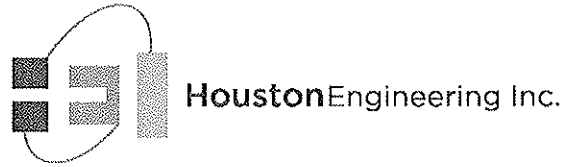


MEMO



Meeting Summary

To: Terry Fleck, Chairman
Burleigh County Water Resource District

From: Craig Odenbach, P.E.

Date: February 3, 2014

Subject: Storm Water Management Meetings

January 28, 2014

On January 28, 2014, the following parties met at the Houston Engineering Conference Room to discuss storm water management issues and how complaints are dealt with by the various jurisdictions:

Terry Fleck, BCWRD Chairman
Kathleen Jones, BCWRD
Cary Backstrand, BCWRD
David Bliss, Bliss & Stebbins
Michael Gunsch, HEI
Craig Odenbach, HEI

The following points were discussed:

- A majority of the storm water management issues arise in the City of Bismarck Extra-Territorial Area where the City of Bismarck has the jurisdiction to approve storm water management plans but has no enforcement authority or fails to exercise any authority they might have. Similarly, Burleigh County has no authority to enforce a City approved plan, and the Water Resource District has only limited authorities primarily in the instances of obstructed watercourses or unauthorized dams or dikes or unauthorized drainage.
- The County Creek 3rd drainage issue was noted as a prime example of this issue.
- The Burleigh County Highway Department can implement corrective actions within a road right of way, but has limited authority and funding to take corrective action outside the right of way.
- Development of a Memorandum of Understanding or Memorandum of Agreement between the various parties to identify each entity's jurisdiction, authority, responsibilities and expectations was discussed. This would likely be accomplished through two separate documents, one with the County and one with the City.
- The WRD must decide at what level it wants to be involved in attempting to resolve storm water issues that arise. They have the option of only addressing those complaints for which they have specific statutory responsibility, or they can review other situations as well and provide their conclusions to the appropriate entity that might have jurisdiction to take corrective action, essentially providing expert review and mediation services.

- The overall goal is to provide an appropriate level of public service to the appropriate constituency without spending an unwarranted amount of the public's money getting mired in issues for which they lack the specific statutory authority to resolve.
- It was also noted that the WRD cannot delegate their statutory responsibilities to the City of Bismarck. Any obstructions to water courses or unauthorized dams or dikes are the WRD's responsibility whether located inside or outside City of Bismarck limits.
- This discussion was intended to set the stage for the scheduled discussion with Marcus Hall regarding these issues on January 30th.

January 30, 2014

On January 30, 2014 the following parties met in the Houston Engineering Conference Room:

Terry Fleck, BCWRD Chairman
Kathleen Jones, BCWRD
Cary Backstrand, BCWRD
Marcus Hall, Burleigh County Engineer
David Bliss, Bliss & Stebbins
Michael Gunsch, HEI
Craig Odenbach, HEI

The following points were discussed:

- Burleigh County is stepping up their review and certification process for those areas located outside the City's newly established ETA. They are also establishing a development fee that would create a fund for oversight of construction activities and potentially correcting issues that arise in the future.
- Burleigh County is working with the City of Bismarck to identify a process that will reduce the likelihood of future storm water issues for new developments located within the City's ETA.
- The fund being established through the developer's fee is a fund for dealing with future issues in those developments for which the fee was collected. It would not be appropriate to use those funds to correct past mistakes in previously approved developments.
- How to correct those past mistakes remains an issue. One suggestion was to establish a process whereby the WRD could call upon the Burleigh County Highway Department to use their construction capabilities to correct certain problems in existing subdivisions. Such actions could be funded through a specific mill levy which could be provided either to the WRD, who would create a dedicated account, or directly to the Burleigh County Highway Department.
- The question of how best to proceed with the issues surrounding the Country Creek and Country Ridge developments was also discussed. The physical solution is simple, but the question of who pays for implementation of the solution and who does the actual work is more difficult.
- A previous summary of SWMP agreements and understandings was provided to Marcus Hall and the Board for discussion. A copy of this document is attached to this meeting summary.



Bismarck



STORMWATER MANAGEMENT PLANNING

BACKGROUND

There has been considerable discussion regarding jurisdictional issues related to stormwater management within the City of Bismarck's four mile Extraterritorial Area (ETA). Stormwater Management Plans (SWMP) and Stormwater Permits (SWP) are reviewed and approved by the City of Bismarck within the ETA; however construction observation for the installed features, (typically roadway culverts) has been left to the Burleigh County Highway Department (BCHD). The BCHD however does not have jurisdiction in areas located outside the County or Township Roadway rights of way (ROW). The Burleigh County Water Resource District (BCWRD) has certain statutory authorities in these areas; however these are not directly related to issues associated with the elements contained in the SWMP and SWP. Therefore, completion of the stormwater conveyance channels and designated detention/retention areas remain under the City's SWMP and SWP authority within the ETA.

The City of Bismarck adopted its stormwater ordinance (Title 14.1 of the Code of Ordinances of the City) in 1997, with the ordinance becoming effective on January 1, 1998. The ordinance stipulated that the City of Bismarck review and approve stormwater management plans and stormwater permits for all "land development, land disturbing, or other activities which result in an increase in stormwater quantities, degradation of stormwater quality, or restriction of flow in any storm sewer system, open ditch, or natural channel, stormwater easement, water body, or wetland outlet", within the jurisdiction of the City. At the time of the ordinance adoption, the City of Bismarck enforced a two (2) mile ETA. The ETA was extended to four (4) miles in 2003.

The City of Bismarck has little or no enforcement authority beyond that associated with the platting process once plats within the ETA were approved. Withholding plat approval while issues with the stormwater management plans associated with the land development was used on occasion, but generally City staff tried to work collaboratively with the developer's engineering consultants to ensure that the stormwater management plans were appropriate, and were then constructed in the field according to the approved plans. Eventually certification to that effect was required by the City of the design consultant; however, this has not been as effective as desired.

During the last decade, a rapid increase has been noted in the platting of rural residential subdivisions both within and beyond the City of Bismarck's ETA. Hundreds of rural residential lots have been platted and made available to interested home buyers and builders in the rural areas adjacent to the City. Prompted by the availability of a reliable water supply and other desirable services such as paved roads and ease of access to Bismarck, considerable growth has occurred in these rural residential subdivisions ringing Bismarck's perimeter. Coupled with the occurrence of a relatively "dry cycle" in annual precipitation, few problems were initially noted as arising from stormwater management concerns within the ETA. However, once the weather pattern changed into a "wetter cycle" numerous stormwater related issues were identified and complaints filed by the residents of these rural subdivisions.

Often the impacted rural residential citizens were uncertain as to whom to bring their concerns to, and alternately approached the Burleigh County Highway Department, the Burleigh County Water Resource District, and City of Bismarck offices seeking redress of their concerns. A number of these issues clearly arose when modifications to approved and constructed stormwater management plans occurred after the developer sold the land to subsequent property owners who often modified drainage channels, planted trees in stormwater easements, or made other changes without knowing or realizing the implications such changes would create for upstream or downstream properties. The net result has been considerable time and effort expended by all three entities in trying to reactively address stormwater related issues.

Recent meetings between the entities have sought to create greater cooperation on stormwater issues, as well as an in-depth review of the current process and a proposed approach to potentially redistribute stormwater jurisdiction within the ETA. After a proactive and productive discussion regarding the various stormwater management planning issues a consensus has been developed between the City, BCHD and BCWRD staff. The following is a summary of the general positions for each entity, followed by a joint statement and recommendation to consolidate this regulatory process in a manner that better serves the public interest within the City and County.

CITY OF BISMARCK (CITY)

- The City has zoning and subdivision authority within the ETA under NDCC 40-47.01.1. As the stormwater management ordinance is included as part of the City's zoning and subdivision regulations, it is also applicable within the ETA.
- City staff believes that the City's stormwater ordinance (Title 14.1 Stormwater Management) is both comprehensive and well structured, to regulate development both inside the city limits and within the ETA; however, some modifications are required to allow effective enforcement within the ETA.
- City staff is experienced in dealing with urban runoff, stormwater designs and construction; however rural developments provide different challenges for which they are not well equipped in staff resources and experience to address. The City also has limited enforcement authority regarding stormwater issues outside the City limits. The City has no authority to maintain drainage facilities outside of the City limits.
- Due to staffing limitations the City has provided only limited review and oversight of construction activities that occur outside city limits and has been relying on the BCHD for oversight on SWP (e.g., erosion and sedimentation control) and SWMP compliance reviews (e.g., structural installations). The BCHD is in a position to assist with the roadway portions of the project, but not other stormwater features.

BURLEIGH COUNTY HIGHWAY DEPARTMENT (BCHD)

- The BCHD feels only those areas within the city limits or those areas that either are requesting or will be requesting annexation into the City should be under the City's jurisdiction.
- The BCHD focuses primarily on the roadway components of the SWMP and SWP within the ETA; however it realizes the issues of erosion and surface water flooding are more complex and require additional attention and oversight than what is presently provided. They are not currently staffed to observe or provide oversight for the construction of other stormwater management features within rural developments.
- The BCHD is uncertain as to its role or authority over erosion control, the installation of stormwater features and compliance on construction projects within the ETA, as the City is issuing both SWMP's and SWP's under their jurisdictional authority.
- Recognizes that surface water flooding is occurring in areas where the impacts are outside the roadway rights-of-way where the BCHD does not have jurisdictional authority. This creates issues for which considerable time is required to discuss, evaluate and consider, yet with no ability to implement solutions.
- If the SWMP and SWP review, approval and enforcement for areas within the ETA were transferred to the County, the BCHD is willing to utilize Title 14.1 of the City Code of Ordinances as a primary basis for this process.
- The BCHD anticipates that any potential transfer of authority under Title 14.1 of the City Code of Ordinances will require additional staffing to review and administer a County run SWMP and SWP process. It is anticipated a position created to oversight this program would be paid for, in part, via review fees and enforcement revenues.

BURLEIGH COUNTY WATER RESOURCE DISTRICT (BCWRD)

- The BCWRD understands the stormwater management issues and is concerned about the significant expense they have incurred relative to noncompliance and jurisdictional questions in the past few years.
- The BCWRD has certain defined statutory authorities and responsibilities, which should be considered to resolve County-wide stormwater management issues, where practical.
- While the BCWRD currently participates as a commentary entity on SWMP applications and flood related issues they have become increasingly involved in stormwater issues and are willing to continue assisting in the SWMP processing, review and enforcement.
- The BCWRD believes that the BCHD should handle and direct the review and processing of most SWMP and SWP applications for areas outside the Bismarck city limits, with the BCWRD remaining as a commentary entity, unless requested by the BCHD to assist in more complex technical reviews.

- SWMP and SWP applications should be charged a fee adequate to offset the cost for the required processing and any requested technical reviews.
- The BCWRD supports the use of the provisions contained within Title 14.1 of the City Code of Ordinances, with revisions. The objective is to place the burden of planning and expense on the developer and/or builder, such that unnecessary public expenses are avoided.
- The BCWRD supports implementation of a Development Permit to govern the construction of roadways and stormwater management features within the ETA. Construction observation would be provided by the BCHD and applicable fees charged to the developer to cover the associated expenses. The Development Permit would eliminate the need for the Consulting Engineer's Certification of the constructed facilities.
- The BCWRD believes existing enforcement provisions contained within Title 14 of the City Code of Ordinances are limited and should be enhanced to allow more effective measures to be implemented to encourage and insure SWMP and SWP compliance.
- The BCWRD supports modifying ordinances to better define the allowable uses for lands located within stormwater easements and conveyance areas. These revisions would also limit the ability to construct channels that redirect or divert runoff along alternative routes that might result in increased flood risks as well as operation and maintenance concerns (e.g., cleaning, mowing, access, conveyance, snow block, etc...). In addition those lands located within a stormwater easement may be excluded from determining the minimum lot size, such that the required area for building and septic system installation exists outside these easements.
- The BCWRD supports the idea of a developer/builder/landscaper/homeowner educational program to better inform these groups and individuals regarding stormwater management issues related to surface water flooding and groundwater concerns so historic problems resulting in public costs can be minimized and/or avoided in the future.
- The BCWRD supports creating an authority to collect stormwater impact fees to secure funds for the purpose of maintaining stormwater easements located outside County and Township roadway rights-of-way. This to include authority for the County to enter upon such easements to conduct maintenance work, as deemed applicable, to ensure there functional use. This work would not include items such as mowing and snow removal.
- The BWRD is actively involved in the Hay Creek Greenway development and feels joint jurisdiction should be considered for those portions of the Hay Creek Corridor located within the city limits. This would require SWMP approval from both the City and County for these applications.

Joint Recommendations:

The City of Bismarck, Burleigh County Highway Department and Burleigh County Water Resource District staff recommends the Bismarck City Commission and Burleigh County Commission consider making the following changes to existing ordinances and operating procedures:

- 1) The City of Bismarck transfers the review and approval of SWMP's and SWP's within the City's ETA to Burleigh County (except for those areas being platted and annexed into the City, those that require annexation prior to development, and those developments that would have major impacts on the City's utility systems). Such transfer would require the execution of a joint powers agreement between the City and County.
- 2) The City and BCWRD would retain the ability to provide input on any SWMP or SWP applications and will be provided copies of all applications for review and consideration.
- 3) The County will adopt the provisions of Title 14.1 of the Code of Ordinances, subject to mutually agreeable revisions, as the guiding ordinances when reviewing subdivisions within the ETA, through a joint powers agreement between the City and County in order to better address the stormwater management issues within the ETA.
- 4) The County will review Section 13, Article 33 of the Burleigh County Zoning Ordinance in order to bring its stormwater regulations for areas beyond the City's ETA into closer conformance to Title 14.1 of the City Code of Ordinances.
- 5) The review, approval and construction inspection of the SWMP's and SWP's outside the City limits will be performed by the BCHD, including subdivisions and site plans, through a joint powers agreement between the City and County.
- 6) All fees for stormwater management plan review and stormwater permits within the City's ETA will be transferred to the BCHD, except for those areas of lead City Engineer authority described in recommendation number 1 above. Additional fees may be assessed to the developer to oversee construction activities.
- 7) Burleigh County will budget \$25,000 annually to be used by the BCHD to address current and past problems with existing stormwater systems.
- 8) The County, City and BCWRD will cooperatively develop additional enforcement provisions and penalties related to non-conformance to construction certification requirements for stormwater systems.