

COMMISSIONERS MINUTES

DECEMBER 22, 2017

The Elmore County Commissioners met in regular session on the above date in the Commissioners Room, basement of the Elmore County Courthouse, 150 South 4th East, Mountain Home, Idaho.

Present at the meeting were Chairman Al Hofer, Commissioners Bud Corbus and Wes Wootan, Civil Attorney Buzz Grant, Attorney Scott Campbell and Deputy Clerk Shelley Essl.

A public hearing was held regarding the adoption of a Development Agreement between Cat Creek Energy, LLC and Elmore County and an ordinance adopting the same.

Chairman Hofer asked at this time that the commissioners' disclose any contacts or communications they may have had with the applicant or any member of the public since the last public hearing on the project in November of 2016, excluding any procedural matters pertaining to this hearing or matters in public board meetings with the applicant pertaining to the development agreement. In the event of any disclosure, please state the individual which whom they communicated with, the date and the nature of the communications. He also asked that they confirm on the record that they will limit their decision to those facts and information which are disclosed in the record or are received today in the form of the testimony to be given, while taking notice of those facts which are in common knowledge or of which there is general public awareness.

Chairman Hofer stated that he contacted Attorney Grant to ask his opinion about an item in the draft of the development agreement and was told by Attorney Grant that he was unable to discuss the draft of the agreement with him.

Commissioner Wootan stated that he spoke with John Faulkner three or four weeks ago and had a general discussion about farming and the Cat Creek project.

Commissioner Corbus stated that he also contacted Attorney Grant to discuss a few things in the draft of the development agreement and he was also told by Attorney Grant that he was unable to discuss the draft of the agreement with him.

Chairman Hofer stated that any written testimony for today's hearing would be given to Beth Bresnahan, Land Use and Building Department Director, to be entered into the record.

Ms. Bresnahan reviewed the summary of rules for the hearing.

Attorney Grant stated that he would like to make a motion on behalf of the county to continue this hearing to a future, to be determined date and for the board to order the parties to negotiate the development agreement in good faith. He stated that there are a number of outstanding issues and he feels that those

number of issues can be resolved if the board would make such an order. He also feels that the board agreed to this hearing on December 1, 2017 with insufficient information available at that time. The developer's draft of the development agreement had been presented in a format such that the county was unable to view it and compare it prior drafts. He estimated that based on prior drafts there would be over nine hundred differences between the county's draft and the developer's draft. Once he obtained an electronic version of the developer's current draft and made a red line comparison, there is now well over one thousand differences and there are changes in every paragraph for the current draft. He stated that the number of changes is extensive and for the developer to say that those changes are not material is inaccurate. Attorney Grant stated that on December 1st, Mr. Faulkner testified that he was up against a deadline of the end of the year, yet he provided no explanation as to what that deadline was. He again stated that the county had insufficient information when this hearing was set and he requested again that this hearing be continued. He feels that under any set of circumstances that it would be highly unlikely that this will be resolved by the end of the year anyway. Based on the developer's new draft of the agreement, there is a new third site plan and to his knowledge the county has not seen this third plan. The county would not have sufficient time to review the new plan.

Attorney Terry Pickens-Manweiler, representing the applicant, objected to Attorney Grant's motion. She stated that they appeared today and have gone to great lengths to negotiate the agreement in good faith. She feels that the challenge that they are facing is that she can continue on forever negotiating the agreement with Attorney Grant, but without the board's input on the factors that they can no longer negotiate, they are never going to get anywhere. The presentation they had planned for today was to review the red line changes and there are not that many major substantive issues and they need advice from the board on these issues. They cannot continue to negotiate language in the agreement and cannot move forward without input from the board. She stated that they have been working on this for eight months and would like to continue with today's hearing and work through these issues and stop delaying this process. Commissioner Corbus questioned what kind of a time frame they are expecting for the agreement to be finalized if they continue on with the hearing today, because every time he reads a new draft of the agreement there are significant changes and he wonders if they go through the agreement again today, will there be more significant changes made again in the next draft. She stated that they can keep negotiating over and over, but their draft will continue to be vastly different than the version of Attorney Grant and Attorney Campbell, and they will never resolve it amongst themselves. That is why they are going to go through the document today along with Attorney Grant's red line version, work through the issues and make the changes as they go along. Then they will print the document and present it for consideration. She stated that their timeframe is today and she feels they can work through all of the issues today and even take testimony on the updated document today if necessary. Commissioner Corbus questioned the issue of the water provisions in the agreement. Attorney Pickens-Manweiler stated that they are planning to work through the water issues at a later date as to not hold up approval of the agreement so the solar and wind portions of the project can get started.

Attorney Grant reiterated that there are an extensive amount of items that need to be reviewed and he does not feel that it is a prudent use of time for the board or the public to have to take the time to go through all of those items. He stated that he is fully prepared to continue on with the hearing today, but he strongly urged the board to continue the hearing and have the attorneys continue to negotiate the agreement.

The board feels that legal staff for both sides have come to an impasse and that input from the board is needed to help the negotiations move forward.

Motion by Corbus, second by Wootan, to commence with the public hearing.

HOFER -AYE
WOOTAN -AYE
CORBUS -AYE **Motion carried and so ordered.**

Attorney Grant wanted to state for the record that this is a negotiation of the development agreement and until such time that the agreement is executed by both the county and the developer, it is not a binding agreement. The purpose of these negotiations are to try and move forward. There may be certain discussions where something is agreed upon, but he recommended to the board that these not be binding on the county until the written agreement has been executed and duly approved by the board.

A very lengthy review of the current draft of the agreement and the red line version followed.

The public hearing was put on hold until after lunch to take care of other agenda items.

Motion by Hofer, second by Corbus, to go into Executive Session pursuant to I.C. 74-206(d) – 31-874 to discuss indigent applications. Roll call vote was taken.

HOFER -AYE
WOOTAN -AYE
CORBUS -AYE **Motion carried and so ordered.**

Regular session resumed. The following decisions were made as a result of the Executive Session:

K-10-17-10 Motion by Corbus, second by Wootan, to approve with a reimbursement order of \$100.00 and 50% of federal and state income tax refunds as payment.

HOFER -AYE
WOOTAN -AYE
CORBUS -AYE **Motion carried and so ordered.**

K-10-17-11 Motion by Corbus, second by Wootan, to approve with a reimbursement order of \$25.00 and 50% of federal and state income tax refunds as payment.

HOFER -AYE

WOOTAN..... -AYE
CORBUS..... -AYE **Motion carried and so ordered.**

K-11-17-02 Motion by Corbus, second by Wootan, to suspend as the applicant has applied for SSD/SSI and has filed an appeal. Elmore County is not the last resource at this time.

HOFER..... -AYE
WOOTAN..... -AYE
CORBUS..... -AYE **Motion carried and so ordered.**

K-11-17-04 Motion by Corbus, second by Wootan, to approve with a reimbursement order of \$25.00 and 50% of federal and state income tax refunds as payment.

HOFER..... -AYE
WOOTAN..... -AYE
CORBUS..... -AYE **Motion carried and so ordered.**

K-11-17-06 Motion by Corbus, second by Wootan, to deny as St. Alphonsus Regional Medical Center submitted medical records and billing untimely per Idaho Code and the applicant has discretionary income to self-pay the remaining bills over five years.

HOFER..... -AYE
WOOTAN..... -AYE
CORBUS..... -AYE **Motion carried and so ordered.**

NM-12-17-04 Motion by Corbus, second by Wootan, to approve rent in the amount of \$589.00 for December 2017 only with a reimbursement order of \$25.00 per month and 50% of federal and state income tax refunds as payment.

HOFER..... -AYE
WOOTAN..... -AYE
CORBUS..... -AYE **Motion carried and so ordered.**

Motion by Corbus, second by Wootan, to approve and authorize Chairman Hofer to sign the 2018 Weed Cost Share Application with the Department of Agriculture.

HOFER..... -AYE
WOOTAN..... -AYE
CORBUS..... -AYE **Motion carried and so ordered.**

Motion by Corbus, second by Hofer, to add an urgent ambulance repair issue to the agenda.

HOFER..... -AYE
WOOTAN..... -AYE
CORBUS..... -AYE **Motion carried and so ordered.**

Commissioner Corbus wanted the board to be aware that the ambulance in Atlanta and two ambulances in Mountain Home have some pretty significant mechanical issues. They are currently working on cost quotes for the repairs. He will keep the board updated.

Motion by Wootan, second by Hofer, to approve the expenses in the amount of \$199,488.19.

HOFER -AYE
WOOTAN..... -AYE
CORBUS -AYE

Motion carried and so ordered.

Motion by Corbus, second by Wootan, to adjourn for lunch.

HOFER -AYE
WOOTAN..... -AYE
CORBUS -AYE

Motion carried and so ordered.

Regular session resumed.

The public hearing resumed. Attorney Pickens-Manweiler made a proposal to the board. She suggested that a small group, to include herself, Attorney Grant, one commissioner and one person from her team get together at a later date to continue with the negotiations of the agreement, continue the hearing to January 26, 2018, and present the new draft of the agreement to the board at that time. Attorney Grant suggested that Attorney Campbell be included to discuss water issues as well. Attorney Pickens-Manweiler agreed and would like to have Attorney Slette from her team be included for the water issues. The board accepted the proposal and it was decided that Chairman Hofer would attend the negotiations for the county.

Commissioner Corbus read written testimony that was submitted by Wendy Combs. The letter stated that she was upset that the hearing was scheduled so close to the holidays when she had travel plans and she would be unable to attend the hearing and that she wanted it stated at the hearing as to why she was unable to attend. It also stated that she did not receive the hearing notice in time, which left her little time to prepare for the hearing. Commissioner Corbus asked Ms. Bresnahan to make sure all interested parties are properly noticed in advance for the next hearing.

The hearing was closed.

Sheriff Hollinshead appeared. He has a part time administrative assistant position that he would like to make a full time position. He has reviewed his budget and since they have been working diligently to reduce the department’s overtime, he will be able to cover the cost of the full time position out of his overtime line item. Chairman Hofer stated that he supports the Sheriff’s request, but he would like to see a revenue increase, such as charging inmate for being housed in the jail, which is allowed per Idaho Code, and the inmates working the SILDS program.

Motion by Hofer, second by Corbus, to adjourn.

HOFER -AYE

WOOTAN -AYE

CORBUS -AYE

Motion carried and so ordered.

/S/ ALBERT HOFER, Chairman

ATTEST: /S/ BARBARA STEELE, Clerk