

The Sargent County Commission held a special meeting with the Sargent County Water Resource Board and the City of Milnor, at 9:00 a.m. on Thursday, December 13, at the Courthouse, with the following members present: Dave Jacobson, Mike Walstead, Jerry Waswick and Bill Anderson. Absent: Steve Wyum. All 5 members of the Sargent County Water Resource Board: Chris McFarland; Mark Breker; Jim Bosse; Roger White; and, Richard Engst; were present, as was a quorum of the members of the Milnor City Council, including: Randall Edison; Terry Dusek; Merrill Decker; and, Jay McCleery. Also present were: the contractor, Steve Johnson; Sargent County States Attorney Lyle R. Bopp; Water Resource Board attorney Sean Fredrick; attorney Jonathan Green representing the City of Milnor; Chad Engels and Brady Woodward of Moore Engineering; and, Page Cary, reporter for the Sargent County Teller. Water Resource Board Chairman Chris McFarland chaired the meeting.

The matters of paying the contractor and allocating the costs of relocating a Milnor municipal water line under County drain #7 and the site of the new concrete box culverts being installed as part of a Flood Hazard Mitigation project with grant funding of 75% from FEMA and 10% from the ND-DES were discussed. Pursuant to a Joint Powers Agreement drawn up by the Water Resource Board's attorney and agreed to by all parties, the local share of project costs were to be divided among the City, the Water Resource Board and the County, with each entity to pay 1/3 of the local share. The primary question before the 3 boards was whether or not the relocation of the water line was considered to be a project cost, subject to the cost sharing provisions of the Joint Powers Agreement, or was a cost outside the scope of the project, to be the sole responsibility of the City of Milnor. The circumstances leading up to the discovery of the municipal water line at the job site; the degree to which the project had been completed at the time the water line was discovered; the options available to the parties once the water line had been discovered; the relative costs of the various options; and, the instructions given to the contractor by the project engineer, with the acquiescence of a water board member and members of the Milnor City Council were discussed at length. Water Resource Board member Jim Bosse asked the Water Board's attorney if a motion to rescind a Water Board motion approved on November 28, 2012, denying payment to the contractor for work performed relocating the water line was in order. Attorney Fredrick expressed the opinion that such a motion to rescind was in order. Mr. Bosse then proposed the following settlement: The City of Milnor to pay for \$6,113.00 of materials, primarily water pipe and fittings, and the balance of the bill for work done relocating the water line to be shared 1/3 to each party, with the condition that, If Milnor receives any compensation or recovery from the engineers or construction company that originally installed the water line at the incorrect depth back in 1991, any such compensation or recovery will be shared, proportionally, with the other parties to the Joint Powers Agreement, up to the amount of the additional costs incurred.

The contractor, Steven Johnson, offered to reduce his bill for the additional work by \$3,000.00, provided that the payment was approved and made within the week.

After the discussion, the 3 boards convened separately to consider the matter.

The Sargent County Commission convened separately in the Commissioners' Room and considered the settlement offered by Jim Bosse of the Water Resource Board. Bill Anderson made a motion to the Sargent County Commission that Sargent County, pursuant to the Joint Powers Agreement, will pay 1/3 of any bills related to the Milnor Flood Hazard Mitigation project on Drain #7, including bills for work done to relocate the water line, approved by the Sargent County Water Resource Board, provided that the City of Milnor agrees that any compensation or recovery from the engineers or construction company that originally installed the water line at the incorrect depth back in 1991 will be shared, proportionally, with the other 2 parties to the Joint Powers Agreement, up to the amount of the additional costs incurred. . Seconded by Jerry Waswick. Voting yes were Bill Anderson, Mike Walstead and Jerry Waswick. Voting no- Dave Jacobson, motion carried.

The separate Meeting of the Sargent County Commission was recessed, and the Commissioners returned to the joint meeting. The Water Resource Board informed the joint meeting that Mr. Bosse's settlement proposal had been approved and adopted by a vote of 3 "ayes" and 2 "nays." The Milnor City Council informed the joint meeting that the Water Board's settlement proposal had been accepted by the City. All parties had accepted the settlement offer proposed by the Water Resource Board. States Attorney Bopp, Water Board attorney Sean Fredrick and attorney Jonathan Green representing the City of Milnor were charged with drawing up a memorandum of agreement on the matter. Mr. Johnson's offer to reduce the amount of the bill by \$3,000.00 was accepted. The joint meeting of the three parties then adjourned.

The separate Commission meeting was called back to order by Chairman Jacobson, and there being no further business permitted pursuant to the call for a Special Meeting, the meeting was adjourned.

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DAVID L JACOBSON – CHAIRMAN

ATTEST:

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SHERRY HOSFORD - AUDITOR