



TITLE: SPECIAL BOARD MEETING
MEETING MINUTES

DATE: DECEMBER 13, 2021

1. ATTENDANCE:

Chairman Stuart Christian called the December 13, 2021 meeting to order at 11:00 AM at the District Office. Other managers attending were Don Andringa, Clayton Bartz, Craig Engelstad, and JJ Hamre. One staff member was present April Swenby – Administrator. Others in attendance included Zach Herrmann – District Engineer, Deb Keil – State Representative – House District 1B, Mark Johnson – MN Senator District 1, JT Anderson – MnDOT, and Dave Weirens – BWSR. Landowners in attendance were Dan Vesledahl.

2. APPROVAL OF THE AGENDA:

A **Motion** was made by Manager Bartz to approve the agenda, **Seconded** by Manager Engelstad. **The Motion was carried.**

3. HISTORY.

Chairman Christian welcomed Dan Vesledahl and thanked him for being willing to meet with the board to provide a brief history of the area and describe the issues the landowners face in the area. Vesledahl explained to the managers a history of the project and the promises that were made at the origination of the project by state agencies. Vesledahl explained that he and Swenby have been able to locate documents that corroborate the statements. The managers were given copies of this documentation.

Proposed Easements: Swenby explained that BWSR has prepared proposed easements (the managers were given a printed copy of the existing easement and the proposed easement along with). She noted that the easement states “Shall allow repairs and inspections necessary to maintain existing drainage systems or public utilities within the Easement Parcel(s). The location of the drainage system(s) and public utilities must be shown on figures or design sheets included in the Plan or provided to the LGU and State prior to the maintenance work. Grantor(s) shall be responsible for restoration of the Easement Parcel(s) to the condition(s) present immediately prior to the maintenance work as soon as site conditions allow after the maintenance activities are completed.” Swenby stated she has asked BSWR for flexibility on this paragraph in August. She suggested the following language “Shall allow repairs and inspections necessary to maintain existing drainage systems or public utilities within the Easement Parcel(s) by using an adopted process from the Sand Hill River Watershed District”

Swenby also expressed concern regarding the terms that specify that that the operation, maintenance, and repair of the constructed wetlands are the responsibility of whomever owns the land. How would the district pay to maintain dams, spillways, culverts, and other constructed features?

- a. If we were to take on the land, would we want reassurances that the project is currently in good condition. Otherwise, fixing deficiencies becomes our responsibility.
- b. How will we pay (which fund) for maintenance on a wetland and how is that watershed responsibility?

- i. What precedence are we setting by paying for any maintenance on this for the sole purpose of securing drainage? In other words, how does the rest of the district feel, who is not directly affected by this, about paying for future maintenance of a wetland? Won't our constituents think this is a state responsibility?

Swenby questioned that if a financial obligation is listed in the easement, is this even "sellable" land after we secure the drainage or will the district be stuck with this forever?

Swenby stated she would have some concern about inheriting financial responsibilities for repair, operation, and maintenance of engineered and constructed wetlands. Especially if a third party (ie... BWSR) has the ability to dictate needed works of improvement.

In light of these things, would it be best for all for BWSR to issue an easement to themselves on the land to define their responsibilities in maintaining the credits, and then sell the land/transfer rather than passing that risk on to a future buyer.

The managers discussed the options of turning the land into a watershed project but after reviewing 103.D MN Statute, it is questionable if the criteria could be met. The best route is a legal system according to MN Statute to establish benefit areas.

4. STATE AGENCY DISCUSSION - 1 PM

Chairman Christian welcomed the state agencies, Senator Mark Johnson and Representative Deb Kiel.

History of Progress: Swenby opened by stating that explaining that the project was administered with land acquisition through MnDOT, BWSR developed and implemented the plans, and MnDNR was set to take over the management after the project was complete.

MnDNR has since rescinded on their agreement to take over the land management portion of the project. Because MnDOT is not in the practice of owning land, they would like to either transfer the land to the Watershed District, or sell the land to a private entity.

Swenby explained that in relationship to the drainage struggles that landowners face as a result of the wetland and little to maintenance, she indicated that a legal ditch system is the very best solution, however MN Statute requires that 60% of the landowners must sign a petition of which the ditch passes. In past discussions, MnDOT has stated they would not be in favor of signing a petition for a legal ditch system because they feared the land would not be sellable with special assessments.

As an alternative, the district then explored the possibility of transferring the land to the district, giving the district the opportunity to sign the petition. In August of 2021, BWSR has proposed an easement that includes flowage, but this easement transfers land ownership to the district. The district has many questions before moving forward with this.

Swenby has proposed that MnDOT grant a drainage easement to the watershed district that would allow permanent drainage opportunity for upstream landowners. Swenby stated that a simple easement that allows opportunity for drainage, managed by the district's permitting process is a solution that gives landowners relief they have been searching for. Should the watershed not be able to take over the land, and it is sold to a private party, at least the landowners would not be prohibited from adequate drainage. If MnDOT sells the land without any easements (noting that easements were promised to the landowners at the origination of the project), then the landowners face a real consequence of disputing or having inadequate access to drainage.

The landowners in this area have repeatedly asked the watershed for assistance citing frustration with the MnDOT's permitting process cleanings. The landowners state that they were unable to ever get written permission, only verbal permission, leaving them apprehensive and it was a timely process to work with MnDOT for ditch maintenance. MnDOT offered permission for the district to manage permissions for drainage for the time being, granting a perpetual permit to the district for the length of MnDOT's ownership. While that provides temporary relief for the landowners now, Swenby expressed concern for the landowners if the land switches hands, noting that a solution such as that does not provide security for the future of the landowners, which is who we all work for.

As a result of landowner frustration, in the winter of 2021, a petition from the landowners in the area was presented to Senator Mark Johnson and Representative Deb Kiel asking for legislative assistance for the drainage in this is area.

A letter was distributed from MnDOT to the Polk County Commissioners from 1998 which states that legal ditches and private "Neighborhood" type ditches which cross the acquisition/mitigation site will not be affected. In the letter MnDOT acknowledged the benefit of a legal system in the area to secure the drainage. The letter also promises a priority for maintenance for weeds.

In short the Sand Hill River Watershed District is asking for legislative assistance to help the watershed advocate for drainage and secure it for the landowners that we all represent.

JT Anderson stated that MnDOT does want to be a good neighbor, but they are not in the practice of wetland ownership. Maintenance has been performed in the past year, but acknowledging permitting has been an issue, but feels that has been rectified until landownership has been removed from MnDOT. Anderson stated that he agrees private landownership may not be in the best interest of the people. Anderson stated that MnDOT's reluctance for a legal system is pertaining to an assessed area. Manager Andringa pointed out that MnDOT did get benefit with the credits. Anderson also stated that his land management folks feel that a simple easement would also make the land devalued.

Dave Weirens stated that BWSR's preference is that the Watershed takes it over. Manager Andringa stated that the district is most concerned with the parameters of the responsibility of the district and if the district would be required to maintain the land to the specifications of what the original plan was or would the district be required to maintain it to the specifications of the current condition. Anderson suggested maybe MnDOT could give a one time fee for land management costs.

A risk assessment was suggested by Mark Johnson in prior years. Swenby pointed out that this costs money and there is no assessed area.

Swenby asked if BWSR would be interested in owning the land. Dave Weirens stated that BWSR is not in the business of owning land, like the watershed, and they do not have the staffing structure to be in land management. Weirens stated that they are not intending to walk away from the property and would support the district in owning the land.

When pertaining to a legal ditch system, Anderson stated that MnDOT was apprehensive about special assessments attached to the land. Swenby asked if legislative assistance could be obtained to remove the adjacent landowners. This was not popular and it was noted that it would be risky to ask for legislative assistance on this matter, but the Legislators will look into options.

Swenby stated that she is told there are still issues out there, citing township roads being used as berms and seepage near Mark Morvig's property. Manager Englestad stated that it is his understanding that communication about the wetland has been problematic, citing the same issues for over 20 years have a pattern of resurfacing.

Manager Andringa stated that the initial plan is different than what the existing condition of the land. The land has been under maintained and doesn't align with the original land. The perpetual easement states that this must be done. Dave Weirens stated that the existing easement doesn't make any sense because that was drafted with the assumption that MnDNR would be the landowner. Weirens stated that there is some flexibility to revisit the easement restrictions regarding the vegetation.

Swenby asked what their current process is like and what the timeline is for cleaning the system currently. Weirens will check on the timeline and if there isn't one, said one could be implemented. Swenby suggested that MnDOT communicate with the landowners that there is a new process in place to grant permission to landowners to clear obstructions.

Herrmann suggested that a new easement ensure the that the specifications for cleaning be clearly defined so that wetland impacts are not affected.

The floor was given to Dan Vesledahl. Vesledahl stated that back in the early stages of the project the landowners foresaw these exact problems they are currently experiencing. Through those landowner concerns, the letter from MnDOT to Polk County resulted. Vesledahl stated that the landowners were promised one thing, but state agencies failed on follow through. Anderson stated that the letter was written with the original intent but things have changed since MnDNR backed out of the agreement. Vesledahl pointed out that with any other wetlands in the state of MN, the landowner is responsible. Vesledahl pointed out that it is not the landowners fault that MnDNR didn't follow through, and just because they got what they wanted doesn't justify leaving the landowners at risk for economic devastation. In this case, MnDOT is the landowner, and they have not been held accountable.

JT Anderson said that he would take this information forward to his superiors to see if MnDOT would consider a legal ditch system. Anderson will circle back before February 1. Anderson also stated that he will forward to Swenby their process for the landowners to permit. Weirens would like to continue the discussion about the expectations and requirements of the vegetative state of the land and its future requirements regarding the easement, should the land be transferred to the district. Weirens will also forward a history of maintenance costs of the wetland.

Weirens stated that should the district take over the land, the district would not be prohibited at any time from selling the land.

5. ADJOURNMENT:

The next regular meeting will be held Wednesday, January 12, 2022, at 8 AM. As there was no further business to come before the board, a **Motion** was made by Manager Bartz to adjourn the meeting at 3:39 PM, **Seconded** by Manager Hamre. **The Motion was carried.**

April Swenby, Administrator

JJ Hamre, Secretary