

# GRANT COUNTY

County Courthouse  
P.O. Box 37  
Ephrata, WA 98823  
(509) 754-6060



# HEALTH DISTRICT

1038 W. Ivy Avenue  
Moses Lake, WA 98837  
(509) 766-7960

## BOARD OF HEALTH

July 11, 2007

7:00 P.M.

The meeting was called to order at 7:00 p.m. by Mr. Wanke with the following members, staff and guests present.

### MEMBERS

Raymond Kelby – Wilson Creek  
Clay Richmond - George  
LeRoy Allison – Commissioner  
Manuel Guerrero – Quincy  
Cindy Carter – Commissioner

Troy Ritter – Electric City  
James Liebrecht – Moses Lake  
Richard Stevens – Commissioner  
Mark Wanke – Ephrata

### STAFF

Dr. Brzezny – Health Officer  
Peggy Grigg – Administrator/PH Director  
Jerry Campbell – EH Director

Pattie Anderson – Chief Deputy  
Jim Whitaker - Attorney

### ABSENT

### GUESTS

Launi Ritter – Electric City  
Crystal Doucette – Columbia Basin Herald

Jeff Luce – Best Western Inn - Ephrata  
Ray Towry – City of Ephrata

### APPROVAL OF MINUTES

The minutes of June 13, 2007 were approved as written (M/S Stevens/Kelby – unanimous).

**PUBLIC FORUM FOR CITIZEN'S COMMENTS AND APPLICATIONS** - None

## **BOARD OF HEALTH**

**July 11, 2007**

**Page Two**

### **ENVIRONMENTAL HEALTH REPORT** – Jerry Campbell

**Ordinance 2007-1 Fee Schedule** – Mr. Campbell reviewed the changes proposed in the fee ordinance which was discussed at last month's meeting. A motion was made to adopt Ordinance 2007-1 (M/S Stevens/Liebrecht – unanimous)

**Ordinance 2007-2 Water Recreation Program** – Currently the Health District has no ordinance. Mr. Campbell reviewed the ordinance which had been discussed at last month's meeting. The ordinance had been distributed to the board members. The District had received one written comment from the City of Ephrata which was presented to the board. A copy of the pool and spa checklist was also handed out showing which critical violations would cause a closure of the facility.

Mr. Ray Towry from the City of Ephrata was present and indicated what issues the City had with the ordinance. The checklist clarified some of the issues while there was still concern with the wording in other areas. The appeals process was explained and discussed at length. Also discussed were some of the items listed on the checklist that were regarded as critical, such as water clarity, safety, etc.

It was decided to table the adoption of the Water Recreation Program ordinance until next month so that adjustments can be made regarding the wording of the document to improve the clarification of the issues addressed (M/S Stevens/Liebrecht – unanimous).

**Septic System Ordinance** – Mr. Campbell had previously discussed the changes that went into effect on July 1, 2007. Each board member received a copy of the proposed Health District Ordinance. Mr. Campbell again went over the highlights of the proposed ordinance and pointed out items that were not included in the state regulations. Mr. Campbell requested that a public hearing be held next month to adopt the Ordinance. Mr. Allison inquired as to which items the District added to the state regulations. It was decided to underline the Health District's additions. Mr. Campbell informed the Board again that the Ordinance had been approved (in writing) by the state. A motion was made to hold a public hearing next month to adopt the ordinance (M/S Liebrecht/Allison – unanimous).

**Food Inspections** – The food inspection reports for June had been distributed to the board

**Signing of Plats** – Dr. Brzezny discussed his interpretation of the RCW's and WAC's stating who is responsible to sign off on plats. This has been an issue since 2002. He also read from the Unified Development Code of Grant County regarding the Health District's involvement. His feeling is that the Health District should testify as to the quality of the water only, but not the quantity. According to the current law we should not be signing off on plats. Senate Bill 5145 was introduced in 2003 to try to address some of the issues involved, but failed, so the law remained the same. By continuing to have the Health District sign these plats, it puts the District at greater risk in which we have no resources to deal with the legality issues involved. Perhaps the UDC should be changed to say we testify to the quality of water only.

Mr. Liebrecht agreed with Dr. Brzezny in that we should not be signing off on plats and to let the other entities deal with the situation.

## **BOARD OF HEALTH**

**July 11, 2007**

**Page Three**

Currently the Department of Ecology has not enforced the rules and it is not known if they ever will.

Mr. Whitaker informed the Board that Mr. Hallstrom still has not responded to his letter regarding the county's position regarding this issue. He prefers to wait until hearing from him to make any decisions.

The conflict of interest issue arose again with Mr. Allison making a motion to suspend the relationship with Lemargie and Whitaker law firm until such time as other legal counsel can decide on the possible conflict issue (M/S Allison/Liebrecht – discussion).

A very lengthy discussion was held regarding conflict of interest, including the actual definition of this term. Some of the board members felt there was a conflict while others did not. Mr. Whitaker is legal counsel to the Health District thus protecting the District's interests. If he feels a conflict arises, he will step aside and advise that we obtain outside counsel. Mr. Allison stated that he has talked with other attorney's and they also feel there is a conflict. There have been articles in the paper regarding exempt wells and is concerned about the changes, which appear that the Health District and others are promoting.

Dr. Brzezny read the State Supreme Court's (Rules of Professional Conduct) definition of conflict of interest which was: (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

Dr. Brzezny inquired as to whether the motion meant suspending all of Mr. Whitaker's duties or just the water issue? It was determined that the motion was open ended and did not just specify the water issue.

Mr. Liebrecht and Mr. Stevens vocalized their concern regarding the conflict of interest and agreed with Mr. Allison regarding this issue. Mr. Stevens stated that he was informed approximately a week ago that Mr. Campbell stopped signing plats altogether, but that possibly there was a breakdown in communication.

Mr. Whitaker asked Mr. Campbell if he had ever instructed him to not sign any more plats. Mr. Campbell responded that Mr. Whitaker never told to stop signing them, he was proceeding as usual.

Mr. Whitaker also asked the commissioner's to identify the client who has a conflict with the Health District that he or his office represents to comply with RPC 1.7. Mr. Stevens stated that the client's who represent those cities has a conflict of interest. If they believe that none of the cities have a conflict with the Health District, then there is no conflict of interest since this is the conflict that has to exist. One of the cities whom Mr. Whitaker represents must have a position adverse to the Health District, which he is unaware of any at this time. Consequently, there is no conflict under the rules of professional conduct. Since the county isn't Mr. Whitaker's client, this conflict is absent as well.

Mr. Whitaker has been trying to get this resolved quietly with Mr. Hallstrom and believes it can still be resolved, but a response is needed in order to do so.

## **BOARD OF HEALTH**

**July 11, 2007**

**Page Four**

More discussion was held with the original motion being brought up again. Mr. Ritter stated that the motion did not specify to suspend Mr. Whitaker from just the water issues, but everything else as well. This was the consensus of the Board and Mr. Allison stated that someone could amend the motion.

Mrs. Grigg asked for clarification that the Board is not satisfied to accept the state Supreme Court's definition of conflict of interest?

Mr. Liebrecht stated that the Supreme Court has attorneys, and that he deals with the Association of Washington cities that also have attorneys with a different interpretation of conflict of interest.

The person who can answer the conflict of interest issue is the chief disciplinary counsel of the bar.

Mr. Ritter mentioned again that if the Board does not take legal counsel's advice on matters, then you are on your own financially.

Mr. Allison believes our counsel may be adverse by giving advice that would influence Health District staff not to sign or to consider not signing plats. A revised recommendation letter for water availability proposed by Mr. Whitaker has not been acted on by the Board of Health and is not being used at the present time.

Mr. Whitaker understood the issue to be whether there was going to be any direction given to the Health Officer about continuing to sign the plats. Dr. Brzezny stated that when this issue was raised in 2003, the board directed the staff to continue the signing of the plats. If they want us to continue to do so, we will.

Mrs. Carter asked Mr. Campbell where he received direction to not sign the plats anymore. Mr. Campbell stated that he has never stopped signing them. He would not stop signing them unless directed by the Board. Mr. Stevens said someone came into their office and said the Health District would not sign off on a plat. Mr. Campbell stated it might be an isolated case. In some instances, on a preliminary plat, the developer is supposed to do certain things and when the final plat is presented, if those items haven't been addressed then he will not sign off on the plat.

Mr. Wanke is appreciative of Mr. Whitaker bringing this issue to the Board's attention because there is so much growth going on in Grant County. The water issue is bound to become an issue in the future with all the large developments being planned. He said if it is the responsibility of the DOE regarding this issue, why are we doing it? Mr. Stevens said the DOE does not have the staff to handle this. There would be no growth outside the cities. He also stated that Mr. Whitaker is probably right regarding the Health District's signature on the plats, but something needs to be developed in order for the plats to be issued. The amending of the county's UDC was mentioned again.

Dr. Brzezny believes the staff is facing ethical dilemmas. With all the confusion and controversy surrounding this issue for the past 4+ years, if it takes 120 days to amend the UDC that is nothing compared to what has been happening the last several years.

## **BOARD OF HEALTH**

**July 11, 2007**

**Page Five**

Mr. Allison said before he was a commissioner, the Health District E.H. person was determined to be the county sanitarian and would be the person who signed off on the plats. It isn't the Health Officer, but the county sanitarian. His supposition is that there was probably money attached to this arrangement. The county didn't have a sanitarian, needed one and therefore the E.H. staff person started signing the plats. It now appears that the E.H. division is self supporting and if necessary, the county could determine another county sanitarian which would be damaging this Health District board if the county established its own entity. He prefers not to go there, but this is something that needs to be on the table when we talk about voting on whether or not Jerry should be signing letters of recommendation or on the Mylar's themselves. Somewhere in the history it was established where the sanitarian started signing off on the plats.

Mr. Whitaker explained that in August of 1969, under the previous statute there were not nearly as many requirements on cities and counties in approving plats when it came to the water. In the mid 70's the Health District provided the "sanitarian". Someone had signed the plats on the previous law from the Health District which they didn't do a very good job of reading that it is only a recommendation. They also didn't have the cases of Gwyn vs. Campbell, etc. that have arisen since. So he believes it was a carryover from possibly a time when it was a county Department.

Mr. Ritter wanted the motion to be amended to include "only on water issues". (M/S Ritter/Richmond –discussion). Dr. Brzezny inquired as to whether the conflict of issue was resolved and it was stated that it was addressed in the original motion.

A vote was taken on the amendment to the motion which was the wording "only on water issues" which was 6 yes and 3 no.

The next vote was taken on the motion to suspend the relationship with Lemargie and Whitaker law firm only on water issues until such time as other legal counsel can decide on the possible conflict issue – unanimous.

### **PERSONAL HEALTH REPORT** – Peggy Grigg

**Personal Health Report** - Mrs. Grigg is going to defer until next month to present the 2<sup>nd</sup> quarter report. Both the Persona Health and Environmental Health reports will be a month later (ongoing) due to the difficulty in gathering all the data necessary for the report. If anyone needs information, sooner they can contact either Mrs. Grigg or Mr. Campbell.

### **HEALTH OFFICER'S REPORT** – Dr. Brzezny

Dr. Brzezny asked if the Board wanted him to direct staff to research the issue regarding the conflict of interest. Do they want a letter sent to the state Bar Association? Mr. Whitaker suggested that the letter state that it is a multi-jurisdictional public board that have members of public entities and that their firm represents some of these city entities and that the county entities are sitting on the board as well. Also included should be Mr. Allison's synopsis of his position so they can review it and see if it meets the definition.

**BOARD OF HEALTH**

**July 11, 2007**

**Page Six**

When this decision is made, then the matter is settled. This was the consensus of the Board.

**Salmonella** – We have enough documentation gathered to say that we have an outbreak of salmonella in the county. This is a very rare type of salmonella. In 2001 only 17 cases were reported in California. We now have 7 cases in Grant County alone since February.

People went to the same facility and became ill. This has been happening over a period of months. A commonality is still being researched and just now a connection is being made. People have been recovering fine. The District is still following several leads. The Health Officer may possibly be issuing certain orders to people and facilities. The investigation continues.

Dr. Brzezny also thanked the Board for the discussion that took place and the manner in which the members conducted themselves tonight, and hopefully the issue will be resolved soon.

**APPROVAL OF VOUCHERS**

The vouchers for the period ending June 30, 2007 totaling \$217,037.83 (#1-#4 totaling \$123,932.17) and (#5-#77 totaling \$93,105.66) were approved (M/S Ritter/Stevens – unanimous).

**OTHER BUSINESS**

Mr. Wanke thanked Dr. Brzezny for taking time during his vacation to attend the Ephrata Lions Club meeting to present the Jr. Joggers from Grant and Columbia Ridge Elementary school for their participation in their running program. He explained the total miles ran, how many shirts were given out, when the children ran, etc. The program is hoping to expand to the New Life Christian School and St. Rose of Lima as well.

A motion was made to adjourn the meeting at 9:30 p.m. (M/S Stevens/Ritter – unanimous).

The next meeting is scheduled for August 8, 2007 at 7:00 p.m. at the **Ephrata City Hall** meeting room in Ephrata.

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Mark Wanke, Chairman Board of Health

ATTEST:

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Alexander Brzezny, M.D., Health Officer