

**LEWIS AND CLARK CITY-COUNTY HEALTH DEPARTMENT
BOARD OF HEALTH – PUBLIC HEARING MINUTES
316 N. Park, Room 330, HELENA, MONTANA 59601
April 25, 2013**

Members Present

Ken Wallace, chair
Susan Epstein, vice-chair
Commissioner Andy Hunthausen
Mayor Anthony Strainer
Mayor Jim Smith
Kelly Parsley
Jennifer Lowell

Staff Present

Melanie Reynolds
Gayle Sheldon
Kathy Moore
Gayle Shirley
Frank Preskar
Norman Rostocki
Mike Henderson

Members Absent

Anne Weber
Kent Kultgen

Guests Present

Brian Drinville, Applicant (By Phone)
Paul Stahl, Deputy County Attorney
Ron Alles, Helena City Manager

Ken Wallace, chair, called the meeting to order at 1:33 p.m. A quorum was established. Introductions of Board members were made.

REVIEW OF AGENDA

Mr. Wallace requested that the Board discuss the two Helena Independent articles involving air quality and the septic maintenance program during the board member discussion. Melanie Reynolds, Health Officer, stated that Gayle Sheldon is substituting for Jolene Helgerson as recording secretary.

HEARING OF DELEGATION

Variance Request, Ms. Carrie Drinville/Mr. Brian Drinville Continuation: Mr. Wallace stated that the Drinville variance is a continuation at the request of the hearing officer for the Drinville Variance heard on March 13, 2013. Mr. Wallace noted that a letter dated August 6, 2013, to Mr. Drinville from the health department regarding the results of groundwater monitoring was missing from the variance information found on pages 3-14 of the board packet. Mr. Wallace asked the Board if there was anyone who did not review the March 13 Drinville variance transcripts or listen to the recording. All board members present indicated that they had listened to or reviewed the March 13 Drinville variance. Mr. Wallace introduced a letter of response from the City of Helena to the Board of Health as exhibit “A.”

Frank Preskar, sanitarian for the Environmental Services Division, stated that the parcel of land in question is located at 2169 Head Lane, Helena, Montana. The parcel is 10 acres in size. In 2011, Mr. Drinville requested connection to the City of Helena sewer main that runs along the northern boundary of the property. The request was denied. Staff reviewed the parcel to see if it was suitable for an on-site system. Groundwater monitoring was conducted at four locations on the parcel in 2012. Water levels ranged from 1.83 to 3.54 feet below ground surface. The applicant is requesting a variance to Section 4.3(5) of the 2011 Lewis & Clark On-Site Waste Treatment Regulations: “wastewater treatment systems must be located so as to maximize the vertical separation distance from the bottom of the absorption trench to the level of the seasonally high groundwater level or to the bedrock or other limiting layer, but this vertical separation must not be less than four feet from natural soil.” Mr. Wallace pointed out “exhibit B,” an aerial photo of the Drinville property on page 7 of the board packet.

Mr. Drinville stated that he had no additional information to add to the hearing. Mr. Wallace read the requirements and conditions for granting a variance.

Mr. Preskar stated that the site did not meet the minimum of 4 feet of separation of seasonal peak in the water table. Mr. Preskar noted that this parcel is in a subdivision that was created through exemption to the Sanitation in Subdivision Act. The 10-acre tract can be sold individually without regulatory review. The on-site wastewater regulations come into effect once construction is proposed for any one of the tracts. The soils in this area are predominantly silt loams and silt clay loams. Staff has recommended that a level II treatment system be installed on the property. Mr. Preskar referenced exhibit "C," various levels of treatment systems, on page 8 of the board packet. If the variance is granted, staff also recommends a minimum of 6 inches of fill be placed between the final treatment field and the natural ground surface to increase the separation from groundwater to 4 feet as required by state law. Mr. Preskar also referenced exhibit "D," City of Helena denial letter to Mr. Drinville, on page 10 of the board packet.

In answer to a question from Susan Epstein, Mr. Preskar stated that all of the tracts in the subdivision are greater than 10 acres.

At the request of Commissioner Hunthausen, Mr. Preskar read the staff recommendations on page 4 of the board packet.

In answer to a question from Mr. Wallace, Mr. Preskar stated that a level II system has been proven to remove 60 percent of the total nitrogen or discharges a total nitrogen effluent concentration of 24mg/l or less. These levels are based on nitrogen levels only. Level IB systems remove at least 34 percent of nitrogen but not more than 50 percent from the load.

In answer to a question from Jennifer Lowell, Mr. Preskar stated that 4 feet of separation has to be to ground surface.

Ron Alles, Helena City Manager, stated that the City of Helena will extend its service as long as it is in the Urban Standards Boundary, which is identified in the city's growth policy. The applicants' parcel is outside of the boundary. The parcel is not accessible to emergency and other city services. Mr. Alles noted that that as sustainable land-use policy is adopted and implemented by the County in areas outside the Urban Standards Boundary; the City Commission has expressed an interest in considering extension of some services in emergency situations if the extension does not promote unsustainable development.

In answer to a question from Ms. Epstein, Mr. Alles stated that there are other parcels within the subdivision along the Fort Harrison line that are currently connected to the city sewer, and arrangements were made before the growth policy was implemented. Mr. Alles was not aware of the arrangements that were made regarding these connections. Presumably those property owners waived their right to annexation. There currently is no documentation to their waived right to annex.

There being no public comment, Mr. Wallace opened the hearing for board member discussion.

In answer to a question from Ms. Lowell, Mr. Preskar stated that an engineer will design for compaction for the recommended fill requirement regarding staff recommendation number three on page 4 of the board packet.

In answer to a question from Ms. Epstein, Mr. Preskar stated that level IB and level II systems have been approved by the Montana Department of Environmental Quality (DEQ). A level IB system requires an intermittent sand filter that must be built from scratch, and it often costs more than a level II system.

In answer to a question from Mr. Wallace, Mr. Preskar stated that, due to the nature of the variance, staff did not have a recommendation for the Board regarding whether to grant or deny the variance.

Mr. Drinville stated that, if he is denied a level II treatment system, then what is his option regarding the installation of a holding tank? Mr. Drinville and Mr. Preskar will discuss the option of a holding tank at a later date.

Ms. Epstein stated that she supports granting this variance with the condition that the property would not be subdivided in the future. Mr. Wallace stated that the Board has previously granted a variance with the same condition mentioned by Ms. Epstein.

Deputy County Attorney Paul Stahl recommended that the Board include in the variance the condition that the Drinville property will not be allowed to be subdivided. Mr. Stahl noted that a law has been passed by the Legislature allowing up to three additional uses on a piece of property without subdividing as long as septic regulations are followed. In answer to a question by Ms. Epstein, Mr. Stahl stated that adding a condition that only one septic system is allowed to be installed on Mr. Drinville's property may be considered illegal restriction. Mr. Preskar stated that regarding density or saturation of effluent involving this variance a 10-acre tract involving one single-family home per 10- acres will have natural dilution.

After further board member discussion, Susan Epstein made a motion to approve the variance with the conditions that were recommended by staff but to also include that a level II system will be used, the property may not be subdivided, and that a single septic system will be allowed and may not be enlarged after the original permit. Commissioner Hunthausen seconded the motion. The motion failed 4-2 with Mayor Strainer abstaining from voting. Jennifer Lowell made a motion to deny the application. Kelly Parsley seconded the motion. The motion carried 4-2 with Mayor Smith abstaining from voting. The variance for Mr. and Mrs. Drinville was denied.

Ms. Reynolds referenced page 7 of the On-site Wastewater Regulation section 3.4 (5) regarding criteria for determining whether a variance should be heard by a hearing officer or the Board. Staff will discuss the process further and create criteria for determining when a variance should be heard by a hearing officer.

ACTION ITEMS

Hearing Officer Recommendation, Ms. Gail Zarr: Mr. Preskar gave a brief explanation of the Ms. Gail Zarr variance hearing held on April 23, 2013. Susan Epstein was the hearing officer. Commissioner Hunthausen moved to approve the hearing officer recommendation for approval. Mayor Strainer seconded the motion. The motion carried 7-0.

Request for Approval of 2013 Cooperative Agreement with the MT DPHHS: Mike Henderson, Administrator of the Disease Control and Prevention Division, requested the approval by the Board of the cooperative agreement between the Montana Department of Public Health and Human Services and the Board of Health (BOH) on pages 19-24 of the board packet. The purpose of the agreement is to establish a payment schedule for disbursing funds to the BOH and to facilitate payment of funds to support inspections of licensed establishments. Mr. Henderson noted that an amendment will be needed to the

agreement regarding the inspections of schools and public accommodations, which will come before the Board at a later date. Commissioner Hunthausen moved to approve the cooperative agreement between the MT DPHHS and the Board of Health. Ms. Epstein seconded the motion. The motion carried 7-0.

FY2014 Health Department Budget: Norman Rostocki, Finance Coordinator, presented the FY2014 Health Department budget for recommendation of approval to the Board of County Commissioners (BoCC). Mr. Rostocki noted the budget highlights on page 26 of the board packet. Also highlighted were the budget summaries for all health department programs (see attachment "B") and the breakdown of Health Mill Fund 227 by revenue and expenditures (see attachment "C"). Mr. Rostocki noted a change was made from the ending fund balance for FY2013 on page 29 of the board packet to the beginning fund balance for FY2014 in attachment "C." Ms. Reynolds highlighted mill support for programs such as strategic planning, continued work for accreditation, continued education for air quality, subsidizing for the septic maintenance program, ¾ match for the maternal child health block grant, 33% match for air quality, and two-thirds funding support of the licensed establishment program. In answer to a question from Mr. Wallace, Commissioner Hunthausen stated that if additional monies need to be added into the mill from the reserve, the Commissioners will work with the Board if necessary. Ms. Lowell made a motion to recommend that the BoCC approve the FY 2014 health department budget. Mayor Strainer seconded the motion. Commissioner Hunthausen abstained from voting. The motion carried 6-0.

BOARD MEMBER DISCUSSION

Finance Reports: Mr. Rostocki referenced the FY13 comparison to budget and cash flow for July 2012 through March 2013 (see attachment "D"). Mr. Rostocki noted that the Department is 75% of the way through its fiscal year. Total revenue to date is \$1,055,715, or 64% of the amount budgeted; actual expenditures are \$1,170,553, or 68% of the amount budgeted. Revenues are under expenditures by \$114,838; total ending cash is \$489,605.

MINUTES

Mr. Wallace asked if there were any corrections or additions to the March 28, 2013, minutes. There being none, the Board approved the minutes as written.

BOARD MEMBER DISCUSSION continued

Community Health Improvement Plan: Gayle Shirley, Communications Coordinator, said the Community Health Improvement Plan (CHIP) report will be completed in early May. The CHIP steering committee met to outline a process for distributing and monitoring progress on the CHIP plan. The health department will collaborate with St. Peter's Hospital to produce a combined department and hospital community health improvement plan.

Controlled Groundwater Area for East Helena: Kathy Moore, Administrator of the Environmental Services Division, stated that representatives from the Environmental Services Division and the Water Quality Protection District (WQPD) met on April 15, 2013, with members of the Montana Environmental Trust Group and the Environmental Protection Agency (EPA) to discuss controlled groundwater area for two groundwater contamination plumes in East Helena becoming part of the Institutional Controls (IC) for the East Helena area. At the meeting, members recommended creating a committee of members from the Board of Health (BOH) and the WQPD to petition the Montana Department of Natural Resources (DNRC) for a controlled groundwater area in East Helena as part of the ICs. Eric Regensburger of the WQPD volunteered to be part of the committee. On behalf of the BOH, Ms. Lowell and Mayor Strainer volunteered to be on the committee. Staff will send an email to Board members who were not present asking for additional volunteers. In answer to a question from Mr. Wallace, Ms. Moore said she has not

heard from EPA regarding the petition for a controlled groundwater area in the Upper Tenmile area. Staff will follow up and report back to the Board.

Helena Independent Record Air Quality Article: Mr. Wallace commented on the Helena Independent Record (IR) article regarding the failing air quality marks by EPA for the Helena area. Mr. Wallace noted the possibility of adding more funding to the budget if necessary to improve public education regarding air quality. Ms. Moore stated that DEQ has contacted her regarding additional funding for public outreach and improvements to county dirt roads to help control dust. The additional DEQ funding has been incorporated into the budget for air quality outreach and enforcement. Staff will meet with the American Lung Association, which released the report mentioned in the IR article, to talk about solutions. Staff will also work to find funding to support a wood-stove swap and addition of a new air monitoring location, possibly in Lincoln.

Helena Independent Record Septic Maintenance Article: Ms. Moore stated that staff is making changes to the septic maintenance questionnaire and notification letter based on public complaints mentioned in the recent IR article. The questions will be less intrusive but will still get at the key information regarding the amount of water a home uses.

HEALTH OFFICER REPORT

Sharon Davis accepted the position of administrative assistant for the Environmental Services Division. Her start date is April 29, 2013.

Rita Cortright, executive assistant for the BoCC, will submit notifications to the IR regarding the open positions on the Board of Health, which are for a licensed doctor of medicine practicing in Lewis and Clark County (currently held by Susan Epstein) and a consumer of health services provided by the local Board, with experience in or knowledge of health care, environmental, or human services programs (currently held by Ken Wallace).

Ms. Reynolds and Ms. Shirley met with Karen Filipovich regarding facilitating BOH strategic planning. To make the planning go forward more smoothly, Ms. Filipovich suggested that some of the work be done prior to the meeting, such as completing a survey and summarizing assessments from various agencies and programs. Ms. Filipovich suggested having a 4-hour session in June. Staff will coordinate a date for the Board.

During the remodeling of the Cooperative Health Center, some health department staff will have to relocate to various county buildings within Helena for as long as a year. Ms. Reynolds will work to keep the immunization clinic and the WIC office on the first floor of the current Health Center during and after construction.

There being no public comment, the meeting adjourned at 3:55 p.m.

Ken Wallace, Chair

Melanie Reynolds, Secretary

Action Items from April 25, BOH Meeting

- Staff will create criteria for determining when to use a hearing officer.
- Staff will send an email to Board members who were not present at the April board meeting asking for additional volunteers to be on the controlled groundwater area committee.
- Staff will give an update at the May Board meeting regarding a controlled groundwater area petition for the Upper Tenmile.
- Staff will coordinate a date in June for a BOH strategic planning session.