

MINUTES OF THE SPECIAL MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD HELD ON THURSDAY, DECEMBER 13, 2012, AT 9:00 A.M., IN THE SARGENT COUNTY COURTHOUSE, FORMAN, NORTH DAKOTA

Managers present: Chris McFarland, Jim Bosse, Mark Breker, Richard Engst, and Roger White. Also present: Chad Engels, Mike Opat, and Brady Woodard, Moore Engineering, Inc.; Sean M. Fredricks, Ohnstad Twichell; Lyle Bopp, Sargent County States Attorney; Jonathan Green, attorney for the City of Milnor; Randall Edison, Terry Dusek, Jay McCleery, Merrill Decker, City of Milnor City Council; Jerry Waswick, Bill Anderson, Mike Walstead, David Jacobson, Sargent County Commission; Paige Cary, Sargent County Teller; and Steve Johnson, Johnson Excavating.

Sargent County Drain No. 7/Milnor Hazard Mitigation Project

Chairman McFarland called the meeting to order and asked for introductions from those in attendance.

Commissioner Bill Anderson provided a background from his perspective and indicated he would like to see the parties come to an agreement whereby Johnson Excavating receives payment.

He indicated there are two issues: (1) whether or not the contractor should be paid, and (2) who should pay the contractor.

Sean Fredricks pointed out that there is also question of whether or not Johnson Excavating should receive payment for any costs associated with the initial boring attempt since that attempt was completely unsuccessful. Mr. Fredricks also indicated that the Joint Powers Agreement between the three parties provides a one-third/one-third/one-third cost-share but only for "project costs." From the Water Resource District's perspective, these boring costs are not "project costs" because the borings only benefitted and provided an improved project for the City, and the City was the party directing the contractor to conduct the borings, as opposed to the less expensive option of simply moving this portion of the project. In fact, Moore Engineering estimates simply moving would have resulted in a minimal cost of \$3,000 to \$4,000 as opposed to the more extravagant costs associated with the boring attempts.

Steve Johnson indicated he had no control over the first contractor and that the initial boring contractor was really the contractor operating on behalf of the City and at the City's directive. Chad Engels indicated that the contractor did say that they were working for the City. The City indicated the initial contractor did not plan to submit any invoice for the failed boring attempt.

Manager Jim Bosse pointed out that the City's water line was at the wrong depth and that if the City wanted to sue the project engineer or contractor on that water line project, that was up to the City. From the Water Resource District's perspective, the City provided inaccurate plans regarding its water line, and that is not the Water Resource District's responsibility.

City Commissioner Randall Edison indicated that, from a legal perspective, the City understood Milnor was responsible for the utility. But he also indicated the City is simply trying to go back to what they would have preferred to have done the day the City proceeded with the boring work.

Steve Johnson indicated he would be willing to accept \$41,000 to settle the boring costs, not including pavement work that will be required next spring, if the parties all agree to it today. The \$41,000 offer is approximately \$3,000 less than the \$44,000 he contends he is owed. Mike Opat indicated Johnson excavating has about \$3,000 of overage anyway based on his submissions.

Manager Bosse indicated the City should be solely responsible for the cost of materials associated with the boring work, but suggested that perhaps the three parties could then split all remaining costs associated with the boring work. Manager Engst suggested the cost of materials for the boring work was \$6,113.

Mike Opat indicated the cost of paving just for the borings would likely be approximately \$25,000; this does not include the paving work required over the culvert.

At this juncture, the three boards took a ten-minute break from meeting together so they could separate to talk amongst themselves and to consider the proposal that the City pay the \$6,113 associated with materials for the borings and that the three parties split the remaining costs associated with the boring work.

Manager Bosse offered a motion to rescind the previous motion made at the November 28 meeting, and to settle the matter as follows: that if the City of Milnor agrees to pay the \$6,113 associated with materials related to the borings, and if the City agrees to reimburse the Sargent County Commission

and the Water Resource District on a one-third/one-third/one-third basis of any sums recovered from the project engineer or contractor or other parties related to misplacement of the City's water line, the Water Resource District will agree to pay one-third of the \$35,131 currently outstanding to Johnson Excavating under Johnson's offer to settle for \$41,000, and one-third of all remaining costs to complete the project, including paving work. Manager Engst seconded the motion. Upon roll call vote, Manager Breker voted no, Chairman McFarland voted yes, Manager Bosse voted yes, Manager White voted no, and Manager Engst voted yes. The motion passed.

The City and the County Commission joined the Water Resource District after their conferences. The Water Resource District explained the motion that passed, and the City of Milnor requested an additional break to discuss this proposal. The County Commission indicated that they would agree to pay one-third of remaining costs, less the \$6,113 associated with boring materials, and that they would expect reimbursement of anything recovered from the City's water line project engineer and/or contractor. The County further indicated they would support the decision of the Sargent County Water Resource District.

Following a brief break, the City indicated they unanimously voted to accept the offer given by the Sargent County Water Resource District to pay the \$6,113 associated with materials for the boring work, and to split all remaining costs of the \$41,000 offer from Mr. Johnson; to pay one-third of all remaining costs, including paving; and to pursue the City's project engineer and/or other related parties associated with the City's water line project that resulted in misplacement of the water line; and to share any recovery from the water line project engineer, contractor, or other related parties evenly with the Sargent County Water Resource District and the Sargent County Commission. The three parties were in agreement. They will memorialize the arrangement by letter or some other writing.

Chairman McFarland indicated the Sargent County Water Resource District would no longer review costs associated with the water main work or the boring work. Mike Opat indicated he would prepare a final pay request for the boring work and will work with Steve Johnson to do so.

The meeting adjourned at 10:30 a.m.

APPROVED:

CHRIS McFARLAND - CHAIR

ATTEST:

SEAN M. FREDRICKS, ACTING SECRETARY