

**BOARD OF OKANOGAN COUNTY COMMISSIONERS**  
**05/15/2017**

**In Attendance at Meeting:**

Jim DeTro- JD (BOCC)  
Andy Hover - AH (BOCC)  
Chris Branch – CB (BOCC)  
Lalena Johns - LJ (County Clerk)  
Perry Huston - PH (Admininstrator & Planning Director)  
Albert Lin – AL (Deputy Prosecutor)  
Josh Thompson – JT (County Roads Engineer)

Jim Brown – JB (WDFW Regional Director)  
Justin Haug – JH (WDFW Sinlahekin WLA Manager)

*These notes have been taken by one of several volunteer citizen note takers and published on the website of Represent Okanogan County (ROC.) The notes have been taken as close to verbatim as possible, with any writer's comments or explanations in italics. For officially approved minutes of Board of Commissioner meetings, normally published at a later date, see [www.okanogan-county.org](http://www.okanogan-county.org).*

JD – Jim DeTro  
CB – Chris Branch  
LJ – Lalena Johns  
PH – Perry Huston  
AL – Albert Lin  
JT – Josh Thompson, County Roads engineer  
JB - Jim Brown, WDFW

***Summary of significant discussions***

***Wheeled All Terrain Vehicles***

*The commissioners invited input from WDFW management on an initial plan for ATV use on county roads within District 3 (JD's district). JT showed a map of county roads color-coded to indicate: 1) Roads currently open to ATV use, 2) Roads with 35 mph or lower speed limits proposed for opening to ATV use, 3) Roads with 35 mph or lower speed limits that are not proposed to be open, 4) Roads with higher speed limits that are proposed to be reduced to 35 mph and opened to ATV use and 5) All other county roads. Specific locations were discussed. JB expressed concern regarding Eder Rd, and was told that the resident of that road would be consulted prior to a decision being made. Mitigation and enforcement issues were discussed. JB stressed the need for enforcement by the Sheriff's Office.*

### ***OCC (Title 20/Hirst)***

*The commissioners and PH had a lengthy discussion on various aspects of issuing building permits in light of the Hirst decision. These included permits within the boundaries of the Reservation, vested wells, existing wells that have not been used, the Department of Ecology's current and future role, subdivisions, and impairment of irrigation rights. PH has commenced issuing building permits and indicates that processing currently takes 5 -6 weeks. There was no discussion of his procedures for determining water availability, although he referred to a proposed subdivision in a closed basin the he expects to deny. AL cautions against too much discussion of Title 20, due to litigation.*

### ***Comp Plan/Zone Code/Shoreline Master Program/Critical Areas Ordinance/Subdivision Code***

*The commissioners and PH had a lengthy discussion of the status of the Shoreline Master Program (SMP), the Critical Areas Ordinance (CAO), the Subdivision Code, the Comprehensive Management Plan (Comp Plan) and the Zone Code. AL cautions that anything that is discussed can become part of ongoing litigation and advises that the conversation should be restricted to 'process'. CB advocates for including water availability issues in planning statutes and to adopt a conservative approach to development. He noted that if more lots are created than can be supported by available water, many people will be compromised. AH repeatedly expressed concern that there be a consistent interim process in place while the various legal issues are resolved. CB advocates for considering water availability and infrastructure efficiency in the Comp Plan; PH advises against including specifics. Examples are described of subdivision development on remote, primitive roads where the provision of county services is not paid for by the taxes generated.*

*The status of the 2012 CAO was discussed. Because a revised version is due in 2018, PH suggested that further work on finalizing the 2012 CAO was not a high priority. CB noted that he had received feedback that the 2012 version was worse than the older CAO, due to lack of protection for critical areas. No formal decision was reached as to whether to continue with the 2012 CAO, but no support for doing so was voiced.*

*1:30 Meeting begins*

### ***ATV Discussion with WDFW (relating to JD's district)***

*JT – (shows map) - Green roads, currently open to ORV. Orange roads, currently under 35 mph & we propose to open. Pink roads under 35 that we propose not to open. Blue roads are over 35 that we propose to reduce speed limit and open, to make connections.*

*AH – Want everyone to know that this is not Josh's proposal. We need to start this process with the F&WS for review.*

*JB – Is this part of SEPA?*

*PH – Yes. Look into whatever kind of mitigation is needed, to comply with the problems found in lawsuit.*

*JD – Felt that we were always going to be hollering at the agencies for not coming to tell us what is going on, we should talk to you.*

JB – Appreciate that. See a few problems. Eder Rd. Not sure there is a lot of value of riding up there, compared to the risk. Junior would not be too excited about that.

JD – We will talk to everybody.

JD - Concerned that it would be an attractive nuisance. Also, got that through BPA funding. (Discussion of specific locations, reasons for not including in ATV routes)

AH – Mitigation. Extra signage. You guys are talking about fencing.

JB – Buzzard Lake. Our SEPA letter, concern was (*too rapid to record*)

Justin – (WDFW, Sinlahekin) Rebuilding fencing out there.

JB – Not a lot of concern with the rest of it. Other spot, chronically problematic, is around Fish Lake. A lot of camping out there. People go around signs. Clear evidence of ATV use, but can't cite because they have them on the trailers. Don't know how you get your arms around that. As we discussed (addressing JD), it adds to the enforcement load. (Hands out paper about ATV enforcement actions). Difficult to tease out, due to multiple violations of the statute. County enforcement has been missing. Once you attract ATV use, then more come in. Those are the things we have dealt with. Need enforcement from the County. E.g. Salmon Creek Road, 45 mph, I can hear ATV use all the time. No enforcement. Need enforcement presence, maybe emphasis, in some areas.

AH – I asked Sheriff's office. 59,000 + incidents. 30 ATV incidents, 3 tickets.

JD – (?), Ferry County, said the same thing you are saying. The outlaws are always going to do it. The presence of ATV clubs helps with compliance. Can't arrest anybody, but they can tell them to get back on the road.

JB – I appreciate that. Peer pressure can help, same as with fishing and hunting. My general comment is that we need more enforcement, maybe on key weekends. Get the word out.

AH – As far as monetary kind of things. What are you governed by for setting penalties for tickets?

JB – Under state system, administrator of the courts sets penalty schedule, can't exceed that. Don't know if County can pass its own ordinance with its own penalty schedule.

AH – More enforcement is difficult. County is huge. Don't think a slap on the wrist will work.

JB – Trespass by hunting statue has changed. Provided a game violation, can affect hunting rights (score toward revocation). Allows us to take away the animal. Difficult to catch. Need a higher sense of deterrence.

Justin – need to confer with Jim Olsen about use around Scotch Creek.

CB – Can get pretty wet out there.

Justin – Yes, like right now.

(*Discussion of ATV & dirt bike use along Green Lake Rd*)

AH – Some of the ATV club members are here, listening. They have expressed interest in mitigation.

Justin – I've been thinking about updating the signage specific to ATV use. Say, every ¼ mile. Think it would be helpful.

JB – One additional thought. Haven't discussed it with Justin yet. Talked to Dale Swedberg about this. Perhaps set up a designated loading/unloading zone in Sinlahekin WLA. Figure out a way to corral it in a specific location. Use it as a base of operations.

CB – Those locations, then you are able to give the rules.

AH – Interesting – snow mobile clubs, bicyclists, horse people. All get involved. Need same thing with ATV club. That, and higher penalty.

JB – Right. I have seen that a lot of people are completely opposed to ATV. From the wildlife protection point of view, would be best to say no & protect the resource. I recognize that there are county roads that are open. Best to just work together and keep it corralled. (Discussion of penalties, court costs, etc.)

AH – So if the Sheriff stops somebody, where does the money go?

JB – *(names various funds, too rapid to record)* Appreciate that you guys thought ahead about places that would be a problem for us, removed them ahead of time.

AH – So, Eder Road...

JB – That would be the only one...

JD – We left that on so that we could talk with the family.

JB – If Junior doesn't have a problem...

CB – Tough part for me is that for so long you have been able to ride motorcycles. There is a big discrepancy.

PH – Next steps. You are the first agency to come in and talk to us. Others will come in before we have the SEPA letter, public comment.

JB – Justin will go talk to the other WLA managers.

### **OCC (Title 20/Hirst)**

PH – Title 20. Received an application *(apparently referring to the Stampede Grounds)* for a certificate of water availability within the boundaries of the Reservation. Declined, due to jurisdiction. Sent it to Tribal Water Management.

AH – Do you know how their system works?

PH – Don't know their process. In past, with building permits, we were deferring to everybody else in regard to water availability; we just did the building permit.

CB – Is there a well use already existing?

Dan – Don't know.

PH – We can do a search, see if there is anything existing. We do the site analysis & building permit. Can look to see how many we have done in the last few years.

CB – *(something about adding to existing wells on Reservation)*.

PH – When they applied to us, we still gave notice.

CB – Part of process and protocol.

PH – Yes. In terms of Title 20, Commissioners have talked about revisiting that. I went through it the other day. Still need to dig into the question of what we are going to consider vested. Still looking into litigation, so I won't go into that. Trying to figure out the scope of the water systems that have in the past been Ecology.

AH – Some of those were converted water rights.

PH – If they would tell us that... Any applications that come in where they already have a water right.

AH – That's what I thought. If Ecology has used a water right. That is important.

PH – It is critical. Anything like that, we don't evaluate water availability. Just goes into the regular review process. Also, in terms of class. We have a short plat project that is proposing to use a water right. At final approval, they have to prove that they have the right.

AH – So, if someone comes to you and says that they have a water right or expect to get one...

PH – Right. We only determine water availability if they are proposing to use an exempt well. Assuming that everything passes muster, they get a preliminary approval. If relying on water rights, they have to prove those before receiving final approval.

AH – We need to identify the process prior to Hirst and understand Ecology's role in that process, then find out what is their role since Hirst.

PH – I want to look at how many wells they have authorized since last November. Some people already had wells. **Push back – Ecology already signed off on a permit exempt community well. Another problem is with Campbell-Gwynn. Looking to see if we have a glaring problem with that.**

CB – If somebody had a 600 ft well in, that could be a problem.

PH – Haven't done the count. Of the ones we have made decisions on, half or a skosh more already had a well in the ground.

CB – Old well... As far as water availability – does it pump as much as it did before?

PH – (gives an example where the pump test changed over time)

AH – So is it our thought that we are going to change?

CB – There are a few items that are coming up. Not sure what we are going to do. One would be the pre-existing wells. Somebody put a lot of money into putting a hole in the ground, with the expectation of being able to use it.

PH – (describes differences between GMA vs. non-GMA counties, relative to Title 20). Original purpose of Title 20 kind of got lost in the noise over Hirst. My suggestion is that this might be a good time to dig into the rest of Title 20. Now we have the opportunity to have some informed comment. Maybe an open house. Need to tidy up the question of legislative vs. quasi-judicial process. Question of vesting is not that specifically dealt with. Good time to pick that up and look at it. Even if we don't do an open house, go back, have some informal conversations.

AH – One of my biggest questions is Ecology's role today.

PH – In terms of exempt wells, we don't ask them. We notify them, but we haven't heard back. My observation is that they have stepped away.

CB –

AH – Have you been in contact to ask if they have any words of wisdom?

PH – No. I have had a little off-channel stuff. They are watching the legislation. Some of the push back we are getting is involving the 2 cfs. We look at the well logs, confining layers, etc. Some have suggested that with the 2 cfs set-aside, that is overkill. I am still drawing a bright line for land division proposals. Building permits, maybe there is some room. Maybe we don't need to go through that process. Do you want me to check on that?

AH – I like process, keep everything consistent. If I wanted to put in a well pre-Hirst, I would send them a letter?

PH – My impression was that it was 'Closed basin' or 'Not closed basin'

AH – Are we still doing that?

PH – No.

AH – *(Too rapid to record)*

PH – We are not doing that.

AH – What about a new well?

PH – New well, we are telling them that they have to look at it.

AH – You are the bottleneck. That is just the way it is.

PH – 5-6 weeks.

AH – Commissioners – what are your thoughts? I still think there needs to be a process.

CB – There is more to look at than just the 2 cfs.

PH – Have one on my desk now that I will have to deny. 40 ft well, gravel & sand, in a closed basin. But it was drilled in the '90's.

CB – Ecology has a new page on their website. Their guidance is 'Talk to your County'.

AH – I think that if we are using a process – even if we are not quite sure yet that all the pieces are in place – the likelihood that someone will come along and tell us we are not doing it right are a lot less.

CB – There will still be lawsuits. The water rights laws are behind the courts.

AL – I want to caution the commissioners against discussing too much about Title 20. CB is right – we don't know. But we do need a process. It might have to be tweaked in the future.

Caution against talking about ongoing litigation.

JD – Hubbard case got to the High Court about hydraulic continuity between irrigation well and river. The judge said significant use is 'one drop'.

CB – Collect the best information you can.

JD – *(Inaudible)*

CB – Kind of baffles me, I can see in Hirst – if you are making lots through your subdivision process, then I can see it. That is where the buck should stop. Impairment is part of water law. That is the responsibility of Ecology, and now us. If people are worried about impairment, they go to Ecology, right Perry?

PH – Yes.

CB – Irrigators concerned about impairment.

PH – Prior to consideration of an exempt well, appeal/comment period. Once that decision is made, impairment issues go to Ecology.

### **Comp Plan/Zone Code/Shoreline Master Program/Critical Areas Ordinance/Subdivision Code**

AH – AL, we are still under litigation for Comp Plan, Zone Code & Subdivision. We need to talk about it. What do we do?

AL – Anything you discuss can become part of the litigation. Advice is to stay within the confines of process, but do note that the legality of what you do...

CB – Litigation on Comp Plan & Zone Code, that came before Title 20?

AL – Yes.

CB – Can you separate Title 20 from the appeal?

AL – No.

CB – This is how I would do it. 5817 – subdivision statute. Water is addressed in those statutes. Look at that and say implication is that our subdivision and planning process, we look at that and

say 'Is there enough water for development?' That hasn't been taken seriously, because Ecology was commenting. They didn't have the wherewithal to make the decisions. Form letter from Ecology wasn't taken seriously. Issues of whether there was enough water. Need to take a better look at our decisions. Comp Plan doesn't clearly tell us. Make the connection between land use and water availability. We can change the present. Be more conservative. If we make too many lots today, you have compromised a lot of people.

AH – Can Title 20 be a process that can stand on its own for a little while?

CB – I think it can, but it needs to be acknowledged by everyone, including the people who have brought the lawsuit. We might need to deny some building permits. I don't like that. Exempt subdivisions – nobody looked.

PH – What I am giving you is various memorandums – my efforts over the years, the different tools we have to get our arms wrapped around water availability. (*Discusses Kittitas, private water banking*).

CB – Bigger picture as we go down the road. We can satisfy our own objectives, but later someone else will have to withstand more challenges. For instance, 5,000 gal per day, is that a reasonable amount? Some people say they use a lot less. But what about in areas where fires are frequent, watering heavily is one of the best way to protect against fire. Nobody is monitoring or enforcing. In town, we know how much people are using. When we are making these decisions, people are looking more and more about impairments. When they do find impairments, then what do you do? Don't want to create problems for the future.

**JD – Is there anything else pressing on the agenda? Don't want to spend all our time philosophizing about water issues.**

AH – Superior Court laid something down that is going to take time to work out. And we are taking the time to work it out. What we do needs to (*too rapid to record*)

PH – Three iterations of the Comp Plan in the 10 years I have been here. The pendulum has swung back and forth. Commissioners have signaled some desire to tear into that to see if we can make our language more robust. We have done things that we thought were necessary to do. Some opportunity to learn from what we have done. We have batted around some language. Zone Code (too rapid). Subdivision Code is more specific. **What we have done with Title 20 is where we have embedded our response to Hirst. Should some of that be yarded out and embedded in the Comp Plan? Maybe.** Subdivision Code has fallen off the stove top. Need to yard that out again.

CB – If you take the Comp Plan and separate it from the Zone Code... There are certain issues that affect the financial wellbeing of the County. Water, efficiency of services. Things like that make a lot of sense. That flip-flop/philosophical differences is painful. Property rights. Goal of Comp Plan is to make certain that we will be able to financially serve the areas of the County. We shouldn't be looking at the Zoning Code until we settle those issues.

JD – Tried to do something to protect citizens on an interim basis, then along comes 20 & then bang! Along comes Hirst & destroys that.

CB – Start out with Comp Plan – don't speak to what Zone Code should look like.

JD – Zone Code is a working document. A lot of work went into that.

CB – Basic tennets – why are we creating Comp Plan in the first place?

JD – Because we are not a GMA county.

CB – What if we are farming a big ranch. We make sure we have enough water where we need it, roads we need to get to where we need to go. Same with a Comp Plan. Practical goals. Then go to zoning. Are we zoning so that tax base will support infrastructure needed to serve those area.

JD – Perfect example: (*inaudible*). 20 acre lots on primitive road, then put it in open space, get the cheapest taxes and then come down and demand services.

CB – That is our decision. Does it make sense to allow exempt subdivisions ‘out there’. Once people buy those cheap lots, then they will be mad because they want all the services. Don’t take over the roads until they can be maintained.

AH – Like to look at Comp Plans from all over the west. Here is one from Wyoming County – ‘Limit development on steep slopes (*over 15%*)....’ Comp Plans all over the place, some vague, some specific.

PH – Don’t put the specifics in Comp Plan. Put in general language, then develop Zone Map. Elements of that discussion took place. There really isn’t anything in the Comp Plan should take consideration of the availability of water in the density of development. Can create tools in the subdivision code. That is how it is supposed to inform one layer after another.

CB – So in Comp Plan, all kinds of zoning options that can be applied to deal with those issues.

AH – Let’s take that little piece (slope categories). In that definition, then I can go to Zone Code and designate zoning accordingly.

PH – Or you can mention issues with steep slopes. The Comp Plan introduces the issues.

CB – An interesting thing going on here. The GMA has all these things in it right? (*others agree*) The biggest issues in the GMA is constantly being challenged. If you go through and read those goals, without thinking about it being in the GMA, it is useful stuff. I suggest people read it and think about it. The big rub was who was going to be the planning police? Look at the goals and ask if it makes sense to do that. The thing you just read was from the Wyoming GMA. Let’s look at the map of what we are in charge of and overlay the map of the things we are concerned with, then decide on how to grow. Read the guiding principles of the GMA.

AH – Shoreline critical areas of the CAO, do you have (*inaudible*)

PH – CAO is in the queue. Doing some outreach. Boiling it down to (*too rapid to record*).

Shorelines – haven’t heard from Leonard about what changes they are requesting. Yakama Nation has issues with cultural resources. Let me go ahead and lay out timelines on documents.

AH – Critical Areas, we have to go back out next year. 2012 has never been adopted. Potentially we will have to adopt one in 2017 for 2018.

PH – (*describes timeline*) We owe them revisions. The new revisions cycle has already been extended a year, so will be due at the end of 2018. Same issues as we are dealing with Zone Code, Comp Plan, etc. We need a public meeting (check box meeting). 2012 revisions become more academic every day.

AH – Why would you put any effort into checking off boxes for the 2012 revisions? Do a good job with 2017 – look at comments on the 2012.

CB – Feedback I am getting is that 2012 is not an improvement. Problem with 2012 is lack of protection for critical areas. That it makes things worse.

PH – I realize that that debate rages. (PH thinks that 2012 is more protective. There is no enforcement in the old version).

**CB – One thing missing: boundary line adjustment allows adjustments that create a lot that the only buildable location is in the most critical area.**

**AH – There is so much on PH's plate. So many things we need to do. Don't think there is any benefit; would just piss people off.**

**CB – Things that could be done...**

**AH – He is doing that.**

PH – Aquifer recharge... (discusses new information). Environmental review. Etc. Find myself being less enthusiastic about checking the boxes on the 2012 version. If commissioners want me to walk away on 2012, I can do that.

CB – Until we identify where we are coming from in our decision-making, it will continue this way. What are our reasons for developing these documents? Let's make the most responsible decisions we can. Pendulum will swing; Okanogan is an unpredictable place.

PH – I can box up the Comp Plan and give it to the Planning Commission, or I can give it to the commissioners.

JD – Don't think we can put out the plan while we are in litigation.

CB – Sure we can, it is legislative.

AH – Bring in a section – here is a section on water...

CB – My suggestion is take introductory section, bring in 3 people with different views, read through, decide what we are trying to accomplish, what makes sense? What is our objective?

AH – Agree. Bring in the introduction. Given the Yakama Nation deciding to drop their lawsuit...

PH – Way back, when we had the planning summit. General agreement was that density should be determined by water availability, transportation. Those kind of directions in the Comp Plan. Can't create a mosaic of zoning that is absolutely determined...

CB – Comments we did receive, look at those and keep them in the back of your mind.

AH – People elected us to make decisions. Is this going to work in this County?

### **Planning Budget**

PH – Budget – nothing pressing there, put it off until next week. Ask to reconvene as Tonasket EMS governing body (*Moved, seconded, passed*).

### **Tonasket EMS**

Moving into new model addressing problems identified by audit. Going Wednesday to check up on vouchers. Some items in inventory do not match with what was purchased. Contract with Lifeline – state auditor thinks it would be better to transfer assets to them as part of contract.

That way we don't have an asset inventory to keep track of. Probably should do the same with the Oroville EMS.

JD – Did we get any response from Tonasket City?

PH – Not really. I will look into that. They have the option of buying it when we put it on the market.

AH – (*too rapid to record*)

PH – Interim agreement. If that is not something we can pull off, then my recommendation is to come up with a management plan to staff Tonasket. Plan A is the contract with Lifeline. Will have that to show you by the end of this week.

(Movement to approve vouchers; seconded & approved. Tonasket EMS Board meeting adjourned; seconded & approved. Reconvened as BOCC)

### **Other**

PH – *(reports on some permit for work on the Reservation. Stampede Grounds?)* Miscue on who would be the lead.

CB – Cultural Resources approval?

PH – Yes. State Auditor will begin looking at that project. Restroom history is interesting. Need to make some changes. Will work with the Auditor on that. *(PH leaves)*

AH – MWC heard that they want to appoint Ashley Thrasher to the Watershed Council. Asked for a formal letter, haven't received it yet. She is coming to the meetings but not voting. Wanted to let you know. Went back and looked through it. It is not on our board. The creation was that the people in it...

*(PH returns)*

PH – Emerging issue. AL is on the way. Potential litigation. Under the banner of code enforcement, we have 8 files in a compliance plan – first notice, or stop order for more egregious violations. Last batch of letters we sent out, got a pretty good response back. Mixed bag. Follow up is more consistent now that we have 2 people working on it. (Discussion of olden-days meetings)

*4:40 Note takers leave.*

