



BURLEIGH COUNTY WATER RESOURCE DISTRICT MINUTES

Tuesday, October 9, 2012 at 8 am

City/County Building – Bismarck

Present: Terry Fleck, Cary Backstrand, Ken Royse, Gordon Weixel, Michael Gunsch, HEI, Mike Mulloy and Dave Bliss, Bliss & Stebbins Law Firm, Mona Livdahl, Personalized Management Services, Inc.

Chairman Fleck called the meeting to order at 8:05 a.m. noting a quorum was present.

Approval of Minutes 9-11-12: Cary moved to approve, Ken seconded. Motion carried.

Approval of Special Meeting Minutes of 9-28-12: Cary moved, Gordon seconded, Motion carried.

Financial Reports:

End of September: Ken reviewed noting activity for the month. No action taken.

2013 Final Budget: No action needed.

Approval of Bills: Cary moved to approve the bills in the amount of \$42,597.90. Ken seconded. Motion carried.

McDowell Dam:

Water Permits: Still on hold with the SWC.

Copy of signed Bismarck Parks and Recreation District Agreement: Informational only.

McDowell Dam Expenses: Informational only, no action taken.

Drainage Complaints:

Bitner/Smith/Barbere: Cary noted a letter was sent back awhile ago to Mr. Bitner. Marcus Hall, Burleigh County Engineer had wanted to Cary to speak to Mr. Barbere before they cleaned the ditch out, and Cary noted he has done that. Cary indicated that a draft letter has been reviewed and will be sent to Mr. Smith. Cary noted he suggested one change on the letter prior to it being finalized for the Chairman's signature. It should be mailed today.

Eldin Spier: The City is still reviewing, however due to scheduling conflicts this has not been discussed yet. Michael will work with Mel and Cary to get this scheduled.

Sanferd Mees: A letter did go out registered mail to Mr. Jaskowiak indicating what he would need to do to comply with the drainage regulations and statutes as well as the county's flood plain ordinance. Ray Ziegler was present and noted they sent out their order for a request for floodplain development application regarding this issue. Mr. Ziegler noted that Mr. Jaskowiak had hired an engineering firm, however we have not heard back from him yet noting he has until October 18th to respond. It was noted that in order to request a hearing from BCWRD, he has 15 days from receipt of the letter to respond. Mr. Jaskowiak signed the registered letter



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receipt on September 26th. It was noted that since he has hired an engineering firm, if Mr. Jaskowiak comes back with a plan, we can review and come back with recommendation. This is a work in progress.

Emery/Koppang: A letter was sent out to State Engineer requesting a determination as to whether or not a natural watercourse exists in the location of this complaint. We have not heard back from the State Engineer yet but this should be done within the week or so. It was assigned to Mr. Jim Lindseth at the State Water Commission. Ken questioned liability due to the time frame, Dave Bliss noted the Board is acting as quickly as possible and the State Engineer needs to weigh in. It was noted in the minutes from last month that the Emery's were allowed to bring back a recommendation to this meeting, which they did not. The Board at this meeting can make a recommendation based on the pending determination by the State Engineer that the Emery's need to comply and construct the new watercourse. Ken questioned if there is time this year to do the work. It was noted that reseeding would need to be done next spring and that the amount of cut for the relocated channel is only 8 to 10 inches. Cary felt issuing the order this year would be the way to go. **Cary moved that we have our engineer and attorney draft an order to have the ditch put in and that it includes the plan originally agreed upon which requires part of it on Mr. Koppang's land under the condition that the State Engineer comes back with the determination of that it is a natural watercourse and Mr. Koppang agrees to having it on his land. Ken seconded.** Discussed a second order in the event Mr. Koppang does not agree to having the channel constructed on his land. It was noted that if it doesn't work out we can call a special conference call meeting to discuss. **Motion Carried.**

Arnold Schieve: Mr. Schieve filed a complaint alleging that drainage constructed by Art Mariner in his development is negatively impacting his property. Craig Odenbach, Houston Engineering, Inc. reviewed the complaint noting there is no wetland drainage or storage removal, it is only a redirection of the natural drainage. The recommendation is to dismiss the complaint. **Cary moved to dismiss the complaint and have our engineer prepare a letter for the Chairman to send to Mr. Schieve. Ken seconded.** Cary felt that Mr. Schieve will not be happy with the order noting there is a slight increase in drainage documented in the stormwater management plan for the development. It was noted that the stormwater management plan has been approved by the City and it did include a detention area to control flows. It was noted that if we pass this, Mr. Schieve will have the right to appeal. Cary felt that before we draft this letter, we need to first discuss with Marcus Hall to encourage him to alleviate the flooding problem with the roadway as it would also help Mr. Schieve. Michael will discuss this issue with Marcus first so that we can possibly include information in the Chairman's that there are improvements being discussed for the flood issues associated with this roadway. **Motion Carried.**

Ron Roehrich: **Cary moved to formally receive the complaint, Gordon seconded. Motion carried.**



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Legal Issues:

Property Acquisition for Hogue Island Flood Control Project: Dave has visited with all of the homeowners in the last few days. The ND Guarantee and Title will proceed to review the titles with an eye towards the avulsion issue. Dave noted that we do not have any specific guidance on the issue of avulsion as the ND Supreme Court has not ruled on this issue as of yet. Dave noted that he does not see this as fatal to purchasing these lots; however BCWRD as the buyer needs to know about these issues. Dave noted that they met with the State Water Commission noting that his understanding was that the BCWRD could apply to the State engineer for the ability to build a levee. Dave's understanding was that this would take a couple months to review and approve a permit as they need a formal design to proceed with this. Michael noted the state has laid claim to the property below the high water mark. Houston Engineering has tied down the locations for all the structures and had One Call mark the utilities. Relative to any project permit, HEI is proceeding with preliminary design layouts and are in discussion with the landowners as to the location of the levee. From the aspect of the State Water Commission, their comment was that in general that until they see an actual design they can't comment to any approval, the general consensus is that as long as only the slope of the levee was on sovereign lands, they would be ok with the levee. From that perspective taking forward we have until December 31st to close and will have survey certificates for these lots, and hopefully concurrence of the landowners to construct and we can then proceed with the public informational meeting to further discuss the project. Dave discussed deductions on homeowners, noting they will have another meeting with the State Water Commission as to exactly what the homeowners can deduct. Dave noted he has drafts of the purchase agreements but still needs to determine issues related to out-buildings, personal expenses etc. before we can finalize the purchase agreements. Michael noted the State Water Commission has defined their process regarding the deductions. It all is follow the HMPG process that is part of FEMA's acquisition process, but this is not a FEMA process but the grant program requires the HMPG criteria. Michael noted we need to discuss this with the State. When closing occurs the SWC will write their checks and the Board will write theirs, so we need to provide the purchase agreements for the state to review. It appears under the HMPG process, if personal assistance dollars given, they can't be deducted from the purchase price, however that needs to be clarified with the State. The next meeting with the SWC Mike, Dave and Cary will attend to ask these questions.

Missouri River Flood Hazard Mitigation Studies:

Letter to ND State Engineer requesting funding assistance: No formal response has been received as of yet.



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MRCC Public Informational and Sibley Island Meeting: Michael noted public information meetings have been scheduled for Thursday, October 25th. The first meeting for the MRCC will be held 5:30 to 7:00 p.m., the second meeting concerning Sibley Island will be from 7:00 to 8:30 p.m. in the Tom Baker Meeting Room. The purpose of the meeting is to get the residents in the room to obtain their insights and comments on flood protection alternatives. Michael noted they will show preliminary alignments but no costs will be provided at this time. HEI is planning to prepare individual letters to send out as notice of the meeting. This is a public informational meeting and Michael encouraged Board members to attend, though no Board action or discussion will occur. Michael will take care of the notice through Mona.

Comments and Discussion from Members of the Public:

Kathleen Jones: Ms. Jones noted she has written to the Board requesting that we go back to the plan that was presented over a year ago requiring some type of blockage to Burnt Creek to the south. Ms. Jones noted the association she represents has expanded its horizon on this issue, and are of the opinion that there could be some type of a structure put in the Wilderness Cove area that could prevent the Creek coming North during the next flood. Specific areas of interest that the Association would like to study to include as noted would be: the level with a control structure installed in the Wilderness Cove area; the increase in the river bank west and north of the Wilderness Cover Area; and the levee construction west and north of the Sandy River Drive Neighbors Association to the Ward Field south of Misty Waters. Ms. Jones would like to make a formal request to pursue getting a public meeting scheduled and asked that there be estimates put together on this potential project. Ms. Jones noted that they currently have 65 full time residents and approximately 125 property owners from Wilderness Cove to Burnt Creek Loop. The Board discussed the need for the work order on which this project was listed, which was Work Order 18, but had been revised and this project deleted. Michael reviewed the original tasks and scope of services for this project. **Cary moved to have our engineer develop a new work order for this project with the public information meeting as the first and only task to be completed at this time. Ken seconded.** Cary asked if we are asking about an assessment district if we need a signed petition, it was noted that we would not need this at this point.

Motion carried.

Scott Harris: (9320 Sibley Drive): Mr. Harris noted that his property had major erosion from the Missouri River and two thirds of the property is gone. Mr. Harris stated that they do not fit into any programs as their property was located in the 500 year flood plain. Mr. Harris said he has approached every group/organization and feels he has been left as an entity of one. Chairman Fleck asked if the COE and why they were referred back to us and their premise. Mr. Harris feels our charter refers to our premise. All Section 33 funds were rescinded so the COE was unable to pursue the sloughing easement that was under discussion. The HMPG process has been looked at and did try to connect his land to several projects, however none of them



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worked out to have positive benefit/cost figures. A number of efforts have been tried – the last one was the sloughing effort for the COE however the monies were pulled. Michael noted that this Board has passed that message back to Senator Hoeven's office that the Section 33 funding needs to be continued. Michael noted that Mr. Harris would need to qualify for a project for the state funds to apply. Ken felt that as a constituent we owe it to Mr. Harris to give it more thought and asked for a map at the next meeting to try to see if there is a program that fits his situation. Consensus was to have Michael present the information to the Board at our next meeting and then include the state and county as well as Senator Hoeven's office so they can get a sense of how complex this issue is.

Jerome Rodgers: Mr. Rodgers asked that a board member and Dave Bliss get together with the four homeowners to iron out the details before the buy/sell agreement are done. Mr. Rodgers noted that he has never agreed upon the FEMA personal assistance money being taken away. Dave noted they met with the State Water Commission with regard to the avulsion issue and what the grant requirements are for deductions as it is a state program. Jerry noted that the BCWRD agreement noted there would be no deductions for cleanup costs, however he has already done some clean up at a considerable expense. Dave noted we first need to discuss this with the State and get clearance as to what is allowed and what isn't as far as deductions. Jerry asked as homeowners if they have input. Dave noted first they need to get the regulations and apply those regulations to specific situation, once we know then we can proceed. Michael noted his understanding was that the district could only get the total FEMA funds provided and you may need to have the receipts and documentation to show what the dollars were expended on. Dave asked the homeowners to get the information ready to accelerate the process on the documentation for reimbursement from FEMA. Jerry will also let the others know.

Bill Mitzel: Mr. Mitzel lives on north end of Hogue Island. Mr. Mitzel read a letter that relays the frustration of many residents noting that they had all waited for September 30th deadline and now there is an extension to December 31st. For the residents of Hogue Island this is frustrating and they feel it shouldn't take this long. Mr. Mitzel feels the boundary work should have been done long ago while things were sitting idle. In conclusion all of us have suffered on Hogue Island and this process needs to accelerate. Ken asked if it is premature to start the process of clean up. Dave felt we first need to have the meeting with the State Water Commission as we don't own the properties yet. Michael noted that as far as the buyout process some of this information was also a surprise to the Board (i.e. the sovereign lands issue, etc.). It was noted that the SWC does include cost share for the complete demolition, clean up and site restoration. The next step after acquisition is possibly holding a public auction then for those not sold and the remaining structures a demolition plan. Michael noted that no formal clean up can be done prior to winter as the first item of business is auctioning the homes and there will need to be a reasonable timelines for people to remove the homes if they are sold.



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Chairman Fleck noting he shares the urgency in completing this project however the complexities involved are far more than anyone had anticipated.

Break at 10:15 a.m. reconvened at 10:22 a.m.

Fox Island – Project Assessment Report:

Harbor Drive: Michael noted he has been discussing project issues with the Riverwood West Homeowners Association and they have been reviewing what the BCWRD Board presented as a potential option. Any work on this is currently on hold until the Board gets a response or petition from the Riverwood West Homeowners Association as to what the project should look like. The City is still moving forward on raising Mills Avenue and Riverwood Drive.

Fox Island Flood Control Project: Michael reported that the steering committee has met and there continues to be discussion about forming a homeowners association and as soon as the association gets together, they could submit a recommendation as to the project support. Michael reviewed the route that has been planned.

Work Order 12: Has been amended a number of times, HEI is still proceeding on an hourly basis until there is a specified end point or project direction.

Hogue Island COE Section 33 Bank Stabilization Project:

Michael noted the contractor hired by the COE has completed this project, and praised the contractor for the high quality work that was done.

Non Structural Development Permits: Two permits were required by Ray Ziegler for the COE's bank stabilization project, as well as the Fox Island project for the Levinson/Goodin projects. The bid opening for the later will be October 11th.

Lot surveys to be completed: The surveys have been completed for the residential lots and they are still working on the survey certificates and documenting the ordinary high water mark.

Photo record: Michael will provide construction photos at next meeting.



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Hogue Island Flood Control Project:

Alternative project alignment reviews underway: Michael noted he touched on it with Jerry Rodgers, and is still working to set up meetings with residents on the North side as to their feeling on the levee option. Once the acquisition takes place, a public informational meeting will be set up to discuss with the residents. Dave asked if in terms of the meeting times how quick we can get this set up with Todd Sando at the State Water Commission. Michael noted possibly the week after the 18th. Chairman Fleck noted he will be gone until the 22nd of October and asked Michael to work with Cary to attend in his absence.

Burnt Creek Flood Control:

Status of 50% plan set and opinion of probable costs: the site survey has been completed and the 50% plan set. Michael will try and get a hold of Dennis Reep, NRCS to discuss the potential reallocation of their cost share funds.

Work Order 20: The dollars were approved and the Board simply needs to ratify the decision. **Ken moved to approve Work Order 20. Cary seconded. Motion Carried.**

Hay Creek Sediment & Geomorphic Assessment Update

Work Order No. 19: Michael noted that this is the Section 604(b) Grand Funding and was on hold while we waited for the formal documentation from the ND Department of Health which has been received. **Cary moved to approve Work Order No. 19. Gordon seconded. Motion Carried.**

Agreement with ND Dept of Health: **Cary moved to approve the Agreement. Gordon seconded.** Dave noted he does not agree to Section 19 of the agreement regarding legal fees. **Cary amended his motion to move that we approve the agreement subject to legal counsel review. Motion carried.** Dave asked that Terry sign the agreement and cross out Section 19 and initial.

Sunny View Flood Control Project: Still on hold. Michael noted they will visit with the residents this month.



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Apple Valley Cooperative Lagoon Project:

Bid Award and negotiations: The bid was awarded to Weisz & Sons. Michael noted that preliminary computations were done as far as relocating the muck removal materials, and to negotiate a deduct in costs. That potential deduct should be around \$15,000 to \$20,000. A formal change order will be provided in reference to that deduct.

Loan Documents through State Revolving Fund: Ken moved to authorize the Chairman to sign the loan documents. Cary seconded. Motion carried.

Other Old Business:

BCWRD Mission Statement: Cary moved to accept. Ken seconded. Cary still feels it is longer than what he would like. Discussed possibly renaming the document and leave the Mission Statement off. Cary amended his motion to take the "mission statement" text out and correct spell check and strike out. Motion carried. Dave will work with Mona to clean it up and then email a finished copy of the final document for publishing on the web site.

Resolution for Gailen: Gordon moved to approve the Resolution for Gailen Narum. Ken seconded. Motion Carried.

Resolution for Rynee: Cary moved to approve the Resolution for Rynee Kellar. Ken seconded. Motion Carried.

Cary asked that the resolutions be framed prior to sending.

Apple Creek Bypass Project: Marcus was not available. Michael will contact and inform us at the next meeting.

Stormwater Management Plan Review Policy: Ongoing.

HEI – Work Orders past and active: Michael will email copies of the active work orders to the Board.

New Business:

Sandy River Drive Request: Covered earlier.

Board Appointments to portfolios: Terry asked the Board members to review and volunteer and step up to take the various portfolios. The Board discussed and agreed to the addition of the ND Water Users and ND Water Resource Board to the portfolios list. The appointments will be finalized at the November meeting.999



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Election Vice Chairman: Ken nominated Cary Backstrand as Vice Chairman. Gordon seconded. Motion Carried.

November meeting: Terry Fleck will be gone on the 13th of November. Mona will check on meeting room for the 6th or 7th and email to the Board as to the revised meeting date.

Meeting adjourned at 11:15 a.m.

Mona Livdahl

Mona Livdahl,

BCWRD Secretary