



105 22nd Avenue N.E.  
Waseca, MN 55093  
Phone (507) 835-4800  
Fax (507) 835-7895

### **Approved minutes**

The meeting of the Waseca County SWCD Board of Supervisors was held at the Waseca Soil and Water Conservation District's meeting room on November 18, 2010.

The meeting was called to order at 6:30 p.m. by Larry Hagen, Chair.

#### **Members Present**

Larry Hagen, Chair  
Jurgen Peters, Vice Chair  
Ron Purcell, Treasurer  
Bob Drager  
Wayne Cords

#### **Staff Present**

Marla Watje, District Manager  
Darlene Kukuczka, Office Assistant  
**NRCS Staff**  
Jim Jirik, District Conservationist

**Others Present:** Richard Borglum, Marie Borglum, Tom and Monica Davison, LeeRoy Cain, Vickie and David Hill, Nancy Prehn and Co. Attorney Paul Dressler. Amy Mace by telephone.

Motion by Ron, second by Jurgen to approve the agenda.

Motion carried. Affirmative: All Opposed: None

Richard Borglum: On behalf of Marie Borglum, Richard Borglum presented a proposal to mediate for the Boards review. The proposal, dated November 18, 2010 was signed by Marie Borglum and included two maps; one indicating a 1 acre replacement site location, the second map indicating the on site enhancement area. The proposal states:

- 1) Pull application
- 2) Enhance south side of ditch to us for storm water run-off & wetland
- 3) Make 1 acre wetland on Wilton Township farm (SE & SW ¼ of Section 12) or buy 1 acre from wetland bank.

Discussion was held between Richard Borglum and the Board. The Board will consider the written settlement offer after it has been reviewed by the SWCD's attorney.

Public Hearing: Motion by Wayne, second by Ron, based on the Borglum's breach of the Monitoring Agreement, to reschedule the public hearing at the SWCD office on December 9, 2010 at 6:30 p.m. The SWCD Board will make a decision on the Richard Borglum Water/Wetlands project application for exemption and no-loss, as required by the BWSR remand order. Both parties must submit any new information to the Waseca Soil and Water Conservation District Board of Supervisors by November 23, 2010. Motion Carried: Affirmative: All Opposed: None

Richard Borglum requested time to submit the findings from the County Board of Adjustment actions. The meeting to adopt the findings of fact will be held on December 2, 2010. He stated that at the Thursday, November 11, 2010 meeting, they accepted the 1987 CUP as valid and the

Borglum property was allowed storage. He will not be able to get a copy of the findings of fact until the December 2 meeting.

Motion by Wayne, second by Ron that any information related to the County Board of Adjustment CUP decisions can be submitted to the SWCD Board of Supervisors no later than the Monday after the Dec. 2<sup>nd</sup> meeting. Motion Carried: Affirmative: All Opposed: None Material should be submitted on or before Monday, December 6, 2010.

Closed session pursuant to the attorney-client Privilege: Ron introduced the following Resolution and moved its adoption,

Member **Ron Purcell** introduced the following Resolution and moved its adoption:

### **RESOLUTION CLOSING BOARD MEETING**

WHEREAS, the Minnesota Open Meeting Law, Minn. Stat. § 13D.05, subd. 3(b), provides that meetings may be closed if the closure is permitted by the attorney-client privilege;

WHEREAS, in late October, 2010, Richard and Marie Borglum initiated a new lawsuit in the District Court of Waseca County, Richard and Marie Borglum v. Mark Holsten, Minnesota Department of Natural Resources, and Waseca Soil and Water Conservation District, Court File No. 81-CV-10-991, asking the Court for declaratory judgment that the drainage and fill activities on their property are exempt from the Wetland Conservation Act (“WCA”) as a matter of law, and to enjoin the Conservation District (“SWCD”) from conducting the remand proceeding that the Board of Water and Soil Resources (“BWSR”) ordered it to perform;

WHEREAS, on November 17, 2010, the District Court issued an order denying the Borglums’ Motion for a Temporary Restraining Order, but the litigation is still ongoing;

WHEREAS, Richard Borglum has approached several members of the SWCD Board to discuss settlement of the Borglums’ lawsuit and the BWSR remand proceeding;

WHEREAS, the Board seeks to meet with its attorney to discuss the attorney’s analysis of the new lawsuit filed by the Borglums, the SWCD’s defenses in the lawsuit, and litigation strategy, including whether to pursue settlement;

WHEREAS, it would be detrimental to the interests of the SWCD for the SWCD to hold a public discussion with its attorney where an opposing party or opposing attorney could listen to or be made aware of the SWCD’s positions; and

WHEREAS, it is in the best interest of the SWCD for the Board of Supervisors to obtain legal advice in a confidential setting to maintain the attorney-client privilege.

BE IT RESOLVED by the Board of Supervisors of the Waseca Soil and Water Conservation District, as follows:

1. The Board hereby closes this meeting based upon the attorney-client privilege pursuant to Minn. Stat. § 13D.05, subd. 3(b).

2. The specific subjects to be discussed, pursuant to Minn. Stat. § 13D.01, subd. 3, are the recent order by the District Court and the SWCD's attorney's analysis of the same, the SWCD's defenses in the new lawsuit, and litigation strategy, including whether to pursue settlement.

The motion for the adoption of the foregoing Resolution was duly seconded by **Wayne Cords** and upon a vote being taken thereon, the following voted in favor thereof:

**Jurgen Peters, Larry Hagen, Ron Purcell, Robert Drager, Wayne Cords**

and the following voted against the same:

Whereupon said Resolution was declared duly passed and adopted.

The Board reconvened from the closed session at 8:35 p.m.

Motion by Jurgen, second by Bob to approve the minutes of September 9, 2010.

Motion carried. Affirmative: All Opposed: None

NRCS Report: Jim reported that CSP payments are planned to be sent out in December, and all NRCS District Conservationists will be attending the MASWCD annual conference.

2010 MASWCD Convention: It will be held Dec 5 – 7<sup>th</sup> in St. Paul. Contact Marla for attending.

2009 draft Audit report: Reports were distributed for Board review. Reports were sent to the State Auditor and BWSR.

Flood Relief funding: Marla reported that the district will automatically receive \$50,000 for flood related projects, and request more if needed. It is retroactive and work completed right after the flooding can be paid. The Board needs to set policies at the December meeting. Samples of policies were distributed for review.

Cost share payments:

GBERBA project: Carl Guse Erosion Control: Spillway construction cost \$ 5,583.18 Cost Share payment request of \$4187.00. Motion by Ron, second by Wayne to approve the project costs for Carl Guse and forward to GBERBA for payment. Motion Carried: Affirmative: All Opposed: None

District projects: FY09-12 Melvin Guse

Sediment Basin construction cost \$3,923.45- Cost Share payment requested of \$2850.00

FY09 NB-3 Dave Arndt

Native buffer seeding and maintenance: \$5040.00 Cost Share payment request \$5040.00

Motion by Wayne, second by Jurgen to approve payments of the District projects. Motion Carried: Affirmative: All Opposed: None

The treasurer's reports dated September and October 2010 were presented to the Board for review. Motion by Jurgen, second by Bob to approve the Treasurer Report as presented and file for audit. Motion carried. Affirmative: All Opposed: None

Invoices: Motion by Wayne, second by Ron to approve payment of the presented invoices.  
Motion Carried: Affirmative: All Opposed: None

Supervisors Reports:

Ron reported on Lakes Association meeting and presentations by Marla, Hugh Valiant, DNR and Paul Davis, PCA on the importance of wetlands.

Jurgen reported on GBERBA, the Area VI meeting hosted by Waseca and the video of "Troubled Waters". Larry reported on Area VI meeting.

Wayne reported on Area VI meeting and a request by DNR to pilot a project with the district.

Motion by Ron, second by Jurgen to pursue an agreement with DNR Fisheries for a staff position. Motion Carried: Affirmative: All Opposed: None

Staff Reports:

Marla – Briefed the board on new WCA violations, trees for feedlot, wetland restoration and general office activities.

Darlene – Briefed the board on GBERBA and the RC&D – PCWL grant distribution of 1200 Technical handbooks by National Assoc. of RC&D's.

Motion by Ron, second by Wayne to adjourn the meeting. The meeting was declared adjourned at 9:10 p.m. Motion Carried. Affirmative: All Opposed: None.

The Next Board Meeting will be December 9, 2010 at the Waseca SWCD office.