lives on a bluff. Neighbor drilled well into (bedrock?) no relation to river. If well driller comes in with this info you don't need to worry about it. But the place this happens most of the time is in a closed basin. These are the dry basins. Water is checked to show no rise and fall, if Ecology wants to check. The evidence of well driller is good. These are easy. The real challenge is the movement from all folks in Olympia to people in the cities. (Notetaker did not understand.) If no water available in Upper Methow, there is no water available for all the towns. There are Implications not only to the counties but to the state.

Part of problem Ecy wrote the WRIA in '70 *(does this mean '76?)*.... Technical amendments in '91. But here is 50 years of history with no change. I think SC is saying that if Ecy made determination last week...but this was 50 years ago, and the Nooksak is constantly running below.

RC - Brings up whether there were there mistakes in base flow?

Mackie agrees. goes over history - may be time to fix how this was done.

JD - Info I want to get out: We're doing info gathering. Do not forget that there were certificated water rights in this county before it was a state. I heard DOE tell a friend that there was no certificated water right on record because it had been filed in Waterville (not here.)

SM - Re Gebbers, large ranches. Now growing more fruit on smaller acreages. On old "use it or lose it." If you have excess water, ask about trust water rights. Can have another source of revenue in reaches below minimum stream flow - and rancher can sell water for single family homes. On West side, folks who ran water 24/7 because of the use it or lose it. Put the water into trust which will get you out of use it or lose it and it is another asset that can be saved. A message we need to get out

A certificated water user is a party to all these cases when someone wants a water right.

Water conservancy board could be very busy. but we concluded they could do contested cases. This will include *(answers?)*we will be required to have same decision - is the water available?

DJ - What is difference between water trust and water banking? Can you get water back out?

SM - If I had certain amt of water - 2 acre field I'm about to *(lose?)*- I can put it into trust water, right into trust water system - if I grow a more intense crop I can pull it out or I can transfer it to someone else and put into change of use.

Water Bank - in Kittitas. In Suncadia, they tied up a huge amt of water - Joe bought the water from the rancher, created a water bank, and he can sell it. A water bank is acquired by an entity. That you cannot get back. Trust water - you can get it back out and it can come back out. WA Water law - has (?) of riparian, certificated, etc. Was almost as complicated as Colo River. We need a water right holder's guide. Need a booklet for people.

SK - So from the interim ordinance until final, we will be looking at the things that the water holders (?) have been doing, studies over the past, conservation districts, etc. That is all going to be gathered for what? So county can say that since we have all this in place, we have a process?

SM - The process is the HE. The info that you are gathering - create two notebooks for Okanogan, Methow, Similkameen (?) Everything is in there for the HE to support his decision

SK - So a person who wants to build a small home, from exempt well - either an existing well or a new well - if they want to share that all with someone - even that, if it will add use to that well, they will be required to go through this process?

What about Campbell-Gwinn?

SM - It is part of the determination process. Property owners in county - exempt wells - if 20 parcels, if you already have 10-12 wells already drilled, present rule is that if it is part of a subdivision including exempt segs, once you get to around this amt, there is no more exempt well. They will have to get a certificated water right. At Lost River, may not be able to get exempt well. All the properties in the common schedule must be considered. No daisy-chaining. Everyone in that commonly held property is a part of the requirement. You get one exempt well. If over time you sold different sections, not part of a common development, then each section falls under exempt well rule. But if someone cuts it up at the same time, they get 5,00 gallons. Period.

Another challenge - An exempt well has no gallon limit, but there is enough for 1/2 acre irrigation. Each property can have an exempt well, but you have to calculate the amt of water for each for 1/2 acre, etc.

RC - Conservation easement lands will be an issue.

SM - (?) will be significant. Puts you in position on the exempt well issue. Ecology is on the certificated wells.

SK - #4 on our findings: Says we are taking on the responsibility for making decision on legally availability of water from Health Dept - to HE. We have a Public Health Board meeting today, a discussion on this. What would you recommend?

SM - Conclusion of staff and legal counsel - this will start creating major contested cases. involving all the parties. HE is best place to do that. Health Dept is a party that comments. They can make recommendations. The final decision of legality has been shifted from them now to HE. Over next 60 days - they can make modifications in Ordinance. Right now we are trying to create a simple process. In looking at this, it was very important that we have a system in place that accounts for all the pieces. A first cut - that's why we have 60 days to look at it. Gives us time to work with it. We can work with it constantly (*consistently?*) with state law.

PH - Mr. LIn?

AL: I have reviewed Mackie's paperwork. The board is well aware of my concerns. I believe this is the correct approach for ongoing litigation and protection of the county in the future. Strongly recommend to adopt it.

SM - Record will say that PH has issued an amendment (to ?) that there is no substantial environmental consequence because there is a process in place.

PH - You are requested to adopt it, with the findings. Result will be to impose interim controls. We are asked to have hearing 45-60 days, it will be fine-tuned and it will take the shape of an amendment to Title 20. It will repeal interim controls - we will not get rid of those until you are ready to adopt Title 20. If there is public testimony, we can move to consideration of (?)

Will be published this afternoon. Will be on county website. When hearing is continued, will be re-noticed. Parties who have commented on Title 20 will be notified. Have to do this within 60 days.

At this point, open to public testimony.

(Isabelle Spohn requests to ask a question as to when this draft will be available to the public - answer was today.)

JD /PH - Leaving the record open. Public testimony closed. Open to board discussion.

RC - Contemplating emergency ordinance Interim - and based on conclusions and findings of fact and possible motion to approve - and another separate motion to approve continuance? 2 separate motions? (yes.)

RC - Move to approve Ord 2016-5, pertaining to land use decisions for use of water, other than certificated, and include findings and conclusions.

2nd - SK

JD - 2016 -5 Further discussion? No.

All in favor - passes.

PH - motion for continuance of public hearing. for interim control, etc.

SK - Also, prepare a press release for radios, website, newspapers, etc. to inform public as to why we are doing this, etc.

SM - Needs signed copy of findings and ordinance. AL also requests. That will be used for press releases.

SK - asks for another simpler one for public. I want to be sure the final draft is the one that was signed, etc.

Date of hearing:

LJ Jan 2 is less than 60 days. Not a holiday. Lin is right. Jan 3 is 57 days.

Sk - concerned. We know we will have 1 new BOCC at least. Is it really fair to ask new BOCC to do this right away? In all fairness to our process.....

SM - Could also do on Dec. 20th. We couldn't continue it.

PH - If you conduct within 60 days, leave interim in place up to 6 months. Timeline - create press release, put on website notifications. Do not have to push to end of 60 days. You will meet procedures continuity in discussion. Should have time to fine tune the process in terms of at least a proposal for amendment to Title 20 before the end of the year.

Lanie - December 27 or 28 is last day we meet. Also, week before.

SM - Do not put between Christmas and New Year. Will not work for public. December 19 or 20. -That is tough time for staff and community. Suggests bringing in well-drillers ,etc. Well logs that go back for 60 years in re continuous or discontinuous. May have access to info. whether they fluctuate, other info, etc.

RC - Have been relying upon Health Dept for a long time...??

SM - When you meet with them, is there a way to bring info together that will help Beardslee make a decision?

SM - Do it by reach. build a notebook by reach.

SK - Moves to continue public hearing until Monday, Dec. 19th at 1: 30 PM.

PH - We have had a broad conversation. The public hearing is to review the process by which we will make hearing. We will set up a separate process to gather the info to inform the decision. Want people to understand HOW we will track.

SM - Not making Board make decision on whether water available. That is up to HE. We will gather info. This is just for the process about how we will do all this. An Amendment to Title 20. A process ordinance, not a substantive ordinance.

No further discussion. Passed.

Beardslee - Request that the HE would like to be kept in the loop with exception of anything about a particular case, which would be ex parte. Maybe Lanie can sent a copy of signed ordinance.

PH - in terms of bibliographics and general info. Route all info to my office because we have to filter - appearance of fairness.

SK - Will ask you to contact Public Health and go to them.

PH - will address this today with them.

All legal types and PH leave. Notetaker leaves.