

Logan County Commissioners Work Session

March 7, 2023

Present: Jerry Sonnenberg, Joe McBride, Mike Brownell, Alan Samber, Ashley Smith, Debbie Unrein, Marilee Johnson, Kristan Lange, Rob Quint, Mike White, Mark Shugart, Tom Birney, Brian Hvinden, Jill Distell, Walt Page, Tom Kiel, Rick Cullip, Trae Miller, Darlene Carpio, James Thompson, Jeff Rice, and Jennifer Crow.

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

APPROVAL OF MINUTES FROM PREVIOUS SESSION – Commissioner McBride moved to approve the minutes of February 21, 2023. Commissioner Brownell seconded, and the motion carried 3-0.

REVISIONS TO WORK SESSION AGENDA – None.

REVIEW AND APPROVE HUMAN SERVICES SCHEDULE OF BILLS – Ashley Smith met with the Board to review Logan County Department of Human Services schedule of bills dated March 7, 2023. The Board approved all bills as presented. The Board also approved the Human Services payroll for the period February 11, 2023, through February 24, 2023, via E-sign.

REVIEW AND APPROVE SCHEDULE OF COUNTY BILLS – Kristan Lange met with the Board to review the Logan County schedule of bills dated March 7, 2023. The Board approved all bills as presented.

REVIEW BUSINESS MEETING AGENDA – No bids were received for the lease of the six shares of the Springdale Ditch. The Springdale Ditch board could be contacted to spread the word and see if there is any interest in leasing the shares among members.

Initially no changes were made to the Business Meeting Agenda, but later the Board agreed to extend the moratorium put in place by Resolution 2022-33 to May 1, 2023. Commissioner Brownell moved to extend the moratorium on issuance of permits for wind power generation facilities and solar power generation facilities. Commissioner McBride seconded and the motion carried 3-0.

NJC PRESIDENT MIKE WHITE - Mike White, NJC President, joined the meeting and gave the Board a brief update on what is happening on the NJC campus. He noted it has been a year since he last met with the Commissioners.

They have bids in on the welding building which is the first stage of the new Applied Technology campus. The bids came in high but did include some transformers and things that will be needed for the entire project. This building will be followed up with a larger building. They are bursting at the seams for welders, so this will double their capacity for that program.

Last fall, enrollment was down six percent. This spring, enrollment is down two-and-a-half percent, so they have gained back some of the losses. They took some online courses on themselves and didn't farm them out to Colorado Community College online which brought in some students. A lot of recruiting is going on for the Applied Technology campus. Their van is

down in Akron and Lonestar today. Nursing classes for the first time in a while are both completely full. They are limited by the accreditation on those - they can only take twelve students in a class.

Commissioner Sonnenberg asked how schools can accept more nursing students. Nursing students must get the required amount of clinical activity. NJC nursing students go from Sidney to the front range hospitals and assisted living homes to get their required clinicals done. There are not enough opportunities for the students to get their clinicals done without going further into the front range. Mr. White noted the great support from the Sterling, Sidney, and Yuma hospitals and the assisted living homes.

The Equine Program is still working well. They are starting an ag boosters club. It is still conceptual, when he gets something more concrete, he will be back to talk about it.

ENERGY MORATORIUM – Rob Quint explained that the moratorium on energy expired on March 1, 2023. The Planning Commission has reviewed the proposed regulations. They have been forwarded to Alan Samber for review. The Planning Commission would like to hold one more public hearing before they go to the Commissioners. This would probably be the April meeting.

The Board discussed extending Resolution 2022-33 which deals with the issuance of permits related to the operation of wind power generation facilities by another month or more. There is also a separate resolution for issuance of permits for solar power generation facilities.

The meeting recessed at 9:24 a.m. and reconvened at 10:00 a.m.

FEMA RE LOGAN COUNTY SUSPENSION FROM NFIP – Mark Shugart, Tom Birney, and Brian Hvinden, representing FEMA, joined the meeting to discuss Logan County’s possible suspension from the National Flood Insurance Program (NFIP). Unless FEMA receives previously requested documentation from the County, detailing corrective action plans for local floodplain management program deficiencies and violations, the county will be suspended as of March 31, 2023.

Mr. Shugart shared from FEMA’s perspective, the letter concerning the pending suspension references a draft corrective action plan which was submitted in March of last year. Some items were addressed by the plan, but not all items. The letters concerning probation or pending suspension have continued to come in because a resolution has not been reached for all of the violations. The certified letter dated January 24 doesn’t include addresses of properties and names of the property owners, so it can sound vague and confusing.

Mr. Birney explained that Logan County participates in the NFIP which is a voluntary program, where the county says they will manage the flood plain and the federal government offers National Flood Insurance policies to the residents within the community as well as additional disaster systems. In 2017, the State of Colorado did a community assistant visit to Logan County as a participating member, which is going out and meeting with the community, reviewing their program, and identifying what works, what doesn’t, what support is needed, and going through it. This all stems from that 2017 visit, where there were issues, or violations identified. Since then, the State and FEMA have worked with the county on the issues to try to come up with a

corrective action plan. FEMA and the county have met three times working on the plan. Alan Samber submitted the county's second proposed plan. They are still working on trying to get to a point where we have a corrective action plan addressing the violations.

Mr. Birney noted that because the county participates in the program the county agrees to abide by the ordinances that regulate development in the floodplain according to the conditions outlined in that ordinance. One of them is minimum elevations above the BFE (Base Floodplain Elevation) for some of the properties. There are structures that were built after the county passed its ordinance that said, "you must build above the BFE plus one foot." The state standard is one foot above BFE. It is between the county and the property owners when they develop to abide by the county's ordinance that the county passed.

It goes back to the county building and floodplain development permit office to work with these landowners before the structures are built to condition the permit on abiding by the county ordinance.

Mr. Shugart explained that Logan County entered into the NFIP program in the 1970s or 1980s similar to all other ordinances that were adopted. FEMA is here to hold communities accountable to the ordinances that they have passed. The four or five years of ongoing discussions are trying to correct the violations. There has been no resolution to address any of the properties that are on the violation list. There were some from the draft document that was submitted but there was not a lot of progress after that draft was submitted.

County Attorney Alan Samber stated that the county had some pre-existing floodplain regulations that were adopted in 1976. The county updated those regulations to conform with the state's requirements in 2015. The county rescinded its old regulations by resolution and adopted the new ones which are much more thorough.

When the county updated the floodplain ordinance, the changes that the state passed included what FEMA calls a one-foot freeboard, meaning that the structures need to build one foot above the base flood elevation, the height of the 100-year flood or 1% above what was already existing within the county's ordinance. All of the violations that are identified were non-compliance at the time of construction compared to the effective floodplain ordinance the county had. There was a floodplain ordinance in effect that still had the one-foot freeboard. FEMA compares the development against the floodplain ordinance that was in effect at the time.

Mapping has changed over the years. When the project was started in 2013, the maps were changing. They took an evaluation based off of what the new maps were and gave the benefit of the doubt to whatever worked. There were maybe two structures that were in on the effective map at the time of permitting, but under the new maps, they were no longer in the floodplain. That was considered resolved and they moved on.

The blackball option, or Section 1316 to the NFIP is a last option for development out of compliance that prohibits an owner from having NFIP on that property or structure. It is still a valid option, but it cannot be the first step. It is a tool to work towards compliance. It has serious ramifications. If the property owner has a federally backed loan and all of a sudden is blackballed from the NFIP, that loan may be called due, they may have to pay off that loan or go through a private lender. There are concerns when simply issuing the Section 1316. But it is a

community's choice if there is a compliance issue that is not being resolved, the county could use it as a tool to get an owner to the table.

The fundamental of the NFIP is a life-safety program. The violation with the basement is a concern because people are living in harm's way in a basement that is subject to flooding. The program is meant to protect life and property, not of just those that live there, but maybe first responders that are trying to rescue people. It is not just a program to manage the floodplain for the purpose of insurance, it's a safety program.

FEMA did not say that the basement must be filled in, but they want to know what the other alternatives are. It is up to the county to put those options that it wants to pursue in the corrective action plan. If you look at some of them, it talks about what is the option to bring it into full compliance, vs. what is the option to bring it into compliance to the maximum extent possible. It may not be possible to get a structure fully into compliance per your ordinance. There is something that can be done to help mitigate and lessen that risk. Are there mitigation actions that can be taken to lessen the risk of that property, to that owner, and to the community as a whole?

Commissioner McBride stated that the county has paid for elevation certificates on some of the properties, which shows the county did take steps to follow through with the plan. Going forward, the property owners were not agreeable to exploring other funding options and not agreeable to doing anything. That is where, to him, a property would get blackballed, because what other options are there?

Mr. Shugart suggested that the county go back to the original permit for construction. Raise the issue and make the property owner aware of the ordinance when the permit was issued for construction. The county needs to enforce the minimum ordinance. They were required to build to this elevation, but they didn't. That's a different circumstance than we never set an elevation for them to build to at all, because they were not made aware of the ordinance when the permit was issued. There are different scenarios on different properties. Talking through those before you get to the blackball stage is recommended. Those are some of the things that need to get identified and discussed, the historical knowledge is important.

Commissioner Brownell discussed the basement property that is in question. This area is not comparable with the Big Thompson Canyon, where a ten-foot wall of water, with very little warning, would mean loss of life is imminent. In the last big flood in 2013, this area had three days knowing that the water was coming. People can vacate and move things, and it's not going to be ten-foot of water that's hitting these properties, it's going to come up fairly slowly. It is a different situation as compared to a narrow mountain canyon.

Mr. Birney noted that in the event there is a suspension at the end of the month, this is still the path forward, FEMA is still going to work with the county on the community corrective action plan. What is discussed about these properties today, can continue to be discussed next month. The risk of suspension is policy non-renewals. There is a chance that some of these properties actually have flood insurance through the NFIP. Ideally, the first ones that don't get renewed would be these violations, but that's not necessarily the case. It is possible that all policies in the community will not be renewed if they can be suspended.

Mr. Shugart again asked what is the policy for enforcement of the county's floodplain ordinance? It is optional for residents, or is it a firm policy that the county enforces? County Attorney Alan Samber answered, the ordinance is adopted with the intent that it is going to be complied with, and if there isn't compliance, then it is enforced. That's the intent, otherwise, why would it be adopted in the first place? The county can take legal action through the court seeking an injunction. The problem is, on some of these cases, the county has approved the development and issued a permit, and the certificate of occupancy. The county cannot go in and take that back from the property owner. Estoppel is a legal term called a stop, when the government gives somebody a permit to do something, and they rely on the government's authority and that permit, and they spend money and build a structure or remodel a structure, the county can revoke it after the fact. That is one impediment that we keep running into in trying to correct some of these deficiencies.

This would apply to the variance that was issued for the basement. On others, some sort of certificate of occupancy may have been issued. Alan Samber feels that the county does not have legal authority to do what FEMA is asking it to do.

Mr. Shugart does not feel that FEMA has asked the county to perform anything that it does not have legal authority to do. They are discussing the violations and resolution of violations. FEMA is asking the county to present alternatives to mitigate the violations. Sometimes the violations can't be mitigated to 100%. There are alternatives and this is the beginning of the discussion of the alternatives.

The county's corrective action plan didn't progress beyond the first submittal. There wasn't a second submittal in writing on some of the violations. Some of them don't even have alternatives given for them. There may be multiple alternatives available for each property. There are different circumstances for each property. The Section 1316 may be reached on one, but not all. That's why each property will need to be looked at individually and alternatives evaluated.

FEMA wants to reduce the risks to the properties and occupants of those properties. Part of that is evaluation of enforcement of ordinances. Several violations slipped through administratively. There are things that can be done to tighten that up so that going forward, the community can be better protected in enforcing its ordinance to get compliance.

Commissioner Sonnenberg interjected that there are property owners not agreeable or cooperative as part of step two of the corrective action plan. The Planning and Zoning staff have assessed the situation and felt that there's some personal responsibility. Planning and Zoning made an assessment on a pole building, it was below the floodplain. There really wasn't a safety issue there. They made a decision based on information they had whether or not to bypass that ordinance. These are local people making local decisions, and local residents making decision about their own property and their own well-being.

Mr. Birney stated that there is a variance process outlined within the floodplain ordinance. The process is outlined within the Code of Federal Regulations that talks about how to apply. This is going to be for unique situations typically, it's going to be on a lot that's a half-acre size or less. Because if it's a larger lot, you have more room to either move, or to elevate or do other activities. A variance is also not a blanket to do whatever you want. Instead of raising a

structure up five feet, can it be raised up three feet or do something else to mitigate that process? Variances are an option, if followed according to the county floodplain ordinance. There is a concern if you start issuing a lot of variances to the program. Variances after the fact can be issued, if it goes through the process. It looks at and addresses the ordinance. There are six or seven steps within the ordinance that talk about variances, the size of the lot, hardship, the financial hardship, and the hardship of the property itself. There are criteria that need to be met in order for a variance to be issued, and they can be a part of this if you're doing something that is not bringing a structure into full compliance, you still have to issue a variance to say, this is the best we can do.

The community visit is not just a one and done. They do it with every community and within a certain time frame. As part of this compliance FEMA will probably come back and do another visit. It is a way to see what the community is doing, what is done right. The current list has seven properties however there are eleven violations. They are all going to be a bit of a problem. These are the ones that require more of an action instead of administratively closing and going through a permit. They will require some sort of mitigation or some sort of plan to say this is what is supposed to happen.

There was discussion how to bring a home addition that was added to a home that was built in the floodplain into compliance. An existing house that was in the floodplain now has an addition that was built on to it. If a house valued at \$400,000 and the addition is valued at \$100,000 if the work is 50% or less of the valuation of the structure it is not what FEMA calls a substantial improvement. The house can stay the way it is. They are not concerned about modifying the existing house and changing that house. They are more concerned about the addition. Was the addition built per requirements? If a house is substantially improved, increasing it more than 50% of its value, then it is treated as new construction. Then that house needs to be built as if it were that addition. The whole house needs to be looked at, as it does to current floodplain ordinance for compliance. The floor needs to be elevated or raised. It is saying, if you're investing money in the floodplain, we want to ensure the future developments are reasonably safe.

Mr. Shugart addressed the potential federal funding and potential disaster assistance, community structures that may not be eligible for public assistance. There are two programs. Any community owned structures that are in the floodplain may not be eligible for FEMA Public Assistance in the event of a flood hazard disaster that's declared. Infrastructure would still be eligible for FEMA Public Assistance, assuming other requirements have been met, like the state having a hazard mitigation plan.

There are other requirements to qualify for public assistance. But for the purposes of participation in the NFIP, the risks for disaster funding are the courthouse, for example, if it were in the Special Flood Hazard Area and damaged during a flood event, and the community is not a participant in the NFIP it may not qualify for FEMA public assistance.

On the individual assistance side, they still have rental assistance if there was a flood event and people were displaced. Rental assistance is still eligible, whether they're participating or not, but some of the benefits for individuals that are impacted by flood may or may not be available.

Outlining corrective action plan steps was discussed. Commissioner McBride asked if adding a

step 5 – the Section 1316 blackballing to the basement property #111 would be the next option since the property owners are not agreeable to any other options. Mr. Shugart said that pointing out the circumstances on the other properties, perhaps they might be internal administrative errors or outlining the circumstances associated with the property would be part of the process.

Mr. Birney stated that FEMA is not advocating that the county take everyone to court. That is just one option, that is not what they are advocating. They also suggested a notice to the property owner on the basement property asking them to certify that there are no living quarters in the basement. The owners could be asked to sign the notice and record it at the County Clerk's office. What other options can be looked at? There are no expectations to have the county pay for everything, just work through alternatives of how to bring properties into compliance. Simply stating we can't do anything will not work. The county must follow through and enforce the ordinance to get compliance to the maximum extent possible.

FEMA can approve the corrective action plan within one or two weeks if it is in hand. However, they will need to have the state to sign off on it. If the plan does not meet the state's higher standards, FEMA cannot waive the state's requirements. Logan County floodplain regulations were based on the state's model template. For example, the property labeled 2013-13, it is 1/10 of one foot below FEMA's required floodplain, but when you add in the state's requirement, there is a 1.1 foot difference. Even if there are other alternatives considered but not approved, that should be detailed as part of the corrective action plan. Details such as steps and milestones that have been reached, timelines alternatives, etc. should all be part of the plan.

There are 25 – 27 properties in Logan County that are insured through the NFIP. According to Tom Birney, up until about a year and a half ago, if you had a federally backed loan, it was required to be insured through the NFIP. The private market flood insurance has come on very strong and they are cheaper at times, other times they're not. There are benefits to the NFIP. They don't drop coverage. When storms are coming, they don't drop like other private markets do out on the east coast. But legislation has changed that does say if you have an NFIP equivalent through the private market, that is sufficient. Birney cautioned that if you have NFIP insurance and drop it and then decide that you don't like the private market flood insurance, if you come back on to the NFIP any "glide path" or subsidized amount may be lost and you will be charged what the true risk rating is. Also, if the community is suspended from the NFIP, anyone that had a policy that is not renewed, then they come back if the community elects to join the NFIP again, when that policy is written, it is going to be written on the actual risk rating.

The City of Sterling and other Logan County municipalities will not be affected if Logan County is suspended from the NFIP. There are several other areas that do not participate. Fleming, Merino and Crook do not participate. These communities all have their own ordinances that they enforce.

Property #110 has three different issues addressed on one line. The correction actions taken for that may be completely different for one versus the other. Separating out what actually will be done will be key, because the actions are not going to be necessarily the same for each violation. FEMA will continue to work with the county to get the correction plan into place if the county is committed to doing that.

James Thompson of Senator Bennet's office asked if there was any way the deadline could be

extended. Mr. Birney stated that if there's no corrective action plan in their hands to discuss with headquarters, then they are not getting anywhere. If they have something in their hands, milestones, alternatives that's what they are advocating for.

The county can write a letter of map revision Zone A approximate flood hazard area. To FEMA and the state. The state is the technical partner and does the flood mapping here in Colorado. They have established this area as flooding. They have not done a full robust study to provide base flood elevations. You can do a more robust study to say that floodplain is smaller than what it should be. At the same time, you risk that it could be larger or deeper than what it should be. A lot of people thought that the railroad, Highway 6 or I76, would stop the water. However, those features were not built or designed as levies to stop water from flowing across. Although they may provide a level of protection, FEMA cannot recognize them as levies.

Commissioner Sonnenberg commented that the railroad was recognized as a levy when FEMA created a floodplain between Atwood and Sterling because of the Pawnee. The railroad was utilized as part of that study. He questioned whether this helped design or create the new floodplain maps that were adopted. Shugart and Birney did not know the answer to that question.

The Board thanked FEMA representatives for coming and explaining what is expected from the correction plan.

LOGAN COUNTY AMBULANCE COLLECTION ASSIGNMENTS – Commissioner McBride moved to approve assignment of Logan County Ambulance debt collections accounts to Wakefield and Associates, the account numbers ending in 1001, 1002, 1091 and allow the Chairman to sign. Commissioner Brownell seconded and the motion carried 3-0.

DONATIONS TO AREA HIGH SCHOOL AFTER PROM COMMITTEES – The Board agreed to continue to donate two tickets to the Logan County Fair Night Show to Logan County high schools for their after-prom celebrations as has been done in the past.

There being no further business to come before the Board, the meeting adjourned at 11:31 a.m.