

MINUTES OF THE

COMMISSIONERS' COURT

WORKSHOP MEETING -DECEMBER 8, 2017

On the 8th day of December, 2017, there was a Workshop Meeting of the Commissioners' Court at the Aquarium at Rockport Harbor Education Center, 706 Navigation Circle, Rockport, Aransas County, Texas, with the following members present: **C. H. "Burt" Mills, Jr.**, County Judge; **Jack Chaney**, Commissioner, Precinct 1; **Leslie "Bubba" Casterline**, Commissioner, Precinct 2; **Brian Olsen**, Commissioner, Precinct 3; **Betty Stiles**, Commissioner, Precinct 4; and **Valerie K. Amason**, County Clerk.

Other County Officers present were **Jerry Brundrett**, County Surveyor; **Latisha Murphy**, Administrative Assistant to the County Judge; **David Reid**, Road Administrator/Drainage Engineer/Stormwater Management Engineer; **John Strothman**, Pathways Project Manager; **Diana Espinoza**, Drainage Engineer; Members of Local City Government, Community Groups and other Interested Parties present:

Kim Foutz & Will Whitson, Long Term Recovery Specialists;

Mike Probst, Editor and Publisher of the Rockport Pilot Newspaper;

Russell Cole, Billy Burke, Charles Smith, Wendy Laubauch, Brad Brundrett, and **Brad Brumbach**, a few of the area residents present;

The Meeting was convened at **9:00 a.m.** at which time a quorum was declared by Judge Mills, WHEREUPON, the following proceedings were had and done to wit:

1. Public Comments and Discussion on revisions in the Floodplain Management & Watershed Protection Order to allow residential and non-residential structure improvements in non-Special Flood Hazard Areas without requiring compliance to Floodplain regulations for new construction.

Jerry Frye, FEMA NFIP Specialist, acting as Hazard Mitigation, Floodplain Management & Insurance Supervisor for the Coastal Bend Area, based in Corpus Christi, TX currently, was present to advise and answer questions.

Concerning the idea of doing away with the requirement outside the special flood hazard areas, currently it states in your ordinance that it is not applicable for unmapped areas, I think. All you have to do is change the verbiage to reduce that outside the special flood hazard areas. If you're going to do away with it for buildings in the special flood hazard areas currently, then you're going to have to do away with it entirely. But you can go in and not necessarily rescind, but put a resolution for non-special flood hazard areas, that takes away that 18" free board requirement. What we focus on are structures inside the special flood hazard areas, typically structures outside that area are not supposed to flood, but 25% of claims paid out are in those non-flood areas, so by having that higher standard for the entire county, if you lean towards the Community Rating System (CRS) the residents who have flood insurance will get a discount by having the higher standard, however, outside that special flood hazard area you can do away with that requirement if you so desire and it's not going to have any impact on rebuilding currently. Rebuilding currently will depend on what the ordinance is at the time of the permit.

Commissioner Casterline: Can you go into the 50% that triggers someone having to rebuild at the higher standard?

Jerry Frye: There are two definitions, one is substantial damage and substantial damage/substantial improvement and anytime you are repairing or rebuilding a structure inside the special flood hazard area and currently outside the special flood hazard area for Aransas County, and the cost is greater than 50% of the cost of the actual structure currently or prior to the disaster.

Commissioner Casterline: What I was really talking about was, you get an estimate to do all of your work and my understanding is not all that is used as the calculation of the 50%.

Jerry Frye: No, and what happens a lot of times, especially after an event like this, is we understand people want to get back in their houses as fast as they possibly can, however, when we do the assessment there are 12 components that we look at on a residential structure that we look at, elevation, roof, interior, exterior, superstructure, electrical, plumbing, flooring, HVAC systems and a couple that I can't remember, and they are subjective. We have people that were looking at these things and if they saw that the roof up here that you guys currently have on this building and looking at the tarp that you have, they would have considered this roof damaged at 100%, however, in reality it's not all damaged and what we're doing is, we are not trying to go back in and re-do the entire roof, we are wanting to fix what was broken and that's what the substantial damage and the substantial improvement is. The example for substantial improvement, it essentially says if you go in and you are going to exceed 50% or greater of the value of the structure and you reside outside the special flood hazard

area, so if you take that requirement away from outside of the special flood hazard area, that's ok, there's no penalty there, but if you go in and improve that structure inside that special flood hazard area at more than 50% then it has to be brought into code and compliance. The reason we are doing this and the reason that you have adopted these things and I think you joined the NFIP in 1971, if I'm not mistaken, there's two reasons that you do this, number one; building these structures in a compliant fashion takes the structure itself, pretty much out of harm's way according to the knowledge that we have currently, it doesn't mean that if you elevate that you will never flood again but it minimizes the damage.

Commissioner Chaney: Do the majority of counties adhere to the 18 inch requirement? Are there some who do not?

Jerry Frye: Yes, sir the majority do. The only one that I'm aware of, in the branch that we work with, is the City of La Grange and they have a three foot above base flood elevation requirement. Now, I'm understanding that Aransas County is entertaining going into the Community Rating System that will give residents a discount on flood insurance and the only thing about going down in a standard as far as elevation and the free board requirement is it takes significant points away from that process.

Charles Smith: When you started your talk you were kind of using value and cost in the same sentence, so obviously they are not the same and one of the problems that I'm seeing in the formula that we use, we are taking appraised values and we are comparing them against replacement cost and I have some numbers here this morning that will prove what I'm talking about. I'm not

suggesting that the appraisal district does a lousy job, but I think that they don't really update some of these appraised values if your property is frozen and mine is frozen. The replacement cost on my house, which I have to carry insurance on, is \$330,000, the appraisal district has that structure valued at \$217,000 and when you start figuring 50%, you want to use the largest number that you've got so you don't have to go back and do some things that you don't want to do. My suggestion would be if you're going to change anything, go in and change the formula, use the larger of replacement costs or appraised value, whichever is the greater of the two and that would eliminate an awful lot of the superfluous things that are having to be done. Number two, you talked about counties going down, I was in Houston earlier this week and the Commissioners' Court in Harris County raised flood elevation levels for construction purposes in some of their county by 8 feet, when you start missing it that far, because things like that can happen and it did happen there, so I agree, I think stepping back, reducing the standard on new construction and to a certain extent on existing structures would be a big mistake long term. Short term, I can see that you would help, but I think by going up in elevation you reduce the insurance cost, going forward you would actually promote a better structure with those types of requirements. FEMA has a great website if you want to talk about how to change 6 to 12 or 13 inches in elevation on a house, they go through a whole bunch of ways to do this and some of them are pretty cost effective. I have a lot of compassion for people who are having to go in and raise elevations because of substantial destruction that wasn't caused by a flood and that's a tough sell to have to go to the public with it by these folks sitting

up there, I used to have to sit up there, but I will tell you that I think it would be a big mistake to get rid of some of these requirements, especially on new construction and to some extent on existing buildings.

Jerry Frye: Can I address what you are talking about sir, if the community sends a letter of determination to you, that your home is substantially damaged and they are using the appraisal district number, you have every right to appeal, you can bring in a contractor's estimate, you can bring in an appraisal and they can adjust the numbers, so the numbers are subjective. I don't think the community, the county, and I when I talk about the community I'm talking about the number assigned to this particular area, but I don't think the county wants to penalize people for trying to adhere to the ordinance, that's not the intent. The intent is to try and break the cycle, if possible. Now the second thing that you mentioned, it is a very difficult pill to swallow when you have damage as the result of something besides flood because if you have flood and you have substantial damage, then you have that capability of tapping into \$30,000 on your flood policy from the increase caused by compliance. Currently FEMA, as well as Region 6 are looking at avenues for Community Block Development Grants and 404 Funding, which is the HPG funding, and to try to get those things out there sooner than the 18-24 months than it normally takes. It took me almost 3 months for me to get them to understand that Aransas County and this particular area was more of a wind event than it was a flood event. Usually, what happens with the 404 or the HPG funding, at the end of the disaster, however much money is spent on that disaster a portion of that funding or that money goes

back into the State and then the State will decide where the funding goes. Now everyone I've talked to all the way from Bastrop County to Kleberg County thinks every dime is going to Houston and that is not the case, they understand the State was impacted, not just one county. So there is a far reaching effort to look at spreading the equity around as fairly as possible.

Commissioner Casterline: Will people who didn't have flood insurance be able to qualify for the 404 or the HPG funding?

Jerry Frye: Yes, they could possibly be eligible, who makes that determination, I really don't know. I know that they are looking at other funding sources and to be honest with you I've heard a number of \$160,000 per eligible person to help with rebuilding, but that is a rumor and I don't know where that came from, so do not quote me on that, but I do know that they are trying to get funding out there quicker than normal. And I know that there will probably be over a billion dollars to distribute around the state, and that's huge, bigger than Sandy and Katrina.

Jerry Brundrett: I've been here my whole life and I was here during the storm, from what I've seen, after the storm you're right on the wind event on the east side of the peninsula, but on the westerly side of the peninsula it was a wind driven flood event. Being the County Surveyor and doing a lot of elevations we've see some water level heights 12 feet or above on the west side. The FEMA mapping is totally inadequate for that area, so you know we are trying to keep houses that are rebuilt from flooding and that's a good thing because it was an eye opener for me to see those kinds of water levels on the back side of the peninsula, which is the same thing they experienced in Ike in back Galveston Bay where they had a seventeen foot seawall

and a thirty foot plus back in on the back side. So we need to start from what we don't want and we don't want houses that will continue to flood, but one suggestion that I made at the Commissioners' Court that I'd like to discuss here if we could it's not the FEMA requirements, because we don't have the authority to change those, but outside of the Flood Hazard area, if there is some special certified, engineered, flood proofing methods that we might use to allow people, that aren't in these areas, to do some things that will help in this 18 inch, because that's creating a lot of the issues. If they comply with FEMA but whenever you add the 18 inches, wherever you are, then they can't rebuild and they may lose their downstairs, that's what's upsetting people, so if we could allow, between the engineering department and what FEMA allows, to flood proof that, because right now flood proofing is not allowed in residential areas, only in commercial. But we're not talking about in the FEMA controlled area, were talking about in the County controlled area by our local order, can't we do some engineered flood proofing measures that will allow people to utilize their downstairs without having to totally destroy their foundations and start over.

Jerry Frye: If you go in and take the 18 inch requirement away from the Non-Special Flood Hazard areas, then yes you could.

Jerry Brundrett: But without, no you don't see, why can't the county allow for flood proofing in that 18 inches or above, let's say 18 inches is not adequate.

Jerry Frye: It's not allowable according to the Code of Federal Regulations, it's only available on non-residential structures.

Brad Brumbach: When the flood plain program was written, it was originally intended for Aransas County, all of the county, right, it wasn't written specifically for special flood hazard areas or non-hazard flood areas, now there's something being discussed about walking back that requirement in certain areas of the county?

Jerry Frye: Let's just say, the area on the map, outlined here in pink, is in the special flood hazard area, so when this thing was written originally when the ordinance was first adopted probably back in 1971 it referred to just the county. Every community, Aransas Pass, Rockport, Fulton, Port Aransas, they all have their own flood maps, so anything that is not in pink currently is also required to bring it into current code compliance, based on what we are understanding from the ordinance. So if you just go in and change what you're looking at as far as the higher standards for those areas outside the special flood hazard area then you've created a fairly large area.

Brad Brumbach: Yes, but my question was, the Commissioners' Court clearly has the authority to exempt people in the non-hazard flood areas if they so choose, my question is, do they also have the authority to exempt the special flood hazard areas?

Jerry Frye: If they go in and rescind the 18 inch free board requirement, yes they can, but they have to do it county-wide, but again if the County and the Commissioners' Court sees that they want to participate in the Community Rating System, which those people that live in the Special Flood Hazard area and you're paying \$2,000 or \$3,000 a year and you can get 10, 15 or

20% off your premiums, that's significant. So my thought would be, instead of going backwards, go higher.

Brad Brumbach: I understand and appreciate that, but when the rules were written and with the best of intentions, it was done before Harvey, but the majority of the damage was wind, not flood, somebody could be 20 feet above the base flood elevation and be hit by a Tornado, that's not going to protect them, so the question is, should we have new construction to be required to be rebuilt to higher elevations, less likely to flood in the future, and I actually agree with that, what I don't understand is people whose houses were substantially damaged have to comply with this new thing even if it means destroying their downstairs, which in many cases really weren't even damaged at all, for the good of the county and to protect them from future flood events, to do this. And yet, we have a proposal that's saying that most of the county, even though it's a good idea to build higher, you're not going to have to do that. The easiest group to comply with the higher height requirements is somebody building on raw land and after Harvey very few people would be required to compile the 51% rule, there are very few houses that would be damaged by more than 50% without a Tornado or a Hurricane. I understand the long term goal of getting better insurance rates, but just like we've had changes where trailers are allowed in Key Allegro temporarily while they rebuild and that sort of thing, if they chose, the Commissioners' could choose to grant a moratorium on the additional height, but still require people to come to FEMA height, because while their intent is to reduce flooding for residents in the future, and

certainly higher elevations are less likely to flood, the experts who decide, if you come to this height I could sell you flood insurance, is FEMA. My argument is that should be enough for people to rebuild and pick whatever window, 12 or 18 months while they can get a FEMA trailer and then revert it back to your original ordinance to accommodate the special event.

Jerry Frye: Well, let's take what we have in place right now, currently we have an ordinance that has an eighteen inch freeboard requirement everywhere and the definition of substantial damage in your ordinance says: substantial damage, damage of any origin, sustained by a structure whereby the cost of restoring the structure to it's before damage condition would equal or exceed 50% of the Aransas County Appraisal District's appraised value, now that goes back to what you said, however, you can challenge that. Now I hear what you're saying and this was not adopted just recently, this was adopted and this is a portion of every ordinance in the United States, substantial damage, substantial improvement, is part of every ordinance if you are going to be a participating community. Now, you can choose not to do the right thing or not to bring it into current code or compliance, but two to three years down the road there is going to be a Post Disaster Community Action visit by FEMA's Region 6, Texas Water Development Board from Denton, Texas. They are going to come out and they are going to ask David Reid, the building official, and they are going to say, show us your permits during this event, at that time they are going to look at all of those permits and if you can't show why you didn't do the right thing and make these people build it up and the Commissioners' Court is going to get notification from the Federal Insurance Administrator stating that, and this is

usually 90 days when this happens, and they are going to send you a letter saying you are going to be placed on probation at this point. Now, probation means that everybody who has flood insurance now pays a \$50 surcharge per year. At 45 days before the probation begins, the Federal Insurance Administrator will tend to the local media the reasons why you're going to be placed on probation and the effects of the probation. Once that is done, at the 30 day mark or at the end of that 90 days, the Federal Insurance Administrator will say, you have 30 days to show us why you shouldn't be placed on probation and if the reconstruction goes back in where you are trying to bring structures into compliance then they may delay that. At the end of that 30 days, if you're not moving in the right direction, then they are going to start towards suspension. Suspension means that everybody who has a flood insurance policy, after your suspended, it pretty much goes through the same cycle, and after your suspended flood insurance cannot be sold. What does that do to the housing market in Aransas County? You simply cannot do a Moratorium in the Special Flood Hazard areas, you either have to do away with it or you have to live with it. If you had not been participating in the NFIP during Harvey, the County would have lost \$26 million dollars in individual assistance and almost \$21 million dollars in flood insurance claims.

Wendy Laubach: I'm just having a problem sorting through the different impacts and different actions the County can take. Let me clear up a couple of scenarios to make sure I've got it straight in my notes. I understand that FEMA has different rules that apply in the Special Flood Hazard areas versus the Non-Special Flood Hazard areas, right now the County has uniform

rules between those two areas and the County clearly has the authority to make rules between the two areas, I'm trying to sort out what that affects and what that doesn't affect in terms of FEMA benefits. If the County were to decide to get rid of the 18 inch requirement outside the SFHA, would that alone cause a change to the Community Rating System? Would we suffer a penalty in our premium levels?

Jerry Frye: No.

Wendy Laubach: If the County eliminated the 18 inch rule for the entire county and went with whatever the FEMA requirements are, would that affect our premium levels?

Jerry Frye: It could, because there is a sheet over there that shows, if you are this much above base flood elevation, then this is the rate on the map for flood insurance.

Will Whitson: In the CRS there is a scoring system and that is how you get the discounts from the National Flood Insurance Program. Going up to the 18 inch freeboard gets you extra discounts on your insurance policy.

More comments were made on not being able to bring lower floor of homes up to the 18 inch freeboard requirement, due to the financial burden. Charles Smith recommended visiting FEMA website for different ways to elevate and Commissioner Stiles stated that the Small Business Administration has loans available.

Judge Mills: Ok, we've had a lot of good feedback from the public and from FEMA, thank you.

No further business presenting, the Court adjourned at 10:35 a.m. on a motion made by Commissioner Chaney and seconded by Commissioner Casterline.

C. H. "BURT" MILLS, JR., COUNTY JUDGE

VALERIE K. AMASON,
EX-OFFICIO CLERK OF THE
COMMISSIONERS' COURT