

Forman, North Dakota
August 27, 2013

The Sargent County Commissioners met in a special session at 9:00 a.m. with the following members present: David Jacobson, Jerry Waswick, Mike Walstead, Bill Anderson, and Steve Wyum. Absent: None. Lyle Bopp, States Attorney, Sparky Engquist, Road Supt., Damon DeVillers, Interstate Eng., Inc. Michael Mahrer and Dawn Mahrer, Bernard Mahrer Construction, Inc. were also in attendance. The meeting had been called by Chairman Jacobson at the request of Commissioner Waswick for the purpose of discussing gravel bids and road maintenance projects.

The meeting was called to order by Chairman Jacobson and Jerry Waswick opened the meeting with comments regarding complaints from a gravel contractor. Michael Mahrer had contacted Jerry Waswick with the information that Bernard Mahrer Construction had already graveled County # 3 and County # 7 was on the list for Bernard Mahrer Construction to gravel according to the specifications provided by the Road supervisor, and Enderson Construction graveled County # 3 again and also graveled County # 7.

Sparky Engquist stated that County Road # 3 will have magnesium chloride on this road and that he wants a higher amount of binder, also known as "200's" in the gravel driving surface. Michael Mahrer, Bernard Mahrer Construction, Inc. asked how he decides what the higher amount of 200's is, whether it is clay, which gives a higher plasticity index, or silt, which is worthless, without a lab test, and discussion followed on testing results.

Jerry Waswick referred to maps and quantities that were prepared for the 2013 season and asked how these projects have been assigned to the various contractors by the Road supervisor. The commission asked that the dollar figures showing the amounts paid to the various contractors be provided for this year and previous years. The Auditor provided the following figures for the 2012 season and for the 2013 season, to date. The amounts paid to various contractors for the 2012 season were: Arrowhead Transport-\$31,465.00; Crandall Construction-\$9,922.65; Enderson Construction-\$112,537.02; Lesmeister Gravel-\$606.00. The amounts paid to various contractors for the 2013 season, to date, are: Arrowhead Transport-\$29,378.40; Bernard Mahrer Construction Inc.-\$67,157.33; Crandall Construction-\$71,550.70; and, Enderson Construction-\$144,968.66 (This amount includes an 18,333.33 yard stockpile purchased at a cost \$94,416.65). The totals expended for gravel so far in 2013 substantially exceed the amount expended for the 2012 season due to additional road funding appropriated from State oil revenues by the 2013 North Dakota State Legislature.

The Commissioners questioned why the Road supervisor had changed assigned roads for deliveries by some contractors, and stated that the reasons for making changes should be documented. It was suggested that the Commission should consider changing the present practice of accepting all bids, and only accept the bid of the lowest qualified bidder each year in the future. There appears to be a definite communication problem among and between the contractors and the road supervisor. The comment was made that giving all of the business to the lowest bidder may not be realistic. The various companies have differing capacities, and both the contractors and the County need flexibility in responding to needs in various parts of the County road system. The road supervisor should be providing documentation that justifies the decisions made concerning suppliers. There should be more one on one communications between the road supervisor and the contractors. A formal testing procedure should be put in place as soon as possible.

Recess for a preconstruction conference with Industrial Builders on Project CER 4125 (065) 3½ miles north of Rutland on County Road # 10 at 10:00 a.m.

Reconvened at 11:30 a.m. with all Commissioners present except Commissioner Wyum. Commissioner Wyum was participating in an interview in the Extension Office. A question was asked about the ownership of the clay pile that had been located at the fairgrounds. Sparky said it was owned by Enderson Construction. A question about restoration of the site and repair of the road after it was hauled out was asked, but not answered. The fact that the official minutes of the Marshall County Board of Supervisors mention Sargent County's crushing and stockpiling in the Christensen Pit, and also the need for repair to a haul road in that County. Commissioner Waswick asked who is responsible for the road damage in South Dakota, and Road supervisor Engquist indicated that repair of the haul road was Enderson Construction's responsibility.

Commissioner Anderson commented that anytime that Sargent County puts up a stockpile at the highest price, and passes over 4 other lower bids it raises a red flag. It must be justified

before it happens not after the fact. It should have been discussed thoroughly and the reasons transmitted to the commission, so the commission and the public know why it was done, and that it was the most economical use of taxpayer dollars. It doesn't always mean that the County has to use the lowest bidder, but using any bidder other than the lowest bidder must be justified before, not after, the fact.

Commissioner Jacobson stated that a letter of reprimand should be placed in the road supervisor's personnel file, and that he should be required to start doing the paper work that should be done concerning graveling decisions and priorities. Commissioner Waswick reviewed amounts paid to the various contractors for the last two years, and stated that the Commission should consider how the County can better its system. A change in the bidding process should be given some consideration. Also the Commission should consider removing the road supervisor's authority to order materials and services because of potential conflicts of interests with companies doing business with the County. States Attorney Bopp clarified questions concerning nepotism, which only exists in appointed or elective office. The appearance of impropriety can be as destructive as actual impropriety in office. Personal gain at the public expense by an officeholder or appointed official may rise to the level of a criminal offense, the States Attorney advised. Commissioner Wyum suggested that the County review its business practices, and have the States Attorney or Attorney General conduct the review. Whether legal or not, allowing a conflict of interest to continue is not good fiscal policy and not a good business practice. There has been past precedence of doing things the way they have been done for many years, and it may be difficult to set a definite line. Commissioner Wyum suggested forming a committee consisting of the Road Commissioner, States Attorney, County Engineer, County Auditor, Commission Chairman and 2 contractors be appointed to study the process and recommend changes. The States Attorney will consult with other counties to see how the bid process is completed in other jurisdictions.

Meeting adjourned at 12:10 p.m.

DAVID L JACOBSON – CHAIRMAN

ATTEST:

SHERRY HOSFORD - AUDITOR