



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

**Mountain River Trails Appeal Hearing
Thursday January 12, 2017**

**Mountain River Trails Appeal
Meeting Minutes
Commissioners' Auditorium
10:00am**

Present

Board of Health (BOH): Laura Osiadacz, Paul Jewell, Rich Elliott, Obie O'Brien

Public Health: Candi Blackford, Holly Myers, Robin Read, Mark Larson, M.D., Mary Lynn Young (medical student)

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

Paul Jewell called meeting to order at 10:02 a.m. and it was noted that Obie O'Brien would not be participating as he was not present at the prior hearing.

Paul Jewell opened the continuation of Mountain River Trails appeal hearing. Commissioner Jewell noted that where the group left off, there was an appeal that was a moot point and ongoing discussion about a few remaining issues:

- Who was attached to liability for corrections at Mountain River Trails
- Reporting requirements that were being objected by the appellant
- Assessment piece that is also being objected by the appellant

There was also discussion about how to handle the appeal, because it seemed like there was significant agreement between the county and Mountain River Trails, and that a lot of cooperation had occurred. There were questions as to how to handle the appeal. Is it upheld, overturned, denied, or does the board need to issue a new health order on the part of the Board of Health? There was no decision at the end of the last meeting and those are the pieces that need to be dealt with today. Commissioner Jewell asked the board how they would like to proceed. Rich Elliott noted that he would like to tackle this issue, by issue.

Commissioner Jewell started with the first issue of liability for the violation. The county has attached the liability jointly to the association and lot owners. Commissioner Jewell noted that the county believes the association/landowners bear the responsibility of the abatement.

Commissioner Jewell believes that if it's the position of the appellant, which they are limited in their rights to enforce, or enter onto the property through a membership agreement that they have. They therefore, should not be responsible for the ultimate abatement, but the individual members themselves. Commissioner Jewell asked for discussion. Mr. Elliott stated that if it is legal to hold the landowner responsible, as it is not practical for the county deal with each individual lot owner. Laura Osiadacz would like the thoughts of legal to note whether or not it is lawful to hold the landowner responsible. Commissioner Jewell noted that it is legal, and it is the county's position to hold the landowner responsible. Commissioner Jewell did research code 1375.020 Service of Health Order sub 4 states the following:

It is unlawful and a violation of this title for any person, firm, or corporation found guilty of having created or suffering to exist on premises either owned or leased by them any violation defined herein. Owners remain liable for violations of duties imposed by this chapter even though an obligation is also imposed on the occupants of the premises, and even though the owner has, by agreement, imposed on the occupant the duty of complying with this chapter. Successive property owners are liable for abatement of violations created by their predecessors in interest. No right can be acquired to continue a violation by virtue of its longtime existence. It shall not be necessary to show that the owner participated in, or was even aware of, the code violation in order to hold him/her liable. (Ord. 2011-006, 2011)

That code talks about the owner of the property and we have one owner and one parcel. In the MRT agreements for use and limit enforcement is really the problem of the association and not the county. The county asked for specifics and asked for legal basis for the appellant's position and there was none provided at the hearing. Commissioner Jewell noted that in his opinion, the county holds them responsible. The code allows the county to abate eventually and that code also talks about that responsibility being the landowner. When you look through county code, it's clear that it is the landowner that is responsible. Any leases, rental agreements, and membership agreements are inconsequential. If they cause an issue for the association, it is the association's matter. Mr. Elliott and Commissioner Osiadacz were in agreement with that.

Commissioner Jewell moved to the next issue which was reporting. The most current reporting requirements in Amendment 1 accordance with WAC 246-272A-0270:

- Securing and renewing contracts for periodic maintenance, and submitting evidence of such contracts to KCPHD by January 31, 2017
- A complete evaluation of the 3 onsite septic systems serving as RV waste ports, to determine functionality, maintenance needs and compliance with regulations and permits at least once every three years; evidence by a licensed septic service provider must be provided to KCPHD by January 1, 2020 and again by January 1, 2023
- Annual operation and maintenance reports including all pumping records must be provided to KCPHD annually through January 1, 2023
- Any failure of any onsite septic system must be immediately reported KCPHD

Commissioner Jewell stated that he believes the appellant was objecting to these requirements because he believes there was not specific requirement that obligates them to these reports.

Commissioner Osiadacz noted that we are all here because of some practices that occurred and created an unhealthy situation. The reporting requirements are not unreasonable and as long as they comply, and reports are satisfactory, they can do away with these requirements after 2023.

Mr. Elliott also agreed that these were reasonable requests. Commissioner Jewell looked at WAC 246-272A-0270 and did not find any prescriptive authority that says you need to report these requirements to the local health department/jurisdiction, but there are several places where these requirements are lifted right out of the WAC and are followed with: “where required by the local health department/jurisdiction”. Commissioner Jewell noted that he believes that the WAC allows for enough flexibility and could be interpreted that the health department can require these types of reporting requirements and supports keeping this requirement.

The last item up for discussion was the assessment for \$9,626.84 to be assessed jointly and severally against MRT and its membership and the appellant objects. Mr. Elliott noted that he does not think this is out of line with the regular practices of public health with re-inspection processes. Commissioner Osiadacz briefly discussed and asked for clarification from the last meeting about the timeline and when it was appropriate to start charging for staff time. Commissioner Jewell reviewed Kittitas County Code 1375.060 that deals with abatement and the processes. The code does specify that the county does have to go in and abate, and does not consider the process for notice and inspections like the work that has been done here, and believes that is the appellant’s argument. The county’s argument is that while it does talk about abatement, there is one line that is a little more general that they are relying on. Commissioner Osiadacz stated that she would be against the assessment piece due to not enough clarification in code. Commissioner Jewell sides against the assessment piece, not because he doesn’t think we should charge, but because our code does not allow us to. Commissioner Jewell believes that the appellant is correct that in code 1375.060 considers abatement costs only in the case of Health Order or other abatement is required for follow through. The county would be correct if done under title 18 action, but this is not the case. Commissioner Jewell will side against the assessment with Commissioner Osiadacz. Commissioner Jewell also noted that the county could change the code and does not think it is unreasonable to do so, especially when there is a large violation. Commissioner Jewell asked how the board moves forward with appeal. Neil Caulkins, Kittitas County Prosecuting Attorney, stepped to the microphone and noted that a decision on the appeal makes the most sense. James Carmody, Mountain River Trails Representative, agreed.

Commissioner Jewell asked the group to take action on the following:

- Violations are responsibility of Mountain River Trails Association: Commissioner Jewell noted that the board will deny the appeal with regard to this issue.
- Reporting requirements that were presented in Amendment #1: the board will deny the appeal with regard to this issue.
- Assessment of \$9,600.00: the board will affirm the appeal and have staff prepare enabling documents to memorialize that decision.

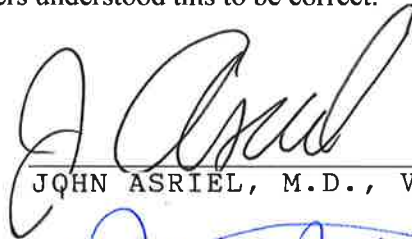
Commissioner Jewell asked for a motion.

Motion 01-01: Motion to deny the appeal with regard to overturning liability and it will remain attached to Mountain River Trails Camping Association as the landowner; deny the appeal with regard to reporting requirements as issued in the Heath Order Amendment #1; and affirmed appeal in regards to the assessment of \$9,600.00. Rich Elliott moved to deny the appeal with regard to overturning liability and it will remain attached to Mountain River Trails Camping Association

as the landowner; deny the appeal with regard to reporting requirements as issued in the Heath Order Amendment #1; and affirmed appeal in regards to the assessment of \$9,600.00. Laura Osiadacz second. Obie O'Brien abstained. All others approved. Motion 01-01 carried to deny the appeal with regard to overturning liability and it will remain attached to Mountain River Trails Camping Association as the landowner; deny the appeal with regard to reporting requirements as issued in the Heath Order Amendment #1; and affirmed appeal in regards to the assessment of \$9,600.00.

Mr. Carmody stepped to the microphone and clarified the appeal was for the August 22, 2016 order and the amended order came in as a part of the submission of the prosecutor's office and would like there to be clarification of the decisions that are based on the amended health order and that the engineering report has been removed in the amendment. All board members understood this to be correct.

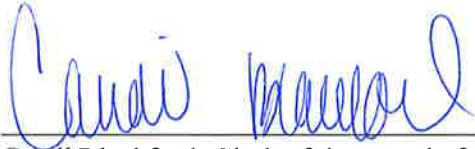
Meeting done at 10:27am



JOHN ASRIEL, M.D., Vice Chair



Robin Read, Administrator,
Kittitas County Public Health



Candi Blackford, Clerk of the Board of Health