



## Lea County Planning & Zoning Board Regular Meeting

Tuesday, June 23, 2020 9:30 A.M.

Lea County Courthouse - Commission Chambers – 100 North Main Avenue, Lovington, New Mexico

Notice of this Meeting has been given to the Public in Compliance with Section 10-15-4 NMSA 1978

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Lea County Manager's office located in the Lea County Courthouse in Lovington, New Mexico at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Lea County Manager's Office at the Lea County Courthouse if a summary or other type of accessible format is needed.

### MINUTES

Call to Order ~ Roll Call

#### **ITEM 01: BOARD**

**9:40 A.M. Roll Call board members were present those being Guy Kesner, Chair; Daniel Johncox, Vice-Chair; Kay Hardin, Michael Arnold, Dickie Wall, and Jeremy Baker. Randy Pettigrew was absent. Public present were Chris Cortez, Troy Hudson, Greg Richards, and Wanda Keltion.**

Minutes for the May 20, 2020 were approved with Kay Hardin making the motion and Daniel Johncox providing the second. All members present approved the motion.

There were no Public or Board Member Comments.

#### **ITEM 02: ACTION ITEMS/PUBLIC HEARING**

Consideration of Approval of the Preliminary Plat for Mesquite Draw Subdivision in Section 31, Township 17 South, Range 38 East, N.M.P.M., Lea County, New Mexico Located east of Matt Drive and west of Bensing Road on Alabama Street at the intersect with Braniff Street.

Mr. Reid presented started presenting the action item and Dickie Wall informed everyone that the podium mike was non present. Found the a mike that could be used and proceeded with the meeting. Mesquite Draw Subdivision is a 31 lot subdivision located west of Bensing, east of Matt Drive, and south of Alabama Street. Braniff Street south to the end of the subdivision will be developed along with five other cul-de-sac roads. The Office of the State Engineer sent back a negative opinion and State Historical and Preservation Office gave an approval stamp for the project. Any questions board members have on water availability for the subdivision will be answered by Chris Cortez with Atkins Engineering Associates from Roswell.

Chris Cortez stated that the State Engineer said that the area would run out of water this is commonly done by the State Engineer (OSE). Lea County underground aquifer is a mined aquifer it is the western edge of the Ogalala aquifer. It is the big aquifer that spreads out into Kansas. If you travel east to Roswell and Carlsbad when you come off the cap. That is the western most edge of the Ogalala Aquifer. It is a red bed aquifer that is the basal layer. In between is the alluvial sands, gravels, clays that make up the aquifer. There is sloping red beds and land surface and down in the ground you have a water level. The difference between the red bed and the water level is your saturated thickness. If the red bed is at a 100 feet and the water level is at 50 feet, then the saturated thickness would be 50 feet. Or the glass is half full or half empty depending on how you what to look at it.

In this scenario, Mr. Johncox looked around the area and bought a 41 acre water right. He changed a portion of the irrigation water right to domestic use. Changed the legal place purpose of the water right through the OSE process. Question. Was all the 41-acre water re-permitted. Answer: No. Explanation: With an irrigation right of 1 acre of land, a person, by law, gets to apply 3 acre feet of water annual, but with a domestic water right an acre of land has only 2 acre feet of water annual. So Mr. Johncox took 8 acres and converted to domestic which gives 16 acre feet per year and gave an half acre foot per lot for originally 32 lots which are now 31 lots.

Chair Guy Kesner (Hobbs ETZ); Vice Chair Daniel Johncox (District 5)

Members: Kay Hardin (District 1); Michael Arnold (District 2), Jeremy Baker (District 3), Dickie Wall (District 4); Randy Pettigrew (Lovington ETZ)

irrigation So the application was filed and finally approved by OSE. So that 8 acre of irrigation right is now permanently been changed to domestic use. So in this scenario each lot owner would have a well and each well would have a water right in it. This is subtly different than a permit like a domestic permit. One major difference is these new permitted wells for this subdivision will be metered according to OSE. There is a limit on these wells. Anyone could go out and get a 1 acre permit for a domestic well and if we had a couple of goats we could get a three acre foot permit because we could get a livestock permit under the law. But here we converted a water right so each lot will have a water right associated with it to a total of 0.5 acre feet per year. It will have to be metered and reported to OSE. For this subdivision Mr. Johncox, is exceeding the intent of the subdivision act by converting these irrigation rights into domestic rights. So that is the basis of the water rights here, we are not pulling any of the individual domestic permits. We have water righted domestic well for each lot.

Next subject is decline of the aquifer. This is where the OSE negative opinion comes from. What the OSE does, as spelled out clearly in the document, they look at the saturation thickness and they look at all the water rights and domestic permits, everything that is listed in the model cells, and the OSE pumps those model cell 100% of the time every year for the OSE to come up with their declining number. OSE model, which is conservative, they assume every water right in the lea county basin every domestic permit, livestock permit, everything is pumping maximum water every year entirely. Question: That is in the entire county. Answer: Yes, the entire county. And locally for the model cells. OSE has divided the county into model cells they have an estimate of saturated thickness and they have all the wells that are permitted to pump in this model cell and they pump it full; then they say what is going to happen. It is useful in one sense for water rights analysis, but it does not accurately reflect real world decline numbers. If we go back to the previous example of 100 foot red bed, 50 foot water table, 50 foot of saturated thickness; the only way the saturated thickness goes down is when water is taken out of the aquifer. Put a straw in the ground and suck the water out. OSE says what happens if everyone pumps 100% of the time and what is it going to look like; so what OSE comes up with is draw down numbers of 3.8 or 4.3 feet per year. Then, OSE says 4 feet per year with 50 feet of water; it will be gone in ten years. In reality that is not what is actually going on. If you look at the water availability assessment, we went to USGS Wells, which is the United States Geologic Society, and these are OSE records. In years past, the USGS would go out in January, when all the irrigation pumping was off, either yearly or every five years, and would measure water levels, globally, and from those numbers you could ascertain decline. What is interesting, the irrigation well on the subdivision is an old USGS well. It last measurement from OSE was in 1986 with a measurement of 59 feet. Alan Eades, Eades Water Drillers, went out and measured that well again. He duplicated how the OSE measured the well in 1986 and used the same process in 2020, Alan Eades measurement of the water table was at 94.7 feet. Since 1986 – 2020 is 34 years;  $94.7 - 60 = 34.7$  feet;  $34.7/30$  years = 1.15 feet annual decline. The decline from 1986 to 2020 in that well was 35 feet divided by 34 years. The decline in that well was 1 foot a year not 3 feet a year or 4 foot a year, but one foot a year. And that is just one well. We expanded the search for other wells around the subdivision and went out and we duplicated that. We basically went out and measured water levels and did the same thing. What we are seeing in the general area of the subdivision is we are seeing a range of 1.0 – 1.4 feet decline per year overall. We do not know if some of that is occurring later than normal. So there is some room there, but not at 3.8 or 4 feet a year. If that were the case than we would all be in trouble. Why is that? I know it is difficult to make a decision when you have the OSE's opinion saying this and there pretty close. What is interesting about the OSE analysis, they say that this model cell using their model would go dry in 2058 using the 3.8 feet a year.. 2058 is 38 years from now. Even with there decline which is almost 3 times or 4 times the decline we are seeing in the real world. You are almost pushing 40 years and that is the planning period forty years. Why this is is because people do not pump their entire water right. And that is exactly what is going on here. The actual water coming out of the ground does not match the theoretical water coming out of the ground. Those of you the work around the county know that most of the irrigation right in the county is not being pumped. A lot of it is fallow or NCRP. Another thing that is changed is people have gone from flood to pivotal irrigation so most do not need their full right. People have invested in more

efficient technology. People do not divert their full duty of water. New Mexico Groundwater Association where they have metered domestic wells have found that people divert about 0.3 acre feet annually instead of the full acre foot of water yearly.

Daniel is a perfect example. Since Daniel has purchased this water right which is quite big, 120 acres of irrigation, 4 years ago. He is converting some, but he is not irrigating with it. The OSE model would not take that into account. The model would say every year for the last 4 years Daniel has been diverting that full amount. That is just one example. This is a way of showing the difference between the actual decline and the OSE model decline. One is based on what is actually coming out of the ground and the other is based on the absolutely worst or impossible cases scenario. When you see that the static water level is at 95 feet and the red bed is at 260; one can see there is 160 feet of saturate thickness.

Question: This that what the red bed measured.

Answer: Yes. But there is a variation in the red bed some may be at 240 feet, some 255, and some 260 like this exploration well drilling on Mesquite Draw land. The depth to water across the subdivision will be between 89 and 100 foot range. In five years, the water level will be deeper.

The wells will need to be drilled to the red bed as stated in the disclosure statement; conservation measures for water fixtures, no outdoor water structures, i.e. swimming pools, fountains, ponds, or water sculptrs.

Question: With the well being metered and the state getting metering reports they should know if there is any violation to the restrictive covenants based on the metering of the water.

Right.

It would be illegal for some one to divert more than they have or have a right to divert.

These well will require a meter because they have been converted from an irrigation right to a domestic right. For normal domestic wells a meter is not required.

Question: Why did the state not use the USGS well on the property. Is the well not a USGS well any longer?

Answer: According to colleagues who worked for OSE in the 1970's and 1980's. The USGS got a grant to monitor wells in New Mexico and hired OSE to do the monitoring and collect the data. When the grant funding ran out so did the statewide monitoring of water wells. OSE still take monitor reading around the state now, but previously it was more diffuse. Now, they may monitor 50 wells statewide, however previously it may have been 500 or 1000 wells. The data has greatly declined which causes problems for a stakeholders and decision makers. OSE model is to protect water rights users. To stop the impairment of water rights.

Question: These water rights were already attached to these parcels?

Answer: Yes. No water rights where moved in. There will be no water right impairment, in fact, the water use in this area may improve because water rights are being removed from this cell.

Just for the record Mr. Kesner stated that Mr. Johncox is the president of YMH, Inc. and the Vice-Chairman of the Lea County Planning and Zoning Board.

Question: Michael Arnold asked if the State decided after issuing a negative opinion and the County still approving the subdivision, if the State ever came in a stopped the development.

Answer: Guy Kesner said not that he has ever been aware of that occurring. He believes the County has authority to listen to an opinion, but still approve a subdivision that have contrary opinions attached to the subdivision. Daniel Johncox shared information from a 2013 document from Senator John Sapien NMSA 1978, CFT Development LLC vs. Board of County Commissioners " While the Act requires the County to request opinion from the State, the County is not bound by their conclusions, in the last analysis the final decision on wether or not to approve the subdivision rest with the County. Under the act the County is to apply its own discretion in weighing it against State Agency opinions and other evidence and make its own decision." That this is what Mr. Arnold is questioning.

Bruce Reid was sworn in. He referred to NMSA 47.6.1.2 document that states the OSE has total control over any subdivision where there lot sizes of less than two acres and more than ten lots. He said that this subdivision does not apply because this subdivision averages over 2 acres in size. So the OSE will give an opinion, but they do not have absolute control over this subdivision. He first stated it as 'or' but change to 'and ' with futher clarification request from Guy Kesner. B.Reid restated the rule as two acres or less and ten

tracts or more. Mr. Kesner asks for clarification. B. Reid stated the rule is that all the lots have to be less than two acres in size with more than 10 lots in the subdivision before OSE has absolute control of the approval status for a subdivision. In this situation if the OSE gave a negative opinion then no one could override that opinion. Mr. Kesner asks if the rule applied in this situation and Bruce Reid stated that the rule does not apply because the tracts of land are more than two acres in size.

Greg Richards was sworn in. His concern is the subdivision will affect his property value for his vacate land. He has a mobile home park to his south and now Mesquite Draw will be developed to the north of him. He believes with the placement of these two developments around his property that it will cost him six figures in his selling price. He would like to know who looks out for land value of property owners in Lea County. He believes everyone on Matt Drive will take a hit on their property values. Greg Richards gave the board an exact location of his property. He bought the land to sell in the future.

Question: Who protects land owner's rights and property values?

Answer: Mr. Kesner- The planning Board takes all property owner's rights into consideration whether it be the people on Matt Drive, or Greg Richards, or the developer of Mesquite Draw. Everyone who buys land has the right to develop that property the way that they see fit. And the Board is here to protect that right as long as it is lawful. Mr. Kesner asked about access to Mr. Richards property. He stated he has two access roads, one from Matt Drive and one on Braniff road from Kansas. Jeremy Baker stated that Mesquite Draw would put in a legal ingress to Mr. Richards property. Mr. Kesner related to Mr. Richards' concern and thank him for appearing today.

Troy Hudson was sworn in. He stated he thought the Mesquite Draw would affect the property values of homes on Matt Drive. He said when he moved in that mobile home where not allowed on Matt Drive. But he said modular homes have started to be placed on Matt Drive. Kay Hardin explain that deed restriction are made by the seller of the property. Each seller may have different restriction on the property or may have no restriction at all. Mr. Kesner asked if Mr. Hudson understood the water concerns in the subdivision. Mr. Hudson said he understood and was just there to voice his opinion about property values.

No one else chose to testify.

Public Hearing closed.

Jeremy Baker asked Daniel Johncox about the drainage lot and the ownership of the parcel. Daniel Johncox stated they haven't had many problems with the lot and he says the YMH, Inc kept the drainage lot from its previous subdivision. Mr. Johncox said he would like to have the County take ownership of the lot.

*(Side Note: In the previous subdivision the drainage was attached to Lot 19, so the owner of Lot 19 has control of the drainage pool. The County did not take control and the developer did not have to keep the lot.)*

Mr. Baker asked about the dark ground cover shown on the google earth image and asked if the subdivision was in a flood zone or not. Mr. Johncox stated that the appearance of the ground had been caused by a fire that happened about 4 years ago. Commented that only the undeveloped areas were burned and that the fire went around all the developed areas. Mr. Baker asked about the easement on the southernmost line of Mesquite Draw and the measurement of the easement. The plat shown a 40' roadway easement.

Jeremy Baker made the motion to recommend approval of the subdivision to the Board of Commissioners with a Kay Hardin second. Roll Call Vote was taken. Guy Kesner, Michael Arnold, Kay Hardin, Jeremy Baker, and Dickie Wall with yes votes. No one voted no. Daniel Johncox abstain with a recusal.

Guy Kesner request comment from the Board on why they went against the OSE negative opinion and recommended the subdivision for approval. Mr. Kesner summation of the Board's reasoning the hydrology study, the granting of the water rights to each landowner from an irrigation right to a domestic right to secure water availability for the subdivision for at least forty years.

### **ITEM 03: OTHER BUSINESS**

- Set/Confirm Next Meeting(s):
  - ❖ July 14, 2020

- ❖ August 4, 2020
- ❖ September 8, 2020
- ❖ October 13, 2020
- ❖ November 10, 2020
- ❖ December 8, 2020

Mr. Kesner asked for an update on the Grief and Hood development from the May 20, 2020 meeting. Mr. Reid stated that the developer chose to go in a different direction than the 5 lot development.

**ITEM 04:**

**ADJOURN at 10:53 A.M.**