

**MINUTES OF SPECIAL SESSION
HIGHLAND CITY COUNCIL
THURSDAY, OCTOBER 15, 2009**

Mayor Michaelis called the Special Session to order at 8:00am. Councilmembers present were Rickher, Bellm and Zobrist. Councilman Bardill was absent. Others in attendance were City Manager Mark Latham, City Attorney John P. Long, Supervisor Limestall, City Clerk Bellm, Attorney Tom Hill, 3 Representatives with Oates Associates, 2 Representatives with Netemeyer Engineering, 28 citizens, and 1 member of the news media.

NEW BUSINESS

Mayor Michaelis stated the item on the agenda today is Bill #09-128/RESOLUTION Supporting Appeal to FEMA Region V Office of Proposed Flood Elevation Determinations by the City of Highland on Behalf of Private Persons. City Attorney John P. Long explained FEMA published two notices, July 15 and July 22, 2009, in various papers (including Belleville News Democrat) that these proposed flood elevation determinations were under consideration. Under the law, those published notifications started the ninety-day appeal process for interested parties to file appeals under FEMA guidelines. By my calculations that expires Tuesday, October 20, 2009. There are two types of appeals: The first is a private appeal that can be taken up by anyone property owner or lessee adversely affected by the determination. The second is a community appeal, which is filed on the basis a private appeal is submitted to the mayor, along with technical data submitted by engineers supporting reason for appeal. If the mayor decides the evidence presented is sufficient to justify the conclusion that FEMA's calculations are not correct. The issue the City of Highland has, up to this point, is that our engineers advised us that there was not sufficient evidence to appeal FEMA's decision. Last week, Attorney Tom Hill notified us that he is representing a group of individual property owners who have hired an engineering firm to do studies on their own and intend to appeal FEMA's decision. Our hope, in calling this meeting today, was that Mr. Hill's clients would have a study available by today or Friday. We are in a strange position, because we do not have the engineering study, so that the council can determine whether to do the community appeal. By the city taking a community appeal, FEMA would give more credit to the appeal. Mayor Michaelis asked City Attorney Long to explain the reason for the council meeting, given that he could make the determination as mayor, is the city would be spending money to take the appeal. Attorney Long explained, under federal regulation, the mayor has the sole discretion to take the community appeal. However, if the city takes the appeal, there would be attorney fees involved to handle the hearing where expert testimony would be taken. That expense would be on the city rather than private individuals. While the city would like to see this done for the benefit of private individuals, the question is whether there is enough evidence to support the city spending the money to appeal this.

Mayor Michaelis stated he would open the floor for statements following the council placing this on the floor for discussion. Councilwoman Bellm made a motion to approve Bill #09-128/Resolution #09-10-1827 supporting the appeal to FEMA Region V Office of proposed flood elevation determinations by the City of Highland on behalf of private persons as attached; seconded by

Councilman Rickher. Councilman Rickher inquired about the estimated costs for the city to handle the appeal. Additionally, if the elevations are changed and then there is flood damage, would the city be liable? Attorney Long responded I would recommend the city, if they take this appeal, review whether to continue or not before proceeding to US District Court. If the elevations are changed, by FEMA, the city would incur no liability by acting now on behalf of these properties in this appeal.

Attorney Tom Hill stated he is representing Steve Schmitt, Inc., Wade Sales & Service, and Gayle Frey, of Frey Properties. If you look at these maps, there is no doubt as to the change and how FEMA is treating the City of Highland with regard to flood insurance. This determination affects owners' ability to finance their property, insurance ratings, and ability to sell, build, or rebuild on the property. There are thousands of dollars of additional expense that these business owners would incur each year as a result of this determination. This affects property values. Look at the difference as to how the contours on the map of Highland are being changed by FEMA's map changes. We have seen the big rain storms in Highland. Yet, we have not seen the flooding that those maps say would occur. That tells me there is something probably wrong with those calculations. Mr. Hill explained by the time it was determined that the city was not going to take appeal and the time it took for individuals to get together and determine how to finance the expense of the study, we are now running close to the time. Attorney Long is looking ahead as to whether this would go to an appeal hearing or district court. The issue today is whether to file a community appeal or not. I can tell you these individuals will file an appeal with FEMA, with or without the blessing of the mayor. If an appeal is not filed, then the issue is closed. Without an appeal, the presumption is that these properties are in a floodplain. If an appeal is filed and is successful, then the results would be the same for all properties and the cost would be spread out. There may not be an administrative hearing, and even more remote that this would go to district court. FEMA invites in their regulations for individuals and communities to appeal. How FEMA makes these determinations is a quick and dirty thing. The engineering studies done by Netemeyer Engineering will tell you that there are other evaluations and calculations that were not applied. There was enough rain last week that we were able to get some meaningful data as to the drainage, elevations, and real conditions. There was no 100-year flood; however, based upon the amount of rain in that period of time we can apply the data against FEMA's report of what they feel would happen. What we are saying is that FEMA's numbers and determinations are too conservative. We ask the city to join in the appeal to give it more clout in the review by FEMA. However, we will file our appeal no matter what the city council decides. Mr. Hill asked the engineers to present their report.

Pat Netemeyer, of Netemeyer Engineering, stated we were supposed to keep Oates Associates up-to-date on what we were doing. However, we worked until after 8pm last night. Cliff Huelsmann, of Netemeyer Engineering, explained this uses a hydrological model to calculate run off from areas. Then a HEC-RAS (Hydrologic Engineering Centers River Analysis System) takes into the calculation the areas elevations, concentration, and length of time, to figure, basically, in a rainfall event how much run off occurs over a period time. We used HEC-HMS (Hydrologic Modeling System) that takes into consideration such factors as peak elevations, height of creeks, culverts, and other waterways, time in detention area(s), length of reaches from other ditches and drainage ways, and the amount of absorption. Obstructions, such as these were missing from FEMA's report. However, these knock peak off and reduces water levels. From using the rainfall event from last week, we identified that there is a problem with the calculation put in to the system that accounts for a difference of five feet. Last week, we had three inches of rain over thirty-six hours. In comparing this to the model, we want to match it as much as possible, and that is still not done. We need more time to insert the information that is missing and do a better comparison. Mayor Michaelis asked what if we did not have the rain last week. Mr. Huelsmann responded by inputting FEMA's numbers and backing into the calculations, using HEC-HMS, we believe they are basing their determination upon all the runoff and precipitation hitting one spot at the same time. That is not what occurs in reality. Mr. Netemeyer summarized we found enough errors in the models to appeal this from a technological standpoint. Based upon the calculations, video data that we have during the rainfall, and historical pictures, we feel we have enough data to give FEMA a reason to reopen the analysis. This was done quick and dirty by FEMA. If this one person that did the analysis makes one error in their calculation, it throws everything off. That is why FEMA encourages the appeal process in

their regulations. Councilman Rickher asked have you done an appeal before. Mr. Netemeyer responded no, we have not. A representative from Oates Associates noted this is the first map change determinations in twenty-five years. Councilman Rickher asked does Oates Associates agree with Netemeyer Engineering's study or parts of it. Mr. Netemeyer stated they have not reviewed our study; however, with the data we have to present, I honestly feel we have a good chance.

City Attorney John Long pointed out that under FEMA's regulations, before the mayor can decide to take the community appeal we have to have the data. Mr. Netemeyer reported we have some of the reports here to show the error in calculations. Mr. Hill informed the council that Mr. Huelsmann would present of some of the program data that used data from FEMA and show there is an error. It is not that you don't have the data; we do. The data is there, just not in a complete form.

Mr. Huelsmann showed a HEC-HMS model print out of the area being addressed. He explained FEMA calculated 510.22 feet as the high-level water elevation by the railroad culvert. The elevation, applying actual information from last week's rainfall event came to 504.7 feet. That is a difference of five feet, from that event alone. There was a significant difference, in that small of an event. I talked to the person that actually programs the HEC-HMS software; he stated there is six to twelve-inches of difference calculated into the program. Once again, if the hydrology is wrong, the information HEC-HMS is going to give you will be magnified. If information put into the model is good data, then the HEC-HMS works. However, if the data put into the model is wrong or it is entered incorrectly, it will not truly reflect reality. What we are trying to do is find where the errors are and fix them. We do not have any information on high level elevations other than pictures and memory. However, if we can figure out those dates, we can go back and find out the amount of rainfall and over how much time that event occurred. It will not be pure data, but it will provide more information, which will make the model more accurate. The models can be adjusted over time to reflect additions and subtractions of culverts and other drainage or detention facilities.

Councilwoman Bellm asked where FEMA got their data. It sounded like you spent a lot of time to collect this amount of data. Mr. Huelsmann explained FEMA's data is submitted by private consultants. In this case, it was FMS, of Kentucky. Mr. Hill pointed out it is important to give FEMA information that is correct. If our information is better than what FEMA has already, they will look at it and accept it. FEMA does a study over a very large area and makes broad determinations. They rely on us - private citizens and communities - to take a closer look. If FEMA does not believe our numbers, they will deny our appeal. My hope is to present the evidence and they will find that we have more information and data; therefore, better information. If we do not file, then these individuals end up spending more on flood insurance. Mr. Netemeyer noted up to \$15,000 more per year for some of the property owners. Mr. Hill stated we are just asking for the city to give their credits to our appeal. We are not asking you to go on with the appeal forever. What Cliff is showing, is that FEMA's determination shows what would occur if all of the rain falls right at that point at one time, which we know it does not. That is the most conservative way to calculate it. However, that is not reality. Councilwoman Bellm summarized: FEMA did this "big picture". Your people have taken more data, provided additional data, and studied the numbers closer. Councilman Rickher added FEMA provided the "worst case scenario". Mr. Huelsmann stated if this occurs the way FEMA presented it, I don't want to be here. The possibility of these levels is something you would see every three generations, if that. Mr. Hill proposed that we continue to do studies and gather data. We would attach that as an addendum to the appeal filed. I think this is the thing to do, to assist the individual owners who would be seriously impacted.

Mayor Michaelis asked Oates Associates to come forward and comment. David Oates, of Oates Associates, explained we prepared the report for the City of Highland as to whether to appeal FEMA as a community. We looked at this for reasonableness for the city's basis to appeal, prior to this. Understand the policy issues that affect this and why we did not think there was a reason for Highland to appeal this: A lot of other communities in the county are dealing with, as is areas in the county. People in the bottoms are going to be impacted severely by not preparing for floods, which will occur at some point. I am not against an appeal, if you feel there are some conservative numbers in the report. It is wrong to

characterize the models and data in the models as errors. FEMA is trying to evaluate the worst-case scenarios. They have developed a model that fits into their policies. The big part if the differences are the assumptions made. One of the big differences being discussed is that spread over a large amount of area, it will take a certain amount of time for some of the water to get to the railroad culvert and that some of that water is not going to get there. However, you are also assuming that what is blocking the water from getting there is always going to be there. FEMA is assuming those are not there. You have to recognize that something up stream may change also. We provided a sensitivity analysis to the city a few weeks ago, which says the highest site being affected would have to be reduced in elevation by forty feet. We feel it will be very difficult to demonstrate that those numbers are off by as much as it is being presented. Mayor Michaelis asked with the information supplied to date, do you feel it enhances the appeal. Mr. Oates stated we have heard bites and pieces of the data; however, we have not seen and analyzed that data enough to put our stamp on it.

Councilwoman Zobrist recalled going to the meeting at FEMA held in Collinsville, last year, on these maps and the proposed determinations. If I recall, the study was done several years ago. Mr. Oates concurred; I believe it was done during the time of the first phase of the Poplar Street reconstruction. The numbers approved in that report were slightly higher than those in FEMA's report. He explained some agencies will use more conservative numbers, in particular with the crossing of a stream. FEMA would rather determine that an area will flood and let it be argued, than to say it will not and then it does. If you had 5-7 inches of rain in less than a day, you would see some magnitude of flooding. With the rainfall we had last week, it is difficult to see a very intense short rainfall. Councilwoman Zobrist noted, on the railroad culvert, this goes out into the branch by Poplar Street. Have we cleaned that branch out? City Manager Latham replied no. We would love to clean that out. However, it has been an issue as to whether it is private or public. We really have not made a good faith effort to clean this out. Councilwoman Zobrist noted if the vote is to give the mayor the recommendation to sign a letter supporting the appeal, we will have to have Oates Associates and the city attorney review the report before filing this by the deadline. Can this all be done and get it off to Washington before Tuesday? Mr. Oates stated it is not necessary for us to review it. The city and their attorneys are the only ones required to review it. We are probably not going to agree with everything in the report. The engineering study presented by Netemeyer Engineering is going to have to stand on its own. Worst-case, you send that report and FEMA denies the appeal, then the determinations stay as they are now, or you can decide to continue with the appeal process. Mayor Michaelis asked are there any consequences for the city. Mr. Oates responded FEMA is not going to make the map any worse than it is.

City Attorney Long reported he re-wrote the original resolution, as the first one assumed we would have a copy of the engineer's report for review before approving this. The second resolution states, in the second section, that the mayor will review the engineering report prior to determining to support the appeal. We will need a copy of the report for review before providing any supporting documentation for the appeal. We have to have the actual engineering report to do this. Approval of this resolution is the council saying it is "on board" if the mayor receives the engineering report. Without the engineering report, FEMA will only view it as "comment". Under FEMA's defined procedures for filing an appeal, we have to have a private appeal that is backed up with an engineering report before we can say that we are going to file a community appeal. Mr. Hill stated, as I understand the resolution, it states the city will incur processing costs for the appeal. However, other than the cost of this meeting and the cost of transmitting the appeal to the federal government and the city's legal counsel fees in this process to file our appeal, we are not asking for the city to pay any additional expense. The mayor may file based on the assumption that a licensed engineer can provide a report for the appeal. Mayor Michaelis pointed out the engineering report must be attached with the appeal. Mr. Netemeyer stated we deal with FEMA all the time. FEMA has a public engineer review this. How many reviews do you need of the engineering report? The way I understand it, from talking to FEMA, all the city has to do is put a cover letter on this appeal. Mr. Hill agreed an engineering report must be attached to the appeal. We will have the engineering report in your hands before you make the decision. Mayor Michaelis clarified I am not disagreeing with the study by Netemeyer Engineering. My only point is we must have the engineering study before filing. Mr. Hill acknowledged the report has to be in express mail service before Monday

evening's council meeting; that is why we are here today. Mr. Netemeyer reported FEMA wants the report submitted on CD or in electronic format. Mr. Hill stated the engineering summary will be in writing for the council's review so that they can make a determination. He noted that all the people in attendance here, today, are affected by FEMA's determination.

Gayle Frey, Frey Properties, stated I am not an engineer or attorney, so I don't know the legal issues or technical data. There are a handful of people here today, in comparison to the number of people that will be affected if this determination remains in effect. If this continues, there will be a massive devaluation of these properties. Flood insurance is not affordable. It will be difficult to sell the property, build new structures or renovate existing buildings on these properties. This is some of the most valuable property in Highland, right now. This is the main corridor for property taxes. If this determination remains then my property is devalued. If that happens, I am going to the courthouse and asking for a reassessment of my properties, and I will get it, because they will no longer be valuable as they are today. With the majority of the property tax revenue going to the school, this is going to severely impact the school district. The school district is not going survive on less tax revenue. Instead they are going to raise everyone's tax rate to make up the difference. You don't have a choice to not submit. You lose nothing by appealing. Mayor Michaelis pointed out there was a ninety-day appeal process. Now we are rushing through this at the end. Mr. Frey acknowledged it took us time to get together and to figure out how to pay for the engineering studies. It will cost us thirty-thousand per year for flood insurance for the property by the roundabout, if this determination stays.

Mayor Michaelis explained that the resolution before the council is authorizing me, as mayor, to provide a cover letter supporting the appeal. Councilwoman Bellm stated, as I understand this, down the road, we can withdraw from the appeal, if we chose to do so. However, I do not see how we cannot file the appeal. We must fight this and take a shot at preventing these people from sustaining additional costs. Yes, we may have a 100-year flood and incur some loss.

Roll Call Vote: Rickher, Bellm and Zobrist voted aye, none nay. Mayor Michaelis voted aye. Motion carried.

Councilwoman Bellm made a motioned to adjourn; seconded by Councilman Rickher. All council members voted aye, none nay. Motion carried. Meeting adjourned at 9:25am.

Joseph Michaelis, Mayor

Barbara Bellm, City Clerk