

Logan County Commissioners Work Session

February 9, 2021

Present: Byron Pelton, Jane Bauder, Joe McBride, Shannon Graves, Alan Samber, Marilee Johnson, Jerry Casebolt, Alma McArthur, Rob Quint and Jennifer Crow.

Chairman Pelton called the meeting to order at 9:00 a.m.

APPROVAL OF MINUTES FROM PREVIOUS SESSION – Commissioner Bauder moved to approve the minutes of the February 2, 2021 Work Session as written. Commissioners McBride seconded and the motion carried.

REVISIONS TO WORK SESSION AGENDA – The Board was asked to consider approval of the January 2021 Commissioners Proceedings and 2020 Year to Date Salary Publication for February 2021.

REVIEW AND APPROVE DEPARTMENT OF HUMAN SERVICES SCHEDULE OF BILLS – Shannon Graves met with the Board to review and approve the Logan County Department of Human Services schedule of bills dated February 9, 2021. The Board approved all bills as presented. The Board also approved the payroll for the period January 16, 2021 through January 29, 2021 as presented.

COMMISSIONERS PROCEEDINGS JANUARY 2021 AND 2020 YEAR TO DATE SALARY PUBLICATION – Commissioner McBride moved to approve the Commissioners Proceedings for January 2021 and the 2020 YTD Salary Publication. Commissioner Bauder seconded and the motion carried.

ZONING LAYER ADDITION TO GIS MAPPING SYSTEM – Rob Quint was approached about adding the zoning layer to the Assessor's GIS mapping system. Economic Development would like to donate funds to add the mapping layer to the system. He has been working with Cally Hill in the Assessor's office. They think they can add the zoning layer for approximately \$5,000. Rob will ask Debbie Unrein if the money can be accepted to pay for the work. The Board agreed to the acceptance of a donation from Economic Development to pay for adding the zoning layer to the GIS mapping system. The Planning and Zoning Department uses a different zoning determination than the Assessor uses for assessment purposes. If the public clicks on a link on the Planning and Zoning site, they can see the zoning for land use purposes.

FEMA CONFERENCE CALL – FEMA personnel joined the Commissioners for a conference call to discuss properties out of compliance with FEMA regulations. FEMA representatives participating in the call were: Harry Katz, FEMA Flood Plain Insurance, Tom Birney, FEMA Flood Plain Insurance, Brian Binden, Jamie of FEMA Office of External Affairs, Doug Mahan, Colorado Water Conservation Board, Community Assistance Coordinator for the NFIP program, and Anne Korbe of Leibert and McAtee Surveyors.

Harry Katz explained that FEMA and the State of Colorado conducted a community assistance visit with Logan County in June of 2017. The purpose of the meeting was to do a review of the county's National Flood Plain Management Program and to make sure it was compliant with the National Flood Insurance Program and the State of Colorado regulations. It was also an opportunity for FEMA and the State to provide suggestions, recommendations and assistance in helping administer the program. As part of that visit, there was a follow-up letter to document any deficiencies in the program and any recommendations or suggestions that they think will help improve the program. It can also help identify any specific violations or compliance issues with the National Flood Insurance Program (NFIP).

Since the last meeting there has been progress made but the county has not made sufficient progress to address the identified violation issues. Over the last several years, there have been several data submissions by the

county to determine what has occurred in the flood plain, what was permitted and was it permitted properly. If it wasn't permitted, they need what was built and whether is it compliant with county regulations and the NFIP. Logan County provided elevation certificates which give FEMA information on how the structure is built, where the floor elevations stand relative to the predicted flood elevation among other information. Logan County provided nine elevation certificates for the remaining 13 structures that had been identified in October of last year.

In FEMA's review of those elevation certificates, they have been able to eliminate one structure because the project was never constructed. Of the remaining twelve, FEMA still does not have sufficient information for ten of the properties to make a determination on whether they are compliant or not.

In this meeting, FEMA hopes to develop a timeline for the County to provide the missing information as well as to provide a plan to address NFIP violations. Each of the properties in question were reviewed:

WASTE MANAGEMENT - 18211 Iris Drive. The information needed is the base flood elevation estimate. Without that, they cannot determine whether the building was built in compliance. An elevation certificate was submitted but it did not include base flood elevation information on the certificate. The Zone A flood plain FEMA maps do not come with published flood elevations. There are methods to produce that but it needs to be done by the person completing the elevation certificate, however that was not done. Anne Korbe was on the line and joined the discussion. The base flood elevation is usually on the elevation certificate. McAttee usually hires an engineer to do this. FEMA can provide materials on acceptable ways to determine base flood elevations. There are ways to do estimates from the old topo maps. McAttee can provide an estimate based on the topo maps, however an engineer can provide a more accurate determination. FEMA will accept estimates based on maps.

Rob Quint discussed the fact that they could go out and shoot the elevations and double-check them on a map. FEMA said that was not sufficient. Anne Korbe of Leibert McAttee was hired to do a base level flood elevation estimate. Rob Quint asked if the estimate would be sufficient or if an engineer should be hired. Harry Katz said the estimate would be sufficient as long as documentation is provided how the estimates were produced. Anne Korbe stated that she can produce the estimate, however the contour intervals are ten feet on the topo map. The way they do it is once they determine the contour it crosses at, they have to add five feet to the determined elevation which is half of a contour interval. Anne Korbe noted it is not as accurate as an engineer doing some cross sections and modeling that elevation. Harry Katz noted that either method is acceptable, however, having an engineer model tends to produce more precise results. Tom Birney of FEMA noted the fact that you can do a contour interpolation, it is a valid method, but it does produce a more conservative approach for a base level elevation. An engineer survey model may produce a more precise base flood elevation that may result in not as high a base level elevation.

As long as the base level elevation is done with an acceptable method, and documentation is provided, it will be valid. If Anne Korbe does the estimate, it will be more affordable, but it could result in higher base flood elevation which would result in the applicant having to build higher.

The estimated cost for an engineer to do a base flood elevation is probably in the \$1,500 - \$2,000 range depending where it is and how many cross sections are necessary for the engineer to do the modeling. The cost of the surveyor to provide the base flood elevation is \$100-\$200.

MICHAEL WEBB - 19587 Marigold Drive. This property is one that the owner refused to allow Planning and Zoning personnel to enter. The owner applied for a building permit for a small renovation and then built something else with living space added on top of a deck. Rob Quint had to issue a stop work order. The project

has never been finished or moved forward. It does not have a certificate of occupancy. There is development at that location that was not permitted. Mr. Katz agreed to take this one off the list if they can confirm that no work was done. The project's building permit was pulled because the owner had a fire and he was going to rebuild what was there. Then it became another addition on the deck with no permit and no plans and a stop work order was issued. The project has not moved forward in seven years.

The permitted fire rehab was framed in but not completed. Mr. Katz noted that the flood plain ordinance does include enforcement provisions and the county should have some type of code compliance process. This would require the county to take the owner to court for code compliance. More information is needed for FEMA. Rob Quint noted that he does not know how he can gain information if he is not allowed on the property. Usually when work done without a permit there is a violation notice issued. Mr. Birney recommended discussing legal options with the County Attorney. There is a section in the county's flood plain ordinance for a penalty for building without a permit.

JIM JACOBSEN - 14801 CR 41. FEMA has confirmed this is a violation which is not built to the right elevation. The floor is nearly three feet below the base level elevation and the garage is nearly a half foot below. There is one that is an accessory building and one that is listed as an addition on the flood certificate. Both appear to not be built to correct elevations. It was noted the house was built before FEMA added flood plain regulations. Mr. Katz noted the trigger is called substantial improvement. If the existing structure is improved by 50% or more of the value of the existing structure, it is required to bring the entire structure into compliance. If the value of the improvements is not 50% more of the value of the existing structure, the improvements do not have to fall under flood plain regulations. FEMA has not received any information to indicate it was or was not a substantial improvement. All they have is an elevation certificate. The value of the improvements needs to be part of the flood plain permitting process. Rob Quint stated that the owners provide costs for the improvement, not the final value. He asked for clarification whether it is market cost or value. Mr. Katz said the value can come from a couple of sources, it can be an assessor's value or an appraisal value. The value can be based on an appraisal or structure's assessed value. Many communities default to assessed value. If cost was not over 50% they can use assessed value.

On this property, Rob Quint knows that the assessed value is not 50% more than the cost of the improvements. Mr. Katz said the cost of substantial improvement list must estimate the labor cost. That amount is not asked for that in building permits. The cost must be added for the flood plain development permit. The appraisal or assessed value is sufficient.

TREVOR MILLER - 17901 Hwy 6 Trevor Miller. This is in Zone A and didn't have a base flood elevation. This property had a variance issued for a basement. The variance did not have any review of the NFIP variance criteria to demonstrate it was eligible. The variance application indicated it was to install flood vents in the basement but the elevation certificate notes the flood vents were not installed. Rob Quint asked why flood vents would be installed on a residential house. The focus on this permit is the basement in a new structure in flood area. Rob Quint stated on this permit, the basement is not going away because it is built and asked what is the next step. There is something called a section 1316 which is a way to prevent an individual structure or property from obtaining flood insurance. In order to do this, the community would need to request it. The community would need to show that they have attempted to bring the structure into compliance.

There are no other options to bring the structure into compliance but fill in the basement which they are not going to do. The county will need to start the 1316 process which essentially blackballs them from being able to purchase NFIP or National Flood Insurance. The 1316 process can be used to fix past violations but moving forward, the county cannot allow future structures to be built out of compliance. The 1316 application must

show that the community attempted to bring the structure into compliance. It was discussed that filling in the basement is not an option with this particular family. There has to be a demonstrated community attempt to obtain compliance.

Mr. Katz will provide the 1316 process in his letter outlining what was discussed today. Tom added it is unfortunate variance issued and the home was built and a family living in it and utilizing the basement. The goal of the program and flood plain ordinance is protection of life and property. There is an increased risk of flooding for the structure. It can be devastating for a basement to fill up with water and have people down there. It is a difficult conversation, but it is a safety factor and is for protection of life. Not looking at options or discussing it, FEMA would not support issuance of a 1316. FEMA's goal when there is a non-compliant structure is to bring them into compliance to the greatest extent possible. For example, filling in the basement is not an option since a variance was issued. The homeowners, from their perspective went through the right process, maybe there could be an agreement that the basement is not used as habitable space, and is only used for storage. There are other options to bring things into compliance to the greatest extent possible.

TYLER KRIER 12343 CR 70 – Information previously submitted by Rob Quint indicated a substantial improvement. The elevation certificate indicates the lowest floor is over seven feet below the base flood elevation. Rob Quint stated that he was present when that basement was filled in. Mr. Katz noted he is going off of the flood elevation certificate. Anne Korbe is not the person who did this elevation certificate. The addition was built because he filled in the basement that had existed. The additional square footage was added to the south. Mr. Katz stated that if the elevation certificate is inaccurate it should be resubmitted to FEMA and they will review it. He also recommended pictures as documentation of what is there.

FEMA needs to know if there is a basement under the addition and if their second highest floor is below the base flood elevation. It does not appear that the addition was built to the right elevation. Anne Korbe believes the finished floor is above the base flood elevation, but there is a basement under the addition which is more of a crawl space. FEMA categorizes a basement at five feet rather than a crawl space. Anne Korbe stated that the basement was 3933 and the finished floor was 3938. It is more of a crawl space. If the difference between the lowest floor and the next higher floor is five feet then it is a basement. Rob Quint noted that the code does not allow a five foot basement. The International Building Code does not allow a basement of five feet. Mr. Katz noted that the NFIP has different standards as to what is defined as a basement and what is classified as a crawl space.

Rob Quint asked if they were to add a foot of sand to the crawl space it could potentially solve the problem. Mr. Katz noted that the addition was a substantial improvement so the entire structure must be in compliance. So it might mean converting the basement to a crawl space or it might require installation of flood vents. Anne Korbe noted there were no flood vents shown on the elevation certificate.

PAUL LEBSOCK JR. - 13766 CR 20.5 Rob Quint submitted information that a base flood elevation was produced for permitting. The base flood elevation was based on construction drawings. FEMA needs an elevation certificate that shows what has actually been built. Anne Korbe noted that the owner would not let the surveyor on the property. This might be possible now since the owner who would not let the surveyor on the property has passed away.

DON FRITZLER – 15848 CR 16.5. The owner refused entrance to the property.

TREVOR MILLER - 17901 Hwy 6 for an agricultural building. This is another Zone A so they didn't have a base flood elevation to make a comparison. There was a Zone A determined by another engineer but it was not attached to the drawings. FEMA needs the base flood elevation certificate. Once they have that, they can

determine if it is compliant or not and determine how to bring it into compliance if necessary. It could be as simple as flood vents added to the building. Rob Quint stated that the engineering report with the base flood elevation was supplied to FEMA previously. Anne Korbe stated it was a contour interpolation determination by the engineer. Mr. Katz and Mr. Birney will go back and check the case files for that information.

TONY GRINDLE - 18889 Hwy 6 - this was to be a pole barn. FEMA has no records submitted for this building. If it has walls they will need an elevation certificate. Anne Korbe stated that they went out to do the certificate and there was no pole barn. This was never built. Rob Quint thought he had e-mailed the Trevor Miller, Tony Grindle and Viaero tower information together to FEMA. Mr. Katz will check his records again. If it was not built, they will take it off the list.

VIAERO TOWER - Rob e-mailed the tower engineering. FEMA has no elevation certificate based on construction. They have a base flood elevation but nothing that represents the elevation based on construction. Rob will check. He believes Viaero supplied the certificate.

DONALD AND JANICE SCHRIVER – This was not constructed.

DON FRITZLER – 15848 CR 16.5 this is another storage building where the owner refused entrance.

MARICK'S WASTE DISPOSAL - 32586 Hwy 138 Crook. This is a commercial building. This is another one that is Zone A and FEMA has no base flood elevation. FEMA needs a final flood certificate based on elevation.

GOALS AND TIMELINE – Mr. Katz stated that work on these violations has been going on for 3 ½ years. The goal is to protect people's property and personal safety and health. This requires working with homeowners and mitigating some of their risks and correcting violations. FEMA is requesting that the county collect the remaining information necessary, such as the base flood elevations for the Zone A's and make determinations on properties that are out of compliance and which are not. If they are out of compliance, a property specific mitigation plan needs to be done on how the county plans to contact the homeowner and how to work with the homeowner to determine what the solution for that property is. FEMA wants this all in one package, submitted at one time.

There will be no additional extensions granted. This does not mean that all mitigation needs to occur, it just means that a plan to address the mitigation is formed. The Board agreed to a six-month deadline. This is not that the plan must be executed at this time, the plan needs to be formed for each property by the deadline. The Board agreed that a plan could be formed in six months. Mr. Katz will follow-up with a letter outlining what is being requested on each property.

FEMA representatives met with the county in December of 2019. Since then, Rob Quint has provided as much information as he had, such as building permits, etc. That was where the request for elevation certificates came from. Those were provided to FEMA in October of 2020.

Nine certificates of elevation were provided for twelve properties, but they did not contain all the required information for FEMA to determine whether or not the structures are compliant. For example, the lack of base flood elevations, without that FEMA cannot make a determination. There are four of the properties that lack base flood elevations. Anne Korbe stated that she could come up with the interpolated base flood elevations on those. There are two that did not get a final elevation certificate submitted. They have elevation certificates based on construction drawings but they need certificates based on finished construction.

There are three properties where the owner refused entry.

There are two with elevation certificates submitted which were determined non-compliant.

Rob provided information on two separately before he sent the total e-mail. FEMA said that they want it submitted all together. Rob thought he sent an e-mail with the information, he will check on that. Mr. Katz said that he will check also and revise the list to note what is needed for each property.

Mr. Katz reviewed what the potential ramifications are if the deadlines are not met. The county could be placed on probation from the NFIP which means that anyone that has a flood insurance policy whether they live in the floodplain or not, will incur a \$50 surcharge for renewal of their policy. FEMA will place an ad in the newspaper noting that the community has been placed on probation and there will be the \$50 surcharge on flood insurance policies. The way the community gets off probation is meeting the requirements and dealing with the violations. If the community on probation does not correct the issues that have been identified, the next step is suspension which is more severe than probation, no new flood insurance policies can be issued and no existing policies can be renewed. By participating in the NFIP, a community is eligible for many hazard mitigation and disaster recovery grants. If the community is suspended it is no longer eligible for those grants.

Progress has been made over the last 3 ½ years but not sufficient progress. Rob Quint added there were periods of time over a year when FEMA did not respond to his e-mails. The meeting in December 2019 was to reset on what the goals and baseline were. Since then there were numerous deadlines missed by Logan County for things to submit. For example baseline elevation certificates were specifically requested for the Zone A properties and they were submitted without them. Rob noted that he had talked to Mr. Birney and asked about those and he was told there were other methods of obtaining that information which they did the work on. Had he known that all that was wanted was the base flood elevation, they would have skipped that because it was a waste of time.

Mr. Birney suggested a bit of misunderstanding and agreed that there has been a lack of communication from both parties. It has been transferred from the State to FEMA and several different people were involved, which was the reason for the “reset” meeting to get the goals established. Mr. Birney explained that they are talking about two different factors, the first what is needed to do to correct these violations and second what needs to be done moving forward to ensure we don’t end up in the same place. In the future, the county should not hire the engineer or surveyor to obtain the elevation certificates, this is the responsibility of the applicant. Mr. Katz will send the letter outlining what was discussed today and he include a spreadsheet with exactly what is needed for each property or if the property can be removed off the list. The conference call ended at 10:20 a.m.

Every time Rob has asked something different was requested or they didn’t want pieces of the information, they wanted it all at the same time. It was also noted that the state person Rob was working with changed three times. Tom Birney from FEMA didn’t respond for a year.

The Board asked if Leibert McAtee was paid for the elevation certificates and the necessary information was not on certificates. The Board also questioned whether FEMA personnel changed the information that was required after the initial request. Tom Birney originally told Rob Quint that he could go out to the site and measure the elevation and then Carol Pivonka dropped a pin on the map and compared them and they were very close. That whole period of time was wasted because FEMA would not accept one of them. Mr. Birney had told Rob that there were other methods to obtain the information but then they were not accepted.

Going forward, the applicants will have to have pay to provide the elevation certificates. The county is paying for the elevation certificates on these properties because the applicants were following the rules that were in place at the time that they were permitted and were given the permits before the flood plain regulations were adopted.

Rob Quint told the Board that under the new flood plain regulations that will have to be adopted by May 4, it specifically states that they will have to provide engineered plans.

Property owners will be sent a letter to notifying them that access is needed to their property to determine the elevations. Alan Samber can apply for an administrative search warrant through the courts. This could take several weeks.

BOOKMOBILE PUBLIC HEARING – The Board will hold a public hearing for adoption of a resolution for dissolution and termination of the Northeast Colorado Regional Library, also known as the Bookmobile. Alan Samber will prepare the resolution for the agenda. Phillips and Sedgwick Counties sent letters stating that they didn't appropriate funds for the Bookmobile. Morgan County has been out of the Bookmobile for several years. That leaves Yuma, Washington and Logan Counties. The Bookmobile has become antiquated for today.

There being no further business to come before the Board, the meeting adjourned at 10:40 a.m..m.