

COMMISSIONERS MINUTES

JANUARY 26, 2018

The Elmore County Commissioners met in special 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, Clerk Barbara Steele, and Deputy Clerk Shelley Essl.

Also present were Attorney Terry Pickens-Manweiler, Attorney Gary Slette and James Carkulis, representing Cat Creek Energy, LLC.

The purpose of this special session is the continuation of a public hearing for the Development Agreement between Cat Creek Energy, LLC and Elmore County pertaining to Conditional Use Permits CUP-2015-03, CUP-2015-04, CUP-2015-05, CUP-2015-06 and CUP-2015-07 for pump storage hydro electrical generating facility, PV solar electrical generating facility, wind turbine electrical generating facility, transmission lines and substation, and an ordinance adopting the same, and consideration of revisions to the master site plan for the project.

Disclosures were made. Chairman Hofer stated that, at the request of Cat Creek Energy and the commissioners, he participated in the negotiations of the development agreement. As a result, he feels that he should recuse himself from deliberations and the final decision regarding the agreement. Commissioners Wootan and Corbus feel that he should be included in the decision and not recuse himself. Attorney Grant explained that with Chairman Hofer being involved in the negotiations, he has received information beyond the record. By him participating in numerous meetings, which were not public, does not give those parties in opposition the opportunity to have heard the testimony that Chairman Hofer heard and in turn does not give them the opportunity to rebut or respond to the information he has received, so it is his legal opinion that Chairman Hofer recuse himself from this matter.

Beth Bresnahan, Land Use and Building Department Director, read the rules for the hearing into the record.

Attorney Pickens-Manweiler thanked the commissioners for working together to get the development agreement put together and Cat Creek really appreciated that Attorney Grant and Chairman Hofer took the time to meet with them to negotiate the agreement. She wanted the public to be aware that during the negotiation process, Chairman Hofer was a very solid advocate for the public of Elmore County and made it very clear throughout the entire negotiation process that he was doing what was best for the residents of Elmore County. As a result of the ongoing negotiation efforts, she feels confident that the development agreement that they now have is a great step forward for the progress of the project. She stated that there is still some discussion that needs to take place regarding the water provisions in the agreement, which have been negotiated by Attorney Campbell for the county side and Attorney Slette for Cat Creek.

Attorney Slette provided his proposed water provisions to the commissioners. He stated that in order for the county to get water for recharge, the project has to be functional and operational. He made minimal changes to the language in the provisions made by Attorney Campbell. Commissioner Corbus feels that Attorney Slette needs to get together with Attorney Campbell to review the proposed changes instead of getting the commissioners in the middle of it. Attorney Slette stated that he wanted the commissioner to see his changes first and explain to them why they make sense. He reviewed his proposed changes which included a provision that the county would pay for the cost of pumping water, which includes power, overhead, maintenance and amortization of the financing. The preliminary cost estimate for this will be approximately \$21.00 per acre foot in order to pump the water. He also added a provision that they will only provide water to the county during normal operations of the pump station. Chairman Hofer stated that it would be many years from now before Cat Creek could deliver any water to the county so he feels that it is too early to include a dollar figure in the agreement for the cost to pump the water. Attorney Slette agreed.

Attorney Grant reviewed some provisions in the agreement in accordance with the conditions of approval of the CUP's. He stated concerns regarding written comments to the proposed agreement that were submitted by Hawley Troxell Law Offices. While Attorney Grant is sympathetic with the developer's desire to have this process completed today, he feels that a number of comments in the Hawley Troxell correspondence are valid and clarify certain items in the agreement and he would recommend that the county have on more work session to discuss the comments presented in the correspondence.

Attorney Campbell provided the Commissioners with a copy of selected portions of the transcript from the original public hearing, held in November 2016, referencing discussion of possible water provisions, which became the foundation for their decisions in the conditions of approval of the CUP's. He reviewed mandatory inclusion of the development agreement per the conditions of approval. He discussed the water diversion and delivery language and explained that it is the second or third version of language that he and Attorney Slette drafted in a side bar during one of the negotiation sessions to make the water language very simple and easy to understand. He also referenced language stating the county would build the diversion system from the Cat Creek reservoir to Little Camas. He did not include that language in his draft because, according to the approved conditions, all infrastructure was to be built and funded by the developer and the county shall not incur any expense. Attorney Slette addressed these concerns stating that the developer was putting in the infrastructure to get the water pumped up into the Cat Creek reservoir. He feels that he and Attorney Campbell are in agreement with most of the water provisions, but if the issue is the cost of pumping the water, he is ok with putting in language stating that the cost can be negotiated at a later date, once the project is in operation. Commissioner Corbus stated concern with negotiating the cost at a later date and what the "cost" would include. Attorney Slette stated that the cost of providing the county water is more than simply the electric used, as there are other things, such as the overhead and maintenance costs. Commissioner Corbus pointed out that that's what Cat Creek agreed to in the public hearing for the CUP's, that the developer was going to provide the infrastructure, they did not say they were going to provide the infrastructure and bill the county for it. Commissioner Wootan

agreed that the way he also understood was the county would only have to pay for the power to pump the water. Attorney Slette stated that they have done some calculations on the costs to pump water for the county, which amounts to a minimum of \$210,000.00 per year and asked if the county really expected Cat Creek to pay that cost. Commissioner Corbus stated that the county didn't ask Cat Creek to provide infrastructure to get the county water, Cat Creek stated in the public hearing that they would do that, so the commissioners anticipated that Cat Creek was going to do what they said they would do. Attorney Pickens-Manweiler stated that Cat Creek's specific intent was to build the infrastructure to get water from down below to up above, and at no time did they ever say that in addition they were going to build the county's infrastructure to Little Camas, they said they would partner with the county to get it done. Attorney Slette requested that the water provisions be dealt with independently from the development agreement to at least allow the agreement to move forward. Attorney Grant asked if the board would like to continue the hearing so the working group can meet one more time to try work out these issues. James Carkulis, representing Cat Creek, suggested that Cat Creek would build and own the infrastructure from Cat Creek reservoir to Little Camas. In return, the county would pay the cost of pumping the water, the overhead and maintenance costs it will take to do that, and a fifty year amortization schedule for the county to reimburse Cat Creek for the infrastructure to Little Camas. The commissioners asked if the county would be charged the fee if no water was pumped. Mr. Carkulis stated that the county would not be charged to pump the water, but they would still have to pay the amortization, which could be paid when the water is pumped, paid on an annual basis or paid by invoicing, but that can be worked out.

It was decided that the hearing would be continued so the working group can meet next week to discuss the water issues.

Motion by Corbus, second by Wootan, to continue the hearing until February 9, 2018 at 1:30 p.m.

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

Motion carried and so ordered.

Motion by Hofer, second by Wootan, to close the public hearing.

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

Motion carried and so ordered.

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