

**LEWIS AND CLARK CITY-COUNTY  
BOARD OF HEALTH – MINUTES  
316 N. PARK AVENUE, HELENA, MONTANA 59601  
Lewis and Clark City-County Building  
September 27, 2018**

Members Present

Commissioner Andy Hunthausen, vice chair  
Justin Murgel  
Tyler Ream  
Kammy Johnson  
Scott St. Clair  
Mayor Wilmot Collins (Arrived @ 2:10 p.m.)  
Jenny Eck (Arrived @ 1:10 p.m.)

Staff Present

Drenda Niemann                      Melissa Baker  
Jolene Helgersen                      Sarah Sandau  
Eric Merchant                              Karen Lane  
Kathy Moore  
Jacqueline Isaly  
Gayle Shirley  
Beth Norberg

Members Absent

James Benish, chair  
Dr. Adron Medley

Guests Present

Jill Steeley, PureView Health Center  
Nicho Hash, County Attorney's Office  
Charles Lane, County Attorney's Office  
Pat Christian, Helena Citizens Council

Commissioner Andy Hunthausen, vice chair, called the meeting to order at 1:07 p.m. A quorum was established.

**REVIEW OF AGENDA**

No changes were made.

**MINUTES**

Commissioner Hunthausen asked if there were any corrections or additions to the July 26, 2018, or August 23, 2018, minutes. The Board approved the minutes as written.

**HEARING OF DELEGATION**

Kathy Moore, Environmental Services Division Administrator, presented an overview on the variance process (see Attachment "A") in which she highlighted what a variance is, what the requirements of the board are, and why variances are allowed. She explained the powers and duties of local boards of health under the Montana Code Annotated and Montana Administrative Rules 17.36.922 Local Variances. Charles Lane, Deputy County Attorney, explained *ex parte* communications and what evidence the board is allowed to hear.

Variance Request of Daniel & Catherine Trost: Beth Norberg, Registered Sanitarian, stated that Daniel Trost of 5232 Castles Road, Helena, MT, is requesting three variances to the 2011 Lewis & Clark Onsite Wastewater Treatment Regulations:

1. Section 4.4 (12) Treatment Field Requirements, which requires pressure distribution of any system with more than 1,000 square feet of drainfield, calculated before applying any reductions;
2. Section 4.3 Site Requirements, Table 4A, Setback Distances, which requires a 25-foot setback from a drainfield to a slope great than 35 percent; and
3. Appendix B, Section 6.1.4.1 in reference to Montana Department of Environmental Quality (DEQ) Circular 4, Chapter 2 Section 2.2.3, which only allows cut systems for replacement of failing wastewater systems.

Mr. Trost referenced Exhibit C, an aerial photo (page 22 of the board packet) and Exhibit D, a sketch of the lot layout (page 23 of the board packet). Mr. Trost said he currently has a concrete drywell (cesspit) on his property and would like to replace it with a Presby Environmental system that will not pose a risk to public waterways, unlike his current system if it should fail. He also recommended that the Onsite Wastewater Regulations be amended to allow a pressure-dosing system with a Presby Environmental system. In answer to a question from a board member, Mr. Trost said that his neighbor denied an easement that would have allowed him an alternative location for his new system.

Ms. Norberg highlighted the Exhibit B staff report (pages 16-19 of the board packet) along with Exhibit C, aerial photo and lot layout (pages 20-22 of the board packet); Exhibit D, lot layout (page 23 of the board packet); Exhibit E, well logs and sample results (pages 24-28); Exhibit G, the Onsite Wastewater Regulations 4B (page 31 of the board packet); and Exhibit H, a description of the Presby Advanced Enviro-Septic System.

Commissioner Hunthausen opened the hearing for public comment and board member discussion.

Commissioner Hunthausen noted that the variance criteria (found in Attachment "A" and presented to the board at their desks) allow the Board to grant a variance only if it finds that all established criteria are met.

Ms. Moore asked the applicant if there would be any hardship if the variance were not granted. Mr. Trost stated that he has no other reasonable option other than the Presby system and it would not be in the public's best interest to continue to use the current cesspit. Mr. Trost noted that if he had to install a portable toilet as his only source of waste removal, his property would not be a home to him.

Commissioner Hunthausen closed the hearing for public comment.

Kammy Johnson, Hearing Officer, stated that the variance application complies with the required criteria for granting a variance.

In answer to a question from Jenny Eck, Ms. Norberg stated that the DEQ pressure-distribution rules were in place before the Presby systems were not allowed to be used in clay soils. Ms. Norberg described the property's steep slope and explained why the Presby system would be the best alternative.

There being no further board member discussion, Scott St. Clair moved to approve the variance request for Mr. Trost. Tyler Ream seconded the motion.

Ms. Johnson moved to approve the Findings of Fact. Mr. St. Clair seconded the motion. In answer to questions from Ms. Eck, Ms. Moore stated that Mr. Lane pointed out that the findings did not address undue hardship, although the applicant did provide a reason for hardship during his presentation. Ms. Moore said staff will add this finding to the documentation. She also stated that staff will ask the applicant for a copy of the easement to know if the well has been placed 100 feet away from the system. Ms. Johnson added that the burden of proof is on the applicant to show he has met all setback requirements. Mr. St. Clair noted that the easement is part of condition item 3. Ms. Johnson and Mr. St. Clair approved the addition to the Findings of Fact. The motion carried 6-0.

Ms. Johnson made a motion to approve the Conclusion of Law. Ms. Eck seconded the motion. The motion carried 6-0.

The full variance was approved 6-0.

**ACTION ITEM**

Resolution in support of Tobacco Point of Sales Ordinance: Karen Lane, Chronic Disease Prevention Programs Manager, presented a draft resolution of support for a proposal under consideration by the City of Helena to prohibit self-service displays of tobacco products and the sale of flavored tobacco products in stores except adult-only retailers. Ms. Lane briefly highlighted the reason for the resolution. Mayor Collins noted that the City of Helena supports the proposed Board of Health resolution. Discussion was had regarding reducing or prohibiting the use of tobacco and the advertising and placement of tobacco aimed at children. There being no public comment, Mr. St. Clair moved to approve the resolution of support for the proposed Tobacco Point of Sales Ordinance. Ms. Johnson seconded the motion. The motion carried 7-0. In answer to a question from Mr. St. Clair, Nicho Hash, Deputy County Attorney, said he will verify whether the Tobacco Point of Sales Ordinance is limited to the City of Helena or will pertain to the City of East Helena as well. Ms. Niemann stated that City of Helena ordinances are restricted to the City of Helena.

**BOARD MEMBER DISCUSSION**

FY18 Division Performance Management Presentation: Division Administrators Eric Merchant, Jacqueline Isaly, and Kathy Moore presented performance management summaries for each of their divisions (see Attachments “C, D, & E”).

Community Health Improvement Plan: Chronic Disease Update: Ms. Lane, along with Melissa Baker, Breast and Cervical Health Program Coordinator, and Sarah Sandau, Tobacco Prevention Health Educator, gave an update on Community Health Improvement Plan (CHIP) objectives related to their programs (see Attachment “F”).

PureView Health Center School-Based Clinic: Jill Steeley, Executive Director of PureView Health Center, announced that the Center will open an onsite clinic at the East Helena Prickly Pear Elementary School. The clinic will offer medical, mental health, and dental services and will be open to the public. PureView hopes to enroll as many Prickly Pear students into the clinic as possible.

**HEALTH OFFICER’S REPORT**

Ms. Niemann stated that, on behalf of the County Attorney’s Office, she wanted to remind board members that they are prohibited from publicly presenting their perspectives on Healthy Montana Initiative (I-185) in their official capacity. They are free to do so as private citizens.

Ms. Niemann briefly highlighted the Crisis and Emergency Risk Communication (CERC) training (page 53-54 of the board packet) and the Health Votes Montana Candidate Forum (page 55 of the board packet).

There being no public comment, the meeting adjourned at 3:27 p.m.

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Commissioner Andy Hunthausen, Vice Chair

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Drenda Niemann, Secretary