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Before the Hearing Examiner for Okanogan County, Washington

IN RE APPEAL OF THE JUNE 16, 2020,
PRELIMINARY APPROVAL OF VAUGHN
JOLLEY SHORT PLAT 2019-9

No. _____

**Notice of Appeal Under
OCC § 16.45.010**

I. Introduction and Notice

As authorized by Okanogan County Code (OCC) §16.45.010, Methow Valley Citizens Council (MVCC) files this appeal of the June 16, 2020, Preliminary Approval of Vaughn Jolley Short Plat 2019-9 by the Okanogan County Office of Planning and Development. As explained below, the Preliminary Approval fails to find that the applicant has demonstrated that the resulting plat will have legally and physically available water. Appellant respectfully requests that the Hearing Examiner direct the responsible official to deny the Application for Short Plat.

A copy of the Preliminary Approval of Vaughn Jolley Short Plat 2019-9 is attached as Exhibit A.

1 **II. Appellant**

2 Appellant Methow Valley Citizen Council’s contact information is:

3 P.O. Box 774

4 Twisp, WA 98856

5 Phone: (509) 997-0888

6 Email: jasmine@mvcitizens.org

7 **III. Applicant**

8 The applicant for the short subdivision approval being appealed is:

9 Vaughn Jolley

10 PO Box 1204

11 Twisp, WA 98856

12 **IV. Standing**

13 4.a Members of MVCC have residences and farms downstream from, adjacent
14 to, and near the proposed Jolley Short Plat and will be aggrieved by the reduction
15 of water available to them from the Methow River, its tributaries, and ground
16 water if the short plat is approved and a new residence is built that is served by a
17 residential well. They are also aggrieved by the impacts of the short plat on the
18 Methow River and the fish, wildlife, and industries that depend on the river flows.

19 4.b Appellant has commented on the Vaughn Jolley Short Plat Application.

20 Appellant’s comment letter is attached as Exhibit B.

21 **V. Basis for Appeal**

1 MVCC appeals the grant of Preliminary Approval for this short plat because the
2 County has not found, and cannot find, that the applicant has legally and
3 physically available water for a second lot or residence.¹ As stated in Appellant’s
4 comment letter on the proposed short plat,²
5

6 “The amended application 2019-9 proposes to subdivide an existing
7 parcel into two lots.
8

9 Proposed Lot 1 has an existing single-family residence served by an
10 existing well and the second lot is proposed to be served with a
11 second permit-exempt well. The proposed lots are in the area
12 identified as the “Lower Methow” by WAC 173-548-020(1).

13 WAC 173-548-030(2)(a) reserves 2.0 cubic feet for per second for
14 “Single Domestic and Stock Use” in the “Lower Methow.” Wells using
15 these reserves are exempt from the water right permitting
16 requirements and have priority over the instream flows. They do not
17 have to be curtailed if the instream flows are not being met in the
18 Methow River or the regulated tributaries. This is important because
19 the instream flows are not met in a typical year. New wells that do
20 not qualify for the reserve are subject to the minimum instream
21 flows and are to be interrupted when instream flows are not met.
22 They may also be interrupted by senior water rights holders who are
23 not receiving the water to which they are legally entitled.
24

25 The Washington State Supreme Court concluded in the *Campbell & Gwinn*
26 decision in 2002 that single domestic use is use “by a single home,” and not
use by several homes, a multiunit residence, or a subdivision. This
interpretation is consistent with Ecology’s report on the Methow Instream

¹ In *Whatcom County v. Hirst*, 186 Wn.2d. 648 (2016), the Washington State Supreme Court held that a county must find that there is legally and physically available water before it can grant a building permit or approval for a subdivision.

² Footnotes omitted. See Attachment B for citations.

1 Flow Rule, which defines “single domestic use” as “[w]ater used by a single
2 household including up to one-half an acre lawn or garden irrigation.”

3 Since the Vaughn Jolley Short Plat proposes to use permit-exempt wells for
4 two lots, two homes, and two households, it is not a single domestic use
5 under WAC 173-548-030.”

6 In contrast to making the required finding of legally and physically available
7 water, the County in Condition 20 merely states that “[e]ach lot must be served
8 by an adequate water supply.” Moreover, Condition 20 refers only to Department
9 of Health requirements for water but does not include Department of Ecology
10 requirements, found in the Methow Rule. This ambiguous condition is insufficient
11 for approval of this proposed short plat, at either the preliminary or final stage as
12 required by OCC § 16.12.040B.3 and state law. RCW 58.17.060 and RCW
13 58.17.110 require that in deciding whether to approve a short subdivision or short
14 plat, Okanogan County “shall determine ... [i]f appropriate provisions are made
15 for, but not limited to, ... potable water supplies”

16 RCW 58.17.110(4) also provides that

17 [i]f water supply is to be provided by a groundwater withdrawal
18 exempt from permitting under RCW 90.44.050, the applicant's compliance
19 with RCW 90.44.050 and with applicable rules adopted pursuant to
20 chapters 90.22 and 90.54 RCW is sufficient in determining appropriate
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1 provisions for water supply for a subdivision, dedication, or short
2 subdivision under this chapter.
3

4 The Methow Instream Flow Rules, Chapter 173-548 WAC, were adopted
5 pursuant to chapters 90.22 and 90.54 RCW. But Okanogan County has not found
6 that the applicant complies with the Methow Instream Flow Rule. In fact, as
7 demonstrated above, preliminary approval of the short subdivision without
8 requiring that the reserves may not serve as the water source for the new lot and
9 any subsequent development violates the Methow Instream Flow Rule.
10

11 Therefore, Okanogan County has failed to find that appropriate provisions have
12 been made for water supply, as required by the Okanogan County Code and RCW
13 58.17.060 and RCW 58.17.110. If the Preliminary Approval is allowed to stand,
14 the subdivision could result in the acquisition of the second lot by a buyer who
15 believes he or she has a legal water supply, when in fact there is no water supply
16 available for a new lot or residence from the Methow Rule's 2 cfs reserve.
17

18 The County apparently approved the proposed Jolley short plat under an
19 exception in its December 2019 Interim Ordinance 2019-11. That ordinance
20 prohibited using the 2 cubic foot per second (cfs) reserves for subdivisions, thus
21 agreeing with Appellant's position that the Methow Rule does not allow use of
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1 the 2 cfs reserve for subdivisions. The ordinance, however, provided an exception
2 for the division of one lot with an existing single-family residence into two lots.³
3
4 Appellant contends that this exception to the prohibition violates the Methow
5 Rule and state law and has so advised the County. In any case, an Okanogan
6
7 County Ordinance cannot legally authorize violations of RCW 58.17.060 and RCW
8 58.17.110.

9
10 **VI. Request for Relief**

11 Appellant respectfully requests that the Hearing Examiner find that the
12 Preliminary Approval for Vaughn Jolley Short Plat 2019-9 is unlawful and reverse
13 the Administrator's decision. Appellant requests that the Hearing Examiner find
14 that Condition 20 must 1) state that water is unavailable from the Methow Rule's
15 2 cfs reserve for single domestic use, and 2) require proof of physically and legally
16 available water prior to final approval.
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19 Respectfully submitted on July 6, 2020,
20

21 

22
23 _____
24 Jasmine Minbashian
25 Executive Director, Methow Valley Citizens Council

26 ³ This ordinance was replaced by Interim Ordinance 2020-4 in June of 2020, which includes the same exception.

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury that on this 6TH day of July 2020, the undersigned caused the following documents to be served on the persons listed below in the manner shown: Notice of Appeal Under OCC § 16.45.010 in Re Appeal of the June 16, 2020, Preliminary Approval of Vaughn Jolley Short Plat 2019-9 and Exhibits A and B.

Pete Palmer, Director of Planning
Okanogan County
Office of Planning and Development
123 5th Ave. N. Suite 130
Okanogan, WA 98840

Administrator
Okanogan County
Office of Planning and Development
123 5th Ave. N. Suite 130
Okanogan, WA 98840

<input checked="" type="checkbox"/>	By United States Mail, postage prepaid and properly addressed
<input type="checkbox"/>	By Legal Messenger or Hand Delivery
<input type="checkbox"/>	By Facsimile
<input type="checkbox"/>	By Federal Express or Overnight Mail prepaid
<input checked="" type="checkbox"/>	By Email:

<input checked="" type="checkbox"/>	By United States Mail, postage prepaid and properly addressed
<input type="checkbox"/>	By Legal Messenger or Hand Delivery
<input type="checkbox"/>	By Facsimile
<input type="checkbox"/>	By Federal Express or Overnight Mail prepaid
<input checked="" type="checkbox"/>	By Email: planning@co.okanogan.wa.us

Vaughn Jolley
PD Box 1204
Twisp, WA 98856

<input checked="" type="checkbox"/>	By United States Mail, postage prepaid and properly addressed
<input type="checkbox"/>	By Legal Messenger or Hand Delivery
<input type="checkbox"/>	By Facsimile
<input type="checkbox"/>	By Federal Express or Overnight Mail prepaid
<input type="checkbox"/>	By Email:

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Signed and declared on July 6, 2020,


