



BURLEIGH COUNTY WATER RESOURCE DISTRICT MINUTES

Tuesday, March 19, 2013

City County Building

Present: Terry Fleck, Ken Royse, Kathleen Jones, Cary Backstrand, Gordon Weixel, Commissioner Doug Schonert, Burleigh County Commission; Michael Gunsch, Houston Engineering, Inc.; Dave Bliss, Bliss & Stebbins Law Firm; and Mona Livdahl.

Minutes 2-15-13: Ken moved to approve the minutes as presented, Cary seconded. Motion carried.

Minutes 3-7-13: Kathleen moved to approve the minutes as presented, Gordon seconded. Motion carried.

Financial Reports: Reviewed end of February financial data.

Bills: Gordon moved to approve the bills totaling \$47,528.40, Kathleen seconded. Motion carried.

McDowell Dam Recreational Updates:

Expenses: Reviewed expenses through the end of February - no action taken.

Miscellaneous: Forrest discussed the storage building proposal they are looking at which would be a three sided storage type building. Information was provided to Gordon and more information will be available at the April meeting for discussion.

Drainage Complaints:

Eldin Spier: Michael reviewed noting that we have the UTTC (United Tribes Technical College) retention area memorandum that explains the background on this site as well as a draft transmittal to Mel Bullinger, City Engineer. The City is in the process of drafting a letter and would like this letter, as well as the Memorandum to go concurrently to Mr. Speirs as well as United Tribes. We are holding until Mel has time to review and prepare their letter. Mel Bullinger, City of Bismarck Engineer was present and noted that he had spoken to Kevin Levi, NDDOT representative about the 42" RCP culvert that was installed and plugged. Mel noted he was told that at design the DOT noted that their design consultant told them to put the culvert in, and then after construction they were told to plug it. Mel doesn't feel this adds up and would like to do more checking before making a decision. Mel will follow up with the design consultant on this issue. It was noted that the Board can approve the Memorandum and hold on sending the recommended letter until after further consultation with Mel. **Cary moved that we accept the Memorandum as written and hold on the letter and direct our engineer to work with Mel Bullinger. Kathleen seconded. Motion Carried.**

Emery/Koppang: Cary noted he and Michael went out to the site a few days ago and the area is flooded and iced over. Cary questioned Michael and Dave as to where we are at with this. Michael noted there are two pieces to this under the Board's prevue. The first was the complaint the Emery's filed against the Koppang's.



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Relative to the Koppang complaint against the Emery's, Michael received a phone call from a Mr. Hoff (?) who is a resident North of the Koppang's and he expressed concerns about the groundwater and feels to some extent he is being damaged. Michael stated that he informed Mr. Hoff that the Emery's are still under order by the Board and have until May 1st to correct the situation. At this time the Board's position was to let the time frame run. Dave reported that the Emery's have lost their time frame to appeal and felt he could respond to the discrimination complaint. Dave will draft a letter in response to this complaint on behalf of the Board. When the Emery's filed a complaint against Koppang, they indicated that there was discrimination by the Board. Michael noted the recommendation in the review memorandum is for the Board to dismiss the drainage complaint against the Koppang's, but they also should have Dave address the discrimination issue. Dave will use Craig's memorandum to address both issues. The drainage complaint needs formal action, the discrimination issue response does not require Board action. Michael noted that typically HEI takes care of these issues, but due to the past background, legal counsel should send this letter. **Cary moved that we dismiss the drainage complaint filed by the Emery's against the Koppang's, Kathleen seconded. With no further discussion, a roll call vote was taken:**

Ken:	Yes
Kathleen:	Yes
Gordon:	Yes
Cary:	Yes
Chairman Fleck:	Yes

Motion carried.

Dave and Michael will work together on this to ensure a letter is sent to the Emery's and make sure it is taken care of and it will be under counsel's signature.

Bitner/Smith/Barberi Complaint: Cary noted we received a two party complaint and we addressed the Smith/Bitner complaint and noted the County has completed the cleanup in the ditch to satisfy the complaint by Mr. Bitner. The other half of the complaint was Pat Smith's complaint which was addressed and investigated. Cary provided a brief history. Cary noted the Board has authority to see that the natural drainage is maintained, but in this case due to the oxbow and fish pond issues it would not be feasible to have this removed. Cary had spoken to Mr. Smith and Mr. Barberi about putting a pipe in to resolve the issue. Both parties were okay with this approach however Mr. Barberi noted he did not have the funds to do this. Cary noted that this is a matter between the landowners and the BCWRD could not order this. In the letter we sent, we asked Mr. Smith to withdraw this complaint, and since we have had no response Cary felt we still have this complaint before us, and that it needs to be dismissed or considered withdrawn. **Cary moved to dismiss the complaint filed by Mr. Smith and have Michael send a letter noting this, Kathleen seconded. Motion Carried.**



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Emery/Koppang Issue: Ken asked how we left Emery/Koppang issue – Michael noted that on the Emery issue we are basically letting the time frame run as they still have until May 1st to do the work themselves. If they decide not to the restoration work will be left to the BCWRD to complete. Dave noted that regarding the deadlines, they had missed the deadline to apply to district court. They also missed the deadline to appeal. Chairman Fleck felt that we need to send a letter letting them know where we stand on this matter. It was noted that the Emery's are not represented by legal counsel and that we are not responsible to provide them with legal counsel or advice. Dave noted the letter would explain that under the Administrative Practice Act that they had 30 days to appeal, which they did not do, a letter or email to this Board does not constitute an appeal, they would have had to file with the court and pay \$80 in filing fees. Dave noted that while they requested a hearing before a district judge, a letter to this Board does not constitute an appeal. Discussion was held on sending a letter, noting that the Emery's had sent an email noting that they no longer wish to work with the BCWRD and asked to be removed from the agenda.

Cary moved to have Dave Bliss send them a letter letting them know that they have missed their deadlines to appeal and we are still enforcing the May 1st deadline, Gordon seconded. Motion carried.

Missouri River Flood Hazard Mitigation Studies:

SWC: The signed copy of the agreement for cost share which is included in Work Order 18 is provided as informational only; this was voted on at the last meeting.

Missouri River Correctional Center: Michael reported that this is still in legislative discussion. Gordon noticed it passed through the House 87 to 3 but has not gone through the Senate. We will hold off on action until after the Senate vote.

Sibley Drive Area: Michael noted that we are in the process of setting up a meeting with the Corps of Engineers and Bismarck Parks and Recreation. A portion of the levee for this project through the park and this is like a lynch pin, if you don't get the levee installed here the project doesn't work. The initial discussions with the COE have been relatively good and hopefully between now and the next meeting, the consultation with them will be held.

Sandy River Drive: Michael will work with Marcus Hall, Burleigh County Engineer to schedule a public informational meeting. They will try to schedule this in April. There first will be a discussion with Kathleen relative to the information to be presented during the meeting.

Comments and Discussion from the Public: None

Ray Ziegler was present and noted he does not have any updates on the CRS rating system at this time.

Chairman Fleck convened the meeting to go into Executive Session. Dave Bliss explained that the purpose for the Executive Session was to discuss and try to finalize Jerry Rodger's purchase negotiations.



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Meeting convened at 8:50 a.m.

The meeting was called back to order at 10:00 a.m. Chairman Fleck informed the public present that we have elected to reconvene and we have a call in to Mr. Rodgers and they will table further discussion until around 10:30 a.m. for his possible return call before making final action.

Fox Island Flood Control Project

Meeting with Fox Island Homeowner's Association: Michael reported that he had met with the Fox Island Homeowners Association, and discussed the current alternatives on the table and found out one landowner Mr. Lee Tavis was not in favor of the levee on his property. We have Segment D Levee and the recommendation before us is to have a specific meeting with just those residents along the levee portion. Michael noted he has had further discussion with Dwayne Ternes, and needs to get the residents together and provide them information as to what it will look like, with cross sections in place at their residences. These are structural issues that will be address at the meeting. The Homeowners Association will also be invited to attend. Once this is done we can rework the assessment costs and have one last public informational meeting prior to taking it to a formal vote. We are looking at having the resident meeting in April at the Houston Engineering's office. **Kathleen moved that we authorize Houston Engineering to organize an informational meeting for Fox Island including the Homeowners Association for the month of April, Cary seconded.** Ken noted the sheets may be easier to read if the homeowners name is on the specs. Michael noted the addresses are on the bottom of the page, Michael noted he would like to add the bank stabilization easements to the mapping and would like permission to post these on the website so when the letters are sent out the information is available. **Motion carried.**

Project Development: Michael reported they are still looking at splitting out costs and will prepare a memorandum documenting the differences as part of the assessment figures.

Public Information Meeting: Will be scheduled when the private landowners come to a conclusion as to what they would like or would accept.

Letter of support for the Riverwood Drive and Mills Avenue Area: Michael noted that the City is working on the project and from a communication perspective it would be prudent to put the Board's voice of approval on this project. Noted during the homeowners Association it was discussed as to how much the City is contributing to the flood control project. **Cary moved that we send a letter of support to the City for this project, Kathleen seconded. Motion carried.**

Commissioner Schonert asked to take the opportunity to thank the City on taking the initiative to go all the way to Mills Avenue noticed we should also have Chairman Jerry Woodcox sign off on the letter. Michael will draft the letter and run it by the Board for signatures from both entities.

Motion carried.



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Executive Session Summary:

Dave Bliss reported the Executive Session was to deal with a counteroffer from Mr. Jerry Rodgers, which was received late Friday afternoon. The offer had to deal with Mr. Rodgers demand for \$8,100 in additional monies, which he states were related to the work he did on the residence within the last few weeks. Dave spoke to Mr. Rodgers noting they did not discuss the building permit amounts, but specifically the invoice submitted from Rodger’s Hardwood Floors, which is his own company. Mr. Rodgers agreed to accept the Board’s counteroffer of \$6,000 in lieu of the invoice he provided from Rodger’s Hardwood Floors. **Ken moved that we accept this offer of \$6,000 plus the building permits and move forward. Gordon seconded. Roll call vote:**

Ken:	Yes
Kathleen:	No
Gordon:	Yes
Cary:	No
Chairman Fleck:	Yes
Motion carried	3 Yes – 2 No.

Hogue Island Flood Control Projects:

Owner’s policy: Dave noted another issue the Board needs to deal with is the owner’s policy to be issued by the sellers. As buyer which the district is, the buyer needs to take with notice that in these owners policy there is an exception related to the sovereign lands policy which the ND Title and Guaranty will not cover. Discussed that the Board will agree to take, with notice that the clear and marketable title documentation is limited by this exception, and the Board cannot sue to recover losses under this issue. In the agreement it states that the seller has to provide satisfactory title to the district and we are saying in effect that these titles are satisfactory. Cary questioned whether we need to formally vote on this, it was noted that we do need to go on record for this.

Dr. Bernard: The BCWRD Board submitted additional evidence to show FEMA that in our view, FEMA should cover the flood damages losses that Dr. Bernard had to his residence. Michael noted in visiting with Dr. Bernard, that he does have flood insurance. Dr. Bernard was initially denied because of the date of the flood. Congress then changed the flood start date and the policy was purchased before that and was denied. Michael noted we submitted additional information and made a determination as to when the water first touched the house.

Dr. Bernard’s policy went into effect June 26th and based on our analysis of the river flows and elevations that floodwater actually touched the foundation on around the 22nd of June. With that being said if that is when the house was first “affected”, FEMA will deny the claim and that is the end of this. The actual impact, however, actually occurred around the 17th of July. The argument put forth is that the date of loss is actually July 17th; therefore this claim should be valid. FEMA



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has 60 to 90 days to evaluate this claim. Once we have an answer from FEMA the purchase can move forward. The purchase does not get impacted, only the dollar value. Again the policy went into effect 30 days after it was purchased which the effective date was June 26th. The water touched the foundation on the 22nd - but there was no loss or damage because the sump pumps were keeping the crawl space relatively dry until the erosion caused the foundation failure.

Magnus: The purchase agreement was signed and authorized; we are waiting for ND Title & Guaranty on this for the final documentation.

Bolls: The Boll's have submitted their purchase agreement and are waiting for the buyout and closure so they can move on.

Dave noted that with Mr. Rodgers accepting this offer today, we now have all four homeowners who have agreed to sign the purchase agreements.

Commissioner Schonert asked that he could make a statement to the general public.

Commissioner Schonert noted that at the last minute, Mr. Jerry Rodgers asked for over \$8,000 for work in his home, which he knew would not benefit the buyer. Commissioner Schonert noted that this put the BCWRD Board in a hostage position. If the Board turned down this offer, it would have put the other three homeowner's purchases in jeopardy and he thanked the Board again for their work in making this difficult decision.

Southern Roadway/Levee Closure Alternatives: Michael noted that after the public meeting, there was discussion regarding the benefits from a southern closure on Hogue Island. Michael noted they have taken a preliminary cursory look at this, but in the interest of time will hold on providing that information today.

Cary noted that they are receiving calls from people on the south end of Hogue Island with the sand blowing in from a sandbar there and are looking at a project to dredge this to remove the sandbar. Michael noted the people on the west side, prior to 2011, had access to the river along their frontage noting there are now access issues. Michael noted that this Board may not want to get involved with such projects, but the Board will be involved in the permit review process.

Due to time restraints on Ken having to leave earlier, items on the agenda were changed.

Engineering Requests for Qualifications:

Ken noted that on the BCWRD Board ran an ad requesting solicitation interests for engineering firms. We have received three submittals for consideration. Ken noted that we had asked each firm to submit 8 copies and asked if we should hand out or have a special committee to look them over. Consensus to have Gordon, Ken and Cary head up the committee to review and will let Mona know when they meet so that we can notice this meeting.



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Financial Status:

Ken noted that Mona was asked to meet with Kevin and Clyde regarding setting up and taking over the BCWRD Accounting work. At the time of the approval, it was noted that the Board did not include Pat Brown of Brady Martz, as they will be the consultant in setting this up to conform with the counties standards in setting this up. **Ken moved to approve allowing Mona to work with and include Pat Brown and/or a representative from Brady Martz to get this process going. Kathleen seconded. A roll call vote was taken:**

Ken:	Yes
Kathleen:	Yes
Gordon:	Yes
Cary:	Yes
Chairman Fleck:	Yes
Motion carried.	

Burnt Creek Flood Control:

Michael noted he has had conversations with Dennis Reep, NRCS. The Burnt Creek Flood Control project is a cost share project, however the monies were pulled and are no longer there, but engineering costs are still reimbursable. Michael inquired as to if the Board was willing to address doing the project on their own if funding is not available. The projected construction cost is around \$150,000. The construction timeline would be for a fall project and the Board should probably move this along, as well as discuss the project with the State Water Commission relative to cost share eligibility, though it potential is not eligible. Consensus of the Board is to have Houston Engineering move forward on this.

Hay Creek Greenway & Sediment & Geomorphic Assessment Study:

Sediment & Geomorphic Assessment Study: Michael noted at this time we are on hold with the sedimentation work - we need the spring runoff to start and to get field studies completed.

Greenway: Discussions are pending at this time with the City.

Hogue Island Owner's Policies Point of Order:

Dave noted that we need to accept the owner's policies with the exception on the policy for sovereign lands. **Cary moved to accept the owners policy with the exception of the sovereign lands for the Bolls' property as well as all the other properties, Kathleen seconded. A roll call vote was taken:**



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Ken: Yes
Kathleen: Yes
Gordon: Yes
Cary: Yes
Chairman Fleck: Yes
Motion carried.

Sunnyview Flood Control:

Michael updated noting that he has had conversations with all the landowners that expressed concerns, with the exception of the both the Richter's, and have a general concurrence that some of the landowners would like to see a response in writing. Dave also has had conversations with the Richter's legal counsel, and it was the consensus to provide the documentation of Michael's meeting with Mr. Richter, and to prepare a written response and submit to Casey Chapman, his legal counsel. They would then schedule a meeting with Mr. Chapman and the Richter's to review the information. Consensus was to authorize Michael and Dave to negotiate and visit with these landowners as well as including Kathleen in the discussions as it is her portfolio.

Apple Valley Lagoon Project:

Gordon noted he attended the meeting and felt it went well. **Cary moved to accept Change Order Number 1; which was a deduction for not hauling the material off site, Gordon seconded. Motion carried.**

Old Business:

FEMA CRS: Ray Ziegler noted earlier that nothing has happened on this.

HEI EJCDC: Michael will get his information to Ken and Gordon within the next week or so.

Missouri River Snagging: Michael noted that last month the Board authorized HEI to send a letter to the State Water Commission. Initially this letter will go to the local entities and after that to include and have discussion with the COE to get this project going.

Board Reorganization: Informational - no discussion needed.

Record Retention Policy: Mona, Dave and Michael will set up time this summer to work on this. Dave noted he does have a schedule of what is needed and how long records need to be kept.

New Business:

Board Policy Documents: Michael noted this is background information for the policies that the BCWRD has developed over the years so that new Board members have them. The Storm Water memorandum is not policy, but Michael noted wanted to share this information with the Board.



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Correspondence:

Reviewed, it was noted that no comments are needed on the solicitation of views; however consensus was that we should send a letter acknowledging our receipt of these notices. Cary and Michael will work together to provide letters on these noting that Cary can sign these letters.

Other Business:

Signing Authority: Dave requested Board action on signatures as the ND Title and Guaranty needed something that showed Terry Fleck has the authority to sign Hogue Island purchase documents. Chairman Fleck asked that we make this a general policy. **Cary moved that the BCWRD Board authorize Chairman Fleck to execute any and all documents on behalf of the Board, including but not limited to the closing process on the Hogue Island purchases, Kathleen seconded. Motion carried.**

Steinle Subdivision: Karen Hogue addressed the Board on the Final County Plat for Steinle noting she does not believe that Mr. Steinle is following the rules and regulations. Dave noted the plats are submitted to the BCWRD for comment but the Board has no formal jurisdiction to review or address these items. Mrs. Hogue was referred back to Planning and Zoning.

Posting of draft minutes: Terry noted that he gets calls from residents who don't live here in the winter months and are requesting that we put the minutes on the website sooner. It was noted that Dave and Michael review these as well as Chairman Fleck, and once they are reviewed and approved they are available for Board approval. Dave discussed the importance of accuracy prior to posting these minutes, which would require Board review and approval. Consensus of the Board was to leave this as we have been doing.

Next meeting: April 9th

With no further business, the meeting adjourned at 11:00 a.m.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Mona Livdahl".

Mona Livdahl
BCWRD Secretary