



To Protect and Promote the Health and the Environment of the People of Kittitas County

**Mountain River Trails Appeal Hearing
Thursday December 15, 2016**

**Mountain River Trails Appeal
Meeting Minutes
Commissioners' Auditorium
8:00 a.m.**

Present

Board of Health (BOH): Laura Osiadacz, Paul Jewell, Rich Elliott

Public Health: Candi Blackford, Hollie Casey, Erin Moore, Robin Read, Kasey Knutson, Amy Fuller, Tristen Lamb, Will Schwab, Liz Whitaker, Mark Larson, M.D.

Other: James Carmody, 230 S 2nd Street Yakima, WA, Mountain River Trails Camping Association Representative, Neil Caulkins, Kittitas County Prosecuting Attorney

Meeting called to order at 8:43 a.m.

Rich Elliott opened the meeting for the Mountain River Trails Camping Association appeal to the Health Order that was issued in August for health violations.

Neil Caulkins, Kittitas County Prosecuting Attorney, stepped to the microphone and gave a brief update of prior events leading up to the appeal hearing and will show that under county code violations did occur. The health department had received various complaints that resulted in an inspection of Mountain River Trails Camping Association. Upon the inspection on August 10, 2016, the health department observed wastewater from recreational vehicles being dumped directly onto the ground or into buckets buried under ground rather than dumping into the septic systems. These violations are considered to be a septic failure by definition and an immediate health risk. The State Health Department was notified and brought about the information of the Federal Regulation that had to do with capacity for a campground being approximately 30,000 gallons for state campgrounds, and the information on file from MRTCA septic systems was not adequate. The Health Order that was effective August 25, 2016 required the following:

- All wastewater within Mountain River Trails Campground be properly disposed of into septic waste ports
- Any and all buckets or other buried wastewater receptacles must be removed or made inoperable from the site within 14 days of receipt of order

APPROVED

3-7-17

- Within 60 days, Mountain River Trails shall supply a proposal from a licensed engineer that explains the system and its adequacy for Mountain River Trails

Mr. Caulkins also explained that Exhibit "C" is photographs that identified 212 units had violations out of approximately 471 units. The department is working with tenants and owners to correct the violations and Mountain River Trails Camping Association is being cooperative with county to come into compliance. The most recent inspections done on December 8, 2016 showed that about 90 percent of the 212 units in violation have been brought into compliance. Approximately 20 units are still not in compliance, but since some people who own units do not visit the property regularly, it is expected. Per the by-laws of Mountain River Trails, the association is restricted and not able to go on the individual unit's property, but again noted, that Mountain River Trails has been cooperative. Mr. Caulkins noted that the units will be brought into compliance when those people come back and at this time of the year it's slow and most owners are not there. The health department will give them until spring to bring the last remaining units into compliance. The new Kittitas County Health Order Amendment 1 (exhibit "A") has amended the health order as follows:

- All remaining units still out of compliance must be brought into compliance by site owner or onsite MRTCA caretaker by April 30, 2017
- MRTCA will operate, report, monitor, and maintain their onsite septic systems per WAC 246-272A-0270 and engage in a contract with a maintenance company

Mr. Caulkins believes that the Health Order Amendment moots the appeal. Both parties are also in agreement that the last few violations will be fixed by April 30, 2017 and ongoing septic reporting. Mr. Caulkins discussed assessment of costs (exhibit "B") for a total of \$9,626.84. Mr. Caulkins stated that in our code, when the county needs to abate/engage in enforcement actions that those fees may be assessed against the landowner. The invoice is attached as exhibit "B". If the board approves, he will put together final assessment costs and present for approval at next Board of Health meeting. Laura Osiadacz asked if those who manage large septic systems were required to report to health department. Holly Myers noted that state recommended that the department has an ongoing maintenance relationship to make sure the system does not go into failure.

James Carmody, Mountain River Trails Camping Association representative, has been working with them for the last six months. Mr. Carmody stated that the appeal filed noting the two primary components; one of grey water discharge and second an engineering report for the three separate septic systems that are maintained by the association. Mr. Carmody noted that the discharge of grey water from the units has nothing to do with a septic system failure and stated therefore, the MRTCA system did not fail. Each of the three septic systems has been permitted, operational, reviewed and there are no failures. On that component they objected to the engineer reporting piece. On the grey water issue, presented a separate issue they were concerned with. In some respects, the issue is moot based on county's current position. Both sides agree there should not be an engineer's report. He would note that it is not due to there is no grey water discharge, but that there is no relationship requiring this report for an approved permitted system. They would also agree with most of what was handled and expressed with respect to the grey water issue. Mr. Carmody noted that there is an important point they brought the appeal for. MRTCA was formed in 1970 and at that time camp grounds were approved through a process before the Securities Division of the State of Washington. They reviewed it as an off order sale of a security. You have an association that sells membership interest in their association. In that membership you get exclusive rights to each lot. So within this association, each lot in MRTCA is individually owned. They have rules

and the rules make it so the association is limited to what they can do, and believes they are individual matters. Mr. Carmody noted that Mountain River Trails Camping Association has not caused any grey water discharge and does not own any of the units. The association is limited to the role they play. Mr. Carmody stated that their role was to notify, facilitating, cooperating and working with the county to bring those units into compliance. That is what they did. The problem with the order is that it is on the association obligations to terminate third party uses and activities and they cannot do that. What they can do, is post notices on the website, try to enforce regulations, contact owners. The use rate is 30-40% on a busy weekend. Mr. Carmody stated the following concerns with the amended health order:

- Health Order states MRTCA sites still out of compliance will be brought into compliance either by site owner or onsite MRTCA caretaker, but MRTCA does not have a legal right to do this

Mr. Carmody would like that clarified as they cannot go onto the property.

- Health Order states that MRTCA will provide annual operation and maintenance reports to the health department, but does not believe that reporting should be required

Mr. Carmody stated that the association maintains the septic system and to be in compliance, but does not believe the reporting piece is allowed under the WAC.

Mr. Carmody noted they do agree with the modifications. Mr. Carmody would suggest to not having an amended health order, but instead the board incorporates the items into an order from the board that would link to the appeal. This seems more reasonable.

Mr. Carmody presented the third issue that was presented to him on Tuesday. The suggested assessment of \$9,600.00 against the associations should not be approved as he believes certain processes and procedures were not followed, therefore, making the assessment piece not valid. Mr. Carmody stated that Health Order was issued and they appealed the Health Order and paid the \$500.00. Specific language states that when there is an appeal there shall be no enforcement allowed during this time and no final order can be issued until there is an order from the board. There was a final order issued in September. The process seems jumbled up to him. Final order states they allow for specific enforcement. Abatement process, which is where the county steps in to physically correct an issue, puts liens on properties and collects from property owners. No abatement ever happened so to assess a bill of \$9,600.00 to 471 innocent people, where only a portion might have been the cause of it, does not seem right and does not believe there is any charges for engineering that don't have any legal basis. Mr. Carmody was prepared to come here today and note that all three of his appeal points were sustained and recognized by the department as well as get their \$500.00 filing fee back since there is no legal basis for the fee other than he was told he had to pay it. Mr. Carmody does not believe there is any basis for the assessment. Would like the board to affirm the appeal, make a modified appeal order, and eliminate reporting and assessment. The MRTCA board is committed to working with the county. Mr. Carmody also stated that these are not new matters, but matters that have been ongoing. They have not been problems in the past, but they are problems now. They will deal with it and will work with public health to correct these matters and work with other county departments to correct issues they have found. The remaining 20 units have minor issues. Again, Mr. Carmody would urge the board to affirm the appeal and to incorporate in the order the matters that are contained in the amended order. Mr. Carmody noted the reason for incorporating into an order is that this has in part been presented to you as a part of a resolution, and a basis for making the appeal moot. The second reason is that if the order is issued separately he would have to file a second appeal that would raise the questions he just raised about reporting, and does not know how to tackle the assessment piece. Mr. Carmody states the assessment piece has no legal basis and should not be charged. Paul Jewell has a couple questions and this is a little unusual when an appeal comes forward when both parties agree that a large portion of the substantial issues has already been dealt with. Commissioner

Jewell asked Mr. Carmody that since a lot of the work has been done and most of the issues are moot at this time, Mr. Carmody is asking for some sort of relief for the MRTCA board association. Mr. Carmody stated that he would like clarification that the role of MRTCA is one of cooperation support. The association does not have any legal right to go onto the individual lots and remove it unless they go to court and find some legal basis, which he is struggling to find and get a court order. Paul Jewell asked if the campground was one parcel or individual parcels. Mr. Carmody replied it is a campground on one large parcel the association owns with exclusive rights to possession through a membership. Commissioner Jewell clarified that the association maintains the ownership of the underlying property. Commissioner Jewell clarified that the association has sold exclusive rights to a certain parcel in the campground. Commissioner Jewell noted that the county would recognize it as one tax parcel. There was a discussion for clarification about MRTCA rules/rights vs. someone leasing a place. Mr. Carmody noted that the Securities Division drives the rights and responsibilities at the time of approval and he has yet to see those documents. Commissioner Jewell asked Mr. Carmody in his opinion if the association is not responsible, are the individual unit owners themselves responsible. Mr. Carmody responded that he does believe that the individual lot owners are responsible. There was discussion about the association working with the county to notify all the owners. Rich Elliott asked about a statement he made about some of the issues have been ongoing and asked if the association would concede that they were aware that discharge was being dumped into buckets buried in the ground under their RV's, and not hooked up to the septic system over a period of 40-50 years. Mr. Carmody noted that there is no connection to the septic systems, but use of a blue boy that you dump into. Mr. Elliott noted that the association knew about this and Mr. Carmody noted yes, but so did the county. Mr. Carmody noted that this was looked at. Commissioner Jewell asked Mr. Carmody if there was any record showing the county looked and approved without doing anything about it. Mr. Carmody stated that there is mostly anecdotal stuff as the county doesn't have record of this to his knowledge. There is some reference about 2-3 years ago; Lindsey Ozbolt was out looking at some things before she left. From what he has been told most of these things were put in place about 20 years ago and operating. He described the system, a hose that comes out that drops into a bucket with holes that filters stuff out. Commissioner Jewell asked if Mr. Carmody was aware that there was black water, not just grey water on the ground. Mr. Carmody stated that he was not aware of black water. Commissioner Jewell noted that when he looked through the notes, there were several references to black water, not just grey water, being dumped in the same fashion. Laura Osiadacz asked how many septic systems MRTCA has, and Mr. Carmody replied with three owned by the association. Commissioner Jewell asked if the association imposed an annual assessment to owners. Mr. Carmody stated yes and that takes care of the common area charges and responsibilities, repairs to roads, and water system. Commissioner Jewell asked who is responsible for enforcing the rules in the camp ground. Mr. Carmody replied that the association is responsible for enforcing the rules. There was continued discussion about who is responsible for what within the association, what happens if someone doesn't pay their annual assessment, and the process for which the association would dissolve. The second request about the burden of reporting that the county is requesting, Mr. Carmody, your position is that it is not allowed under the WAC. Mr. Carmody stated that it is not required under the WAC. It states you will maintain contracts for periodic maintenance of the system. So they have an obligation to do that, it's just the reporting piece. There was discussion about the January 31st, date and not sure if board can meet that deadline due to winter. Mr. Carmody is also not aware if they have a current contract or they just contact someone once a year to provide maintenance on the system. This amendment information was received on Tuesday afternoon. Commissioner Jewell noted that Mr. Carmody was questioning the assessment and alleged it was not consistent with county code. Mr. Carmody stated that there was no legal basis for this.

Mr. Carmody discussed cost recovery language. Commissioner Jewell noted that Kittitas County Code 13.75.060 that deals with abatement. There was discussion amongst the group about the recovery language in the ordinance. It was discussed about the processes and procedures for health orders, appeal, and in that language it is noted that a final order process takes place 20 days after board makes decision, enforcement options, and abatement.

Mr. Caulkins stepped to the microphone and again discussed the roles and responsibilities required with amended health order. The remaining 20 camp sites to be corrected by April 30, 2017 or the county will go in and fix the issues. Mr. Caulkins is ok with having an order from the board and not having a health order, but is not saying the subject they were appealing about is correct. The board may be able to provide some clarity to MRTCA. Continued discussion about who is responsible; the association or individuals. The notices of the health order and sent out. The only one who appealed the health order was MRTCA. Paul Jewell asked if the Health Order was directed at MRTCA. Mr. Caulkins stated that the campground is one parcel so it was addressed and treated as such. Mr. Caulkins stated that the county was not aware of grey water being dumped on the ground until the inspections occurred late this summer. The various permits that we have for the septic systems talk about a septic system for a lodge or a bathroom, but it does not specify that it is for 470 some lots. Mountain River Trails, as far as the county is concerned, was a dry campground. Mr. Caulkins lastly noted that the assessment piece depends on language, but does think it is justifiable under code. The group then discussed the definition of abatement and violation processes and procedures with other programs. Holly Myers clarified that most of the programs have re-inspection fees and if there is no re-inspection fee, there is an hourly rate. Commissioner Jewell discussed the assessment piece and at this time there is no MRTCA final order. Mr. Caulkins again let the commissioners know the processes that have led up to this point. Commissioner Jewell stated that the cost associated with abatement is the cost of county going in and taking care of the issue, not cost of noticing and inspection costs. If MRTCA does not comply by order date, then the county can abate. Mr. Carmody stated they do not need an affirmance and noted that an order could be prepared that incorporates the requirements of the amended orders. Laura Osiadacz asked why there was a timeline in the Health Order. Holly Myers responded that there is a timeline to give MRTCA adequate time to report on actual use for full septic volume. The appellant is not asking for affirmation of appeal.

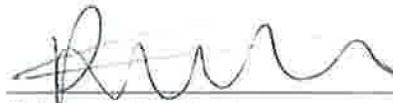
At this time the board discussed the processes and procedures for an appeal hearing.

Motion 12-01: Motion to continue the hearing for board deliberation and possible board decision until January 12, 2017 at 10:00 am in the Commissioners Auditorium. Commissioner Jewell motioned to continue the hearing for board deliberation and possible board decision until January 12, 2017 at 10:00am in the Commissioners Auditorium. Laura Osiadacz second. All approved. Motion 12-01 carried to continue the hearing for board deliberation and possible board decision until January 12, 2017 at 10:00am in the Commissioners Auditorium.

Meeting done at 9:56 am



Paul Jewell, Chair of the Board of Health



Robln Read, Administrator,

Kittitas County Public Health

A handwritten signature in blue ink, appearing to read "Candi Blackford". The signature is written in a cursive style with a large initial "C".

Candi Blackford, Clerk of the Board of Health