

**CLALLAM COUNTY BOARD OF HEALTH
REGULAR MEETING MINUTES
April 20, 2004**

I. ROLL CALL TO ORDER

The meeting was called to order at 1:347 p.m. by Stephen P. Tharinger, Chair.

Present: Stephen P. Tharinger, Chair
Michael C. Chapman, Vice Chair
Howard "Mike" V. Doherty, Jr.

II. AGENDA REVIEW AND APPROVAL

Mr. Chapman moved to approve the Agenda as written. Mr. Doherty seconded and the motion carried.

III. APPROVAL OF MINUTES

Dr. Locke asked to change the word "Torte" to "Tort" on page 3. Andy asked to change "Don Leave" to "Don Leaf" on page 2. Mr. Chapman moved to approve the minutes from March 16, 2004 as amended. Mr. Doherty seconded and the motion carried.

IV. PUBLIC COMMENT

None.

V. PUBLIC HEALTH ADVISORY COMMITTEE REPORT

Virginia Clarke reported that Mary Meyer gave a presentation on Xylitol. The PHAC discussed and decided to form a sub-committee to review further into the information and then make a recommendation to the Board of Health.

The Committee reviewed the O&M funding proposal from Andy Brastad. There were no additional comments on that issue.

JoAnne reviewed the Priority Planning Matrix – 2003 Yearend Report. The Committee felt JoAnne did a very good job of presenting it and the committee will review further to give feedback on possible improvements in communicating how the work is accomplished within the department.

The Committee reviewed the draft proposal of the PHAC Structure. There were no additional comments on that issue.

The Committee reviewed applications and made recommendations for six applicants to be reviewed for the Board of Health Expansion positions.

VI. ENVIRONMENTAL HEALTH DIRECTOR'S REPORT

- A. Public Hearing: Proposed Clallam County Solid Waste Regulations. Andy Brastad reported on the proposed Solid Waste Regulations. Don Leaf, who was hired as a consultant to help write the Regulations, was also present. The document before the Board is the latest Draft that is in the County Codified format. The SEPA process was completed (closed yesterday) with no comments on the designation. One comment was received with this draft, from Rod Fleck, saying he didn't see anything in the Regulation that talked about the County coordinating with other local jurisdictions and applying the Regulation (specifically when it came to permits and enforcement actions). He also asked which District Court (because we have 2 in the County) would the appeals process go through. Andy suggested a change in wording to read "Court of Competent Jurisdiction".

All other stakeholders have been notified. There have been no other questions from stakeholders or the public. Andy spoke to Jefferson County yesterday. They are in the middle of updating their Regulations and are waiting to see our results to base theirs on.

The Board and staff reviewed the language of the size of property you must have to know how much solid waste that you can "bury". Due to a question raised at the last BOH meeting, Jennifer Garcelon handed out an outline of the Solid Waste Exemption samples from four other Counties. Andy said that he can revisit the proposed language for clarity of that issue if necessary. Mr. Tharinger asked Jennifer if she looked at the MRSC. She said she looked mostly at the DOH website and clicked on all of the Western Washington Counties for current matching codes. Most were outdated. Mr. Tharinger asked if there was any impact on landfill and the transition to the transfer station. Andy said that there is not a big impact because most of the landfill activities are governed under 350 Regulations at the State, but it may change the timeline of issuing permits from February to December.

Jennifer said the Methamphetamine Ordinance Appeals Process was used as a reference for this document. There are two tracks to follow. One is the appeal of the Solid Waste Permit Decision which would go to the Hearings Officer. Then if they want to appeal the Hearings Officer decision (open record process), it would then go before the Board of Health (closed record process), then if appealed would go to the Pollution Control Hearings Board. The other appeal is of a Solid Waste Violation which would go to the Hearings Officer, then Board of Health, then Superior Court.

Dr. Locke discussed who would be the "Hearing Officer" – Health Officer or the County Hearing Examiner. After discussion with the Board, it was decided to handle each case on a case by case basis, with the Health Officer being the default, unless the case warrants a more intense approach, at which time it would go to the County Hearing Examiner.

Mr. Tharinger opened Public Hearing. No comments given. Mr. Doherty moved to close Public Hearing. Mr. Chapman seconded and the motion carried.

Clarifications: Mr. Tharinger asked if there should be a clarification to the language of the size of the parcel and the amount of waste disposed. Also, the need to contract with the County Hearing Examiner if the case warrants their assistance.

Mr. Doherty asked staff if either issue is major and should hold back adopting the Regulation. Andy said that he can only remember 2 cases over the years that an exemption process was an issue. Dr. Locke said the current language of the Hearing Officer is flexible enough that we could create an Administrative Hearing Process that would be appropriate to the case. Mr. Doherty said that he felt it would be appropriate to adopt and then amend if needed at a later date.

Mr. Doherty moved to adopt the Solid Waste Regulation 41.10 (Board of Health Resolution #1) as presented with the option to amend the document (re: disposal amounts and County Hearing Examiner needs) at a later date if needed.

Andy asked if the Board wanted to include the wording changes suggested by Rod Fleck. The Board agreed that the document already covers the intent of the Board.

Mr. Chapman seconded and the motion carried.

- B. On-site Sewage Operation and Maintenance Funding Options. Andy reviewed the background of the O&M program. Program is funded through grants (due to expire June 30, 2004). Because our current application for further funding is being reviewed through the Federal process, there is no guaranteed future funding for the program. Andy presented some options to the Board on how to generate stable funding for the O&M program. The ideas have been reviewed by the O&M AdHoc Committee. They were hesitant about raising fees on field work, but do feel it is important to keep the program. Andy asked staff to speak

with designers in the field. No feedback or reaction was given. This has been reviewed by the PHAC and they felt the program is important and supportive of seeking stable funding.

Based on 2004 budget projections the O&M program budget needs to be approximately \$82,637. Andy gave the Board a matrix to review.

Options to get this funding – Field Tech Assist (increase to actual cost at \$88.00 per hour)
Charge an Office Technical Assistance fee
Permit Fees & Site Registrations

Dr. Locke said that the fees all have to do with the initial steps of constructing or installing an on-site sewage system. The only exceptions are the sanitary surveys, which are done more than once. O&M benefits the owners of the existing systems over time. This is a fee that is imposed on the on-site sewage systems, collected by certified pumpers. This is new and he said he believes that it is reasonable to have this as a requirement to the pumpers within the ordinance.

Mr. Tharinger asked if staff recommended a specific option over another. Andy said he wants to know first if the Board wants staff to pursue stable funding and to know if these are reasonable ideas to pursue. Mr. Chapman said that the Board does want to see the program have stable funding. He would like to see the PHAC review the funding proposals and give the Board their specific recommendations.

PUBLIC COMMENT:

Catherine Boardman – She thought that the “no feedback” from the designers that Andy referred to, was not indicative of what is actually going on. She thought that it was because they were in the field working with their clients doing business and not able to discuss the issue of O&M with County staff.

She also asked about the increase of fees for Technical Assistance from \$60 to \$88 and how that would be charged to the designers vs. the client (who and how would the additional fee be charged?). Andy said that the details of how the fees will be charged has not been worked out yet. Ms. Boardman was concerned that a person doing a short-plat would have to pay extra money when they are going to be selling off each parcel anyway. She asked if it is for the O&M program, why do the soils people have to support it (because they are not the ones using it).

She added that an increase to the Sanitary Survey fee seems unreasonable because the auditor already charges a fee to keep the records on file.

She said she liked the pumper idea and likes the idea of raising permit fees if needed because those are the people using the systems.

VII. HEALTH OFFICER’S REPORT

- A. Measles Cases in King and Snohomish Counties. Dr. Locke reported that we have been tracking a measles outbreak in King and Snohomish Counties (with multi-state ramifications). As of today, the outbreak has been contained to six confirmed cases in Washington State, none of which are on the Olympic Peninsula. There was a very intensive and costly containment effort that went on in King and Snohomish Counties because measles is one of the most contagious viral diseases. This week, we are starting to breathe a sigh of relief that it is indeed contained.

VIII. HEALTH DIRECTOR’S REPORT

None.

IX. BOH Hearing: Appeal of waiver and associated on-site septic permit SEP2004-00020

Mr. Tharinger asked if all parties were present for the hearing. Andy Brastad said that due to a death in the family, Mel Thom (Environmental Health Specialist) was absent. The attorney for the respondent applicants said that due to a medical procedure this morning, Jim Bay from the City of Sequim was not in attendance. All other participants were present.

Mr. Tharinger explained that the Board would like to hear a brief report from the staff, then they would like to hear from the appellant, then hear from the opponent. The Board will also provide a period for rebuttal. Mr. Tharinger asked that the process stay brief with pertinent facts. The Board has a packet that included a staff report and an extensive record regarding the issue.

Andy Brastad provided the Board with a memo (in their packet) regarding the appeal of the waiver. The focus is that the appellant believes that the Health Officer erred in the interpretation of the WA State On-Site Code in approving a waiver to the requirement that a reserve area be identified on the septic system plot plan as part of the permit application. Andy explained that the parcel in question is within the City of Sequim. As part of the appeal process, Mel Thom, spoke to Jim Bay about the availability of the City Sewer. Mr. Bay gave Mel a verbal response that the system would be available in about a year. The County received the waiver application. The application went to Dr. Locke. Following the fundamental intent of the code, Dr. Locke reviewed the waiver for public health issues. In this case, the issue has to do with protecting surface water, ground water and preventing public exposure to infectious waste. In order to mitigate the absence of a reserve field, the County looked for enhanced protections and a way of dealing with a potential system failure. Dr. Locke said that this was not a typical waiver, but it was a request to consider using the availability of city sewer (sometime in the near future), some enhanced system design characteristics (rather than the simple gravity system that the site would legally support, a timed dosing and pressurized distribution system). A very important consideration from Dr. Locke's standpoint was the applicant's willingness to hook up to the city sewer system when it became available. Other issues considered by Dr. Locke were the soils on the site are favorable for on-site sewage system installation, which is also a favorable predictor working against system failure. Dr. Locke agrees that the date of the system being available is lacking and is a reasonable concern. There are some unresolved issues about lot size that the County was not aware of when the waiver was granted.

Dr. Locke reviewed the options before the Board:

- 1) Affirming the decision and leaving the permit as is
- 2) Affirming the decision and correcting the technical error in the permit process (due to multiple WACs being waived – not just the WAC requiring the reserve field to appear on the plot plan)

Additional mitigations could be required, such as an Operation & Maintenance agreement as part of the waiver, provide a Notice to Title that this was a system that has no reserve field so if it were to fail it could only connect to a community sewer system or vacate the premises, or have the property owner sign an agreement requiring that the residence be vacated in the event of an on-site sewage system failure until the connection to the community system is complete.

- 3) Reverse the waiver decision and void the waiver and on-site sewage permit

Gerald Steele, Attorney for the Appellant – handed out additional documents to the Board members: a more readable copy of Exhibit 94, WAC 246.72 pages 7A through 7F to insert into the packet, page 115 to end and pertinent to the annexation of the John Wayne Marina, a copy of Mr. Steele's additional comments for today, plot of the parcel (page 67A) in question. In addition Mr. Steele said that he had not received attachments to the staff memo.

Mr. Steele said that his clients have shellfish beds that are just below the property that could be polluted if there were problems with the property.

The first major issue has to do with the application (page 66) and it being misrepresented as 0.55 acres when actually the plot (page 67) is 15,000 square feet. Mr. Steele said it should be considered a material discrepancy by the applicant. The other part of the property being misrepresented as his own, is property that he sold to the Port of Port Angeles in 1980. In 1992 the Port of Port Angeles annexed the property into the City of Sequim. In 1996, when the property was still in the Clallam County jurisdiction, there was a re-division of 2 other parcels that Mr. Bolster owned, and he made the same misrepresentation to Clallam County claiming that he owned property that he didn't. Had Mr. Bolster represented the land appropriately, the County would not have allowed the re-division. In Clallam County Code, there is a regulation that says if

anybody wants to get a septic system permit, after there has been a division of land that doesn't comply with the Clallam County Code, then it is a requirement that in order to get the septic system permit, the person has to get approval from the Board of County Commissioners. The Clallam County Health Regulation 4.170 says if there are any County Regulations that are more restrictive, that you have to meet the County Regulations too. The accusation is that the Health Official, by Clallam County Code 29.47.200, had to go to the Board of County Commissioners, but didn't because of the misrepresentation of the property size. So the error by the Health Official was done erroneously.

The next issue is the material error in the application. The problem was that when Mr. Bolster came in for his application, he said he had .55 acres and that he met the requirements of the minimum land areas to get a septic system permit for this land. Because the documentation is wrong, it was not clear if they were able to comply with "method 1" or "method 2" (pages 7B-7D) to determine if you have a big enough lot. But that information wasn't considered due to the misrepresentation.

The third issue is the error for guarding the reserve field (extra land set aside so that if main field fails, the owner has other options). Mr. Steele said that he is also a civil engineer and knows that almost everywhere in the County reserve fields are required. Reserve fields are used to allow the original field to rehabilitate and then both fields are then used to solve the problem. A reserve field is an important issue. He said he feels the issue is too loose about then the city will have a sewer available. A letter from Jim Bay says that a sewer will be available at a later date. The city sewer discussion began in 1970 and said it would be available by 1990. The city and annexation said the sewer would be available in 2002 and now it is said to be available at a later date. Mr. Steele said that he believes it could take a lot longer and doesn't think the County should rely on that and should make them keep their reserve field. He suggests that the alternative is to allow them to build a house that is designed to be added onto, live in the existing house with the original field (keeping the reserve field) until the city sewer is in and then expand the house to full size.

With the waiver issue, a waiver application was made to not have to plot the reserve field on the application. There are six or seven other code sections that no waiver was requested. There has been no application or process for a waiver. There has been no opportunity for public comment and they all deal with the actual installing and saving room on the site for a reserve field. So Mr. Steele said that he does not believe that the Board of Health can make a technical correction and waive all of the other sections at this appeal hearing, when there was never an application to waive them. His feeling is that the decision should be reversed and further studied and a new application should be required.

Craig Miller, Attorney for the Bolsters - said the Board should recognize from comments made earlier by staff that there was input to staff beyond the letter from Mr. Bay. The staff report says that a conversation occurred between staff and Mr. Bay that formed the material part of their decision in regards to the issue of apparent availability of the city sewer. Because neither Mr. Thom and Mr. Bay are not present, Mr. Steele suggested having both parties submit their comments in writing. Mr. Tharinger agreed.

Issue that the Health Department needs approval by the Board of County Commissioners: said there was a recent variance proceeding which occurred in front of the Board of Adjustment in Sequim and then in front of the Sequim City Council. In both hearings, issues concerning the validity of this piece of property as a lot within the City of Sequim were discussed. The City of Sequim determined that the lot was a valid lot because they granted a variance in regards to certain land use aspects as opposed to the septic aspect. That decision has been appealed by the same parties appealing this decision. As for the validity of the lot, shall be resolved in that litigation. Mr. Miller said that because of that, this is no longer an issue within the jurisdiction of Clallam County or of the Clallam County Commissioners. The validity of the septic permit is the only piece in the Clallam County jurisdiction. Not the validity of the lot, the size of the lot, the existence of the lot, the legality of the lot, are no longer issues for Clallam County, but rather the City of Sequim. Therefore the issues raised on Mr. Steele's letter are basically both irrelevant and outside the jurisdiction of the County Board and should not be able to be considered in regards to this appeal.

The issue in regards to the material error in the application is an issue that County Staff need to address (the question of whether or not the error is material). Materiality means not that there was an error, but that for some reason that that error has some significance. Can staff answer

whether or not they had been aware at the time, that the lot was 15,000 square foot rather than the larger size lot, would that make a difference to the analysis of whether the septic permit should or should not be issued.

Regarding not applying for waivers: needs to be defined as “material” or not. Mr. Miller said there is not any undo prejudice or issues that can be raised there.

In summary the two issues are: whether staff feel the difference in square footage was “material” and the availability of the sewer by the City of Sequim.

Andy said that Mel Thom worked with the designer on this particular lot to confirm what the soils were (soils determine what the lot requirements are). Andy said that on the permit application, the designer has determined that the top layer of soil (page 28) is a Type 4. The second layer at about 17 inches is a Type 2-A. At about 14 inches in the 2nd test pit is a Type 4 and then below that is Type 2-A. According to the application, the design is from soils on the lower layer of 2-A (sands). On the minimum land area requirement, the soil types are listed as 2-A and 2-B if you are on public water supply, you need 12,500 square feet. If you are on an individual well, you need a larger lot. According to the application, the water system is a public water supply “John Wayne”, in which case you would need 12,500 square feet minimum land area requirement. Dr. Locke agreed. He also said that staff were using the Method 1 analysis.

Mr. Steele said that with the change in land size, there should be another look taken at this more carefully. Usually, the side walls and bottom walls are also counted. If the system was designed on all of a Type 4 based soil, then it was designed incorrectly if all sides were used. If sides weren’t used. He believes another look should be taken on how the calculation was done. It also might be sensible to require a test pit (page 28) that characterizes where the leach lines are going to be.

Dr. Locke said that the most important thing is that the soils are representative of the lot. You want to not disturb the area that you are going to construct the drainfield in, as little as possible. So, if you were to have test pits every foot, you would know exactly what the soils were, but you would have also destroyed their utilities as a drainfield. Dr. Locke said he would have to hear an argument that said that the test pits used were not representative of the entire bluff.

Mr. Steele said he agreed that doing two pits (as were done) is a typical behavior if you have a reserve field. But if you are going to waive the reserve field and you don’t have any backup, he feels the soils and calculations should be studied a little more carefully.

He said that he agreed that Mr. Thom and Mr. Bay should be able to submit something in writing and he should be able to submit a rebuttal to their comments back in writing. He would like to see documents that prove that there will be a city sewer available, not just a statement saying there will be.

It was said that the City of Sequim found the lot to be valid and he doesn’t believe that is really true because the lot is not being challenged in this proceeding because it has been divided in the boundary adjustment. The Clallam County Code says if the lot wasn’t divided following the rules (and this one wasn’t) then the County has an obligation to review and authorize, or not, the septic permit.

Mr. Miller said that there is nothing that the County can do because the lot is now in the City of Sequim and the County no longer has jurisdiction over it. So, because there was a boundary line adjustment and an annexation, it has passed to the City of Sequim.

Terry Bolster said that he didn’t know about the land discrepancy until Mr. Slate did a survey after he sold the place. There is a narrow strip up near the port for the breakwater and when the survey was done on the boundary line adjustment, it was a mistake and we will have to deal with that. Mr. Slate has to correct it, but this whole thing is all about preventing him from building a house on that lot. He said he has the power and water there, and if he had the septic there, he could at least put an RV there. He has owned the property for 30 years and paid his taxes. It is a beautiful lot, but Mr. Slate told him he would rather not have anyone living next to him. In regards to the septic, the lot has the best perk. Mr. Slate (next door) has had his septic for about 40 years and has never needed a repair and no one else around has needed a repair either. It is the best perk in the area.

Mr. Doherty said that Mr. Steele suggested that the County could approve a building permit for a much smaller size building, reserving enough area for the reserve drainfield and then applicant to plan to extend the building once the sewer was available.

Mr. Miller said that that is awkward because it isn't the size of the building that has anything to do with the septic system, it is the size of the demand that is placed upon the system by how many people and what activities occur in the house.

Mr. Steele said that if Mr. Bolster requested the hookup for an RV, there would have enough room for the reserve area. Then when the sewer becomes available, he could hook up to that.

Mr. Chapman asked Mr. Steele about his reference in his letter to the fact that Mr. Steele's clients enjoyed views by looking through the subject property, that a larger house would block their view and decrease their natural environment and further reduce their enjoyment. Mr. Chapman said that what was said today is that there will not be a problem when the sewer comes in, but the issue has been raised that Mr. Steele's clients will have a problem.

Mr. Steele said that he has a legal requirement to show that he (and his clients) are aggrieved. So reasons were pointed out to show why they are aggrieved, but they are only standing on their rights and having them follow the law.

Jeff Hollister (an appellant in the case) said that he has water rights. He and Mr. Bolster applied at the same time with the County for their construction. He went through a very lengthy process with the County, met all of the requirements including a 50 foot setback from the bluff. At the same time Mr. Hollister was being approved, Mr. Bolster was told to stop by Mr. _____. Then Mr. Bolster applied for annexation to the City. Mr. Hollister said that he is stunned that he only has a 17 foot setback from the bluff. His hope is that with all of the steps he had to go through, that the City would request the same of Mr. Bolster.

Al Slate (purchased property from Mr. Bolster) said that perhaps the ultimate effect is that he is trying to stop Mr. Bolster from building, but it is not quite the case. He purchased the property on the representation in the MLS to be prepared as a licensed broker that had one acre of ground, Mr. Bolster has made the misrepresentation that he has an acre of land on a number of occasions. Mr. Bolster is not an innocent party, coming in with clean hands trying to get some relief for a poor guy who somebody else made a mistake that he claims he knew nothing about (saying he didn't know he sold the beach and the bank or the survey had been done by the Port of Port Angeles).

Mr. Miller said that when Dr. Locke commented about two additional conditions relating to an O&M agreement and an agreement requiring a resident vacation with connection. Either one of, or both of those would be more than acceptable conditions to his client in regards to the permit on these properties. Mr. Chapman verified which options he was referring to: options 1, 2, 3 and 4 would all be acceptable. Mr. Miller agreed.

Mr. Tharinger closed the public hearing. He will allow written testimony (documentary evidence, not just opinion) from Mr. Thom and Mr. Bay (with copies to all parties) and rebuttal of those testimonies from each counsel (two weeks for testimony and two additional weeks for rebuttal).

Chris Melly stated that if the Board of Health expands (to seven members) before the conclusion of this hearing issue, the three current board members will be the only members to form the decision of the appeal.

X. OTHER

Mr. Doherty asked Andy if Health & Human Services does anything for Earth Day. Andy responded no.

XI. ACTIVITIES CALENDAR UPDATE

XII. NEXT MEETING AGENDA ITEMS

XIII. PUBLIC COMMENT

XIV. ADJOURNMENT

Mr. Chapman moved to adjourn the meeting of April 20, 2004 at 4:22 pm. Mr. Doherty seconded and the motion carried.

APPROVED AND ACCEPTED THIS _____ DAY
OF _____, 2004.

CLALLAM COUNTY BOARD OF HEALTH

Stephen P. Tharinger, Chair

ATTEST:

Michael C. Chapman, Vice Chair

Rene A. Leonard, Clerk of the Board

Howard V. Doherty, Jr.