



BURLEIGH COUNTY WATER RESOURCE DISTRICT MINUTES
Tuesday, January 20, 2014
Conference Call

Present: Chairman Fleck, , Cary Backstrand, Kathleen Jones, Dennis Reep, David Bliss, Bliss & Stebbins Law Firm, LLC; Craig Odenbach and Michael Gunsch, Houston Engineering, Inc.; Lee Ann Eckroth, Bismarck Tribune and Mona Livdahl.

Absent: Gordon Weixel

Chairman Fleck called the meeting to order at 10:00 a.m. noting a quorum was present.

Country Ridge First and Second Subdivisions:

Position Statement to County Planning Department: Michael discussed Country Creek 3rd Addition Issue which ties back to the proposed Country Ridge 1st and 2nd plat. It was noted that Ray Ziegler stated it is not on the planning commission agenda at this time. With the transition these plats are now under the jurisdiction of the county planning and zoning. Country Ridge 1st and 2nd will need to be approved by County Commission and not the City of Bismarck. Country Creek 3rd is the problem area as it has been in the past. Country Creek 2nd is east of Runnel Road. Country Ridge 1st and 2nd are located East of 66th Street which are undeveloped.

Michael noted the area included in the two stormwater plans and these subdivisions is over 80 acres. Based on the condition of the channel, the outlet isn't adequate to convey existing flows. The draft letter documents a couple of things that happened through the past years and during development. Initially the developer did not follow the SWMP, then they obtained an easement for the channel outside the plat process, those easements were granted to Gibbs Township and the Public. The SWMP was approved by the City of Bismarck, once the channel was built there were a lot of issues with sediment and erosion in this area. There was a notable lack of control of erosion and the channel blockage or restriction is from excess sediment deposition – there is no grass in the bottom of the channel, due to the sediment load. A lot of discussions have been held on that issue and who has jurisdictional authority. The SWMP was under the City of Bismarck, so the BCWRD and County do not have jurisdiction. With the design in place the second issue is the sediment issue both are the developer or builder issue, not the residents. There is still a longer term issue with snow in the shelterbelt. The developer was made aware of this flooding problem and put a steel plate over the culvert to restrict flows at 66th Street and the flooding issues continued. The letter from the Board states that we are still opposed to development until the implementation of the capacity correction issues are put in place.



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Chairman Fleck noted that Commissioner Schonert is frustrated due to the length of time this has been placed on hold. Michael noted the fix is easy and a number of issues are happening. One is an existing problem that needs to be corrected; then the new Country Ridge subdivision would complicate this issue and increase the flood risks. The Board letter states we oppose the new subdivision until corrective action is taken. The next issue is who is responsible for actual maintenance and costs. The BCWRD does not have authority, there is a question of obstruction and if there is obstruction who removes it. Currently it appears the landowners are obligated to take care of the channel. The sediment to be removed however is associated with upstream development which arguably is not their responsibility. Cary asked about the public easement under Gibbs Township and why the landowners are responsible. The easements acquired by the developer were dedicated to Gibbs Township and they were not obligated to do maintenance. Dave noted that granting an easement does not mean they have the responsibility for clean up. Kathleen asked about Gibbs Township and noted that we need to be in contact with them as well as the residents. Michael noted in this situation there is no mechanism for funding such as what the BCWRD did for Brookfield Estates under a special assessment district. Kathleen felt we should at least let them know how we did this in Brookfield. Michael noted Gibbs Township does not likely have funding – Brookfield voted themselves an assessment for their maintenance. Cary asked Dave B. about the law on township drains. Dave noted we need to get a hold of Mr. Gabe Brown at Gibbs Township, the easements are recorded but we first need to see if there is a cooperative agreement for maintenance. Dave will work with Michael and the Chairman and also to add on the letter that they have the right to seek counsel to seek remedy. Michael noted the Board has review the jurisdiction component, however they are in a position to evaluate and you have invested dollars to determine the solution now the implementation of the solution is the next step. If the developer wants to have two additional plats approved, this issue needs to be taken care of – but the letter does not say how it gets done, so if the developer wants to do this he could. The second letter will outline how that process could occur and the options. Kathleen asked if we have the jurisdiction to do this. Michael noted the discussion with Gibbs Township should take place prior to the second letter being sent. Kathleen suggested that we first contact Gibbs Township and get the Chairman to explain the scenario to them and let them make the decision as to how much involvement they want, continue with the letter to Ray Ziegler and then after meeting with Gibbs complete and send the letter to the residents to explain what will happen. Cary agreed noting we know when the easements were granted that perhaps Gibbs has minutes from their meeting as to when they accepted the easements? Kathleen noted that the other option is talking to the residents about a homeowners association for long term maintenance. It was asked if the township can do special assessments – noted that probably for roadways, but not in drainage.



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Michael noted the letter to Ray Ziegler in opposition to the new plats does not require a prior discussion with Gibbs Township but should have a reference to so we can notice the Gibbs Township letter. Gibbs could get a copy of the letter. The key issue is not approving the plats until a solution has taken place.

Michael will send another copy of the letter to the Board prior to sending it out. **Cary moved that we draft the letter that our Board is opposed to approving Country Ridge 1st and 2nd subdivision until downstream outlet problems can be solved. This will be a draft letter and if no comments are made once it is sent to the Board, Chairman Fleck can sign and send. Kathleen seconded.** The BCWRD Board cannot block plat approval, but can make this formal recommendation that they not be approved. Dave will work with Michael on the letter. A roll call vote was taken:

Kathleen:	Yes
Cary:	Yes
Dennis:	Yes
Gordon:	Absent
Chairman Fleck:	Yes

Motion carried.

Country Creek Third Addition:

Michael noted that we can start drafting a letter to the residents on the maintenance obligations issue, but first need talk to Gibbs Township. This is Cary's portfolio.

Missouri River Correctional Center:

Michael updated noting the preliminary results are in, there are a couple of parcels for which ownership needs to be verified but it is doubtful that this will change bottom line. It was a 54% to 46% vote so the project has failed. Michael documented the Board's options and felt some of the reasons for the failed vote included the 48rd Avenue grade raise (opposition to ROW acquisition) and future use of MRCC properties. The MRCC contribution was not based on the vote as they are dedicated funds toward the project. Chairman Fleck noted our charge is to protect our constituents, but it is difficult to protect people if beneficiaries are unwilling to underwrite that protection. The request for protection needs to come from the constituents not us. Kathleen felt that we should put this in a letter to the residents as well as to the Missouri River Correctional Center.



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Cary noted this project was a direct result of the 2011 flood protection process, where we developed a plan and this was one of the identified projects request in part by the Burleigh County Commission. Because of that, through the County we initiated this project but at this stage we need to let them know the project failed and that is the end, and if they want protection the residents will need to petition the Board. Michael noted that because the Board took formal action in the form of a resolution to establish the project, the Board will need to dissolve the project and notify a letter to the residents.

The Board discussed dissolving the project or possibly giving the residents the opportunity to revote. If we dissolved we would just need to pass new resolutions. Dave felt the letter needs to go out right now and if there is a reconsideration time will tell. Discussion was held on the pros and cons of closing out the process. It was felt after the changes to the SWC policy the Board could consider getting approval prior to a vote, and they will be more assured the SWC will provide cost share. **Cary moved that we send a letter to the landowners and the MRCC indicating the project failed and that there is interest in revisiting at a later date they would have to petition showing measureable support. Kathleen seconded.** Dennis asked about the time consuming process and questioned why we would dissolve the resolution. Michael noted the process is relatively simple for the Board to re-establish the project; however the landowners will have more work involved in getting a petition started and gathering signatures.

Kathleen:	Yes
Cary:	Yes
Dennis:	Yes
Gordon:	Absent
Chairman Fleck:	Yes
	Motion Carried.

Mona questioned the request she had received on letting people know who voted and how and how we handle the possible release of this information. Dave will talk to the Attorney General's office first to research the issue and let us know. Noted if it is public record, issue it can be released. Michael noted we first need to validate the list first and if it is public record, post it on the web versus. The Board discussed just sending only to those who request the list. Currently the vote is not verified. Noted the letter cannot be sent out until the vote is verified. Dave noted that he will have an answer to the Board by tomorrow evening – noted once we find out if it is allowed to put it on the website. It was the consensus to allow the votes to be posted.



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DeKrey Complaint:

Cary noted he met with the landowners and the County Highway Department. The dirt can be taken of the south side to reopen the drainage and the landowner was very receptive to this. They felt that they would have to push back 12 to 15 feet of pile dirt for the water to go around. The County Highway Department has agreed to go out and work with the landowner, who agreed to push the dirt back once the Highway Department and shows him where to place it. Noted there is a ditch block in that area that needs to be moved to allow the water to go around the south side and no one objected to that. Hopefully this will be taken care of in the next few days. Craig will draft a letter on the meeting that we can send to Mr. DeKrey. Cary noted it is a short term solution and the long term solution is a more designed ditch. Craig will send the draft letter out today or tomorrow.

Other Business: None.

Next Meeting: Friday, February 7th - Dennis noted he was unable to attend the meeting.

With no further business, the meeting adjourned at 11:15 a.m.

Respectfully Submitted,

Mona Livdahl

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