**Administrative Control Board Meeting**

**Box Elder and Perry Flood Control Special Service District**

**Perry City Offices 3005 South 1200 West**

**5:00 PM Wednesday, December 21, 2016**

**Members Present:** Chairman Greg Hansen, Board Member Boyd Hirschi, Board Member Maurice Roche, Board Member Bryce Thurgood

**Absent:** Board Member Kevin Pebley

**Others Present:** Susan K. Obray, Board Clerk, and Chuck Palmer, Christensen, Palmer, and Ambrose

1. **Welcome & Call to Order**

Chairman Hansen welcomed and called to order the December 21, 2016 Box Elder and Perry Flood Control Meeting.

1. **Approve October 19, 2016 Minutes**

**MOTION:** Board Member Roche moved to approve the minutes of November 16, 2016. Board Member Hirschi seconded the motion. All in favor.

1. **Public Comments**

There were no public comments.

1. **Discussion/Action to Award the cleaning of the Maddox Lane Ditch**

Chairman Hansen stated that he has talked with Boyd Montgomery and Mr. Montgomery has signed a Hold Harmless Agreement. He said that the agreement that says he will hold harmless the Box Elder/ Perry Flood Board, Perry City, and Box Elder County from any claims, demands, lawsuits, causes of action, liability, loss, damages. Chairman Hansen explained that he added that it does not exempt the Contractor, Kelcon Construction for liability or damages for the above-described actions of work performed on his property. Chairman Hansen stated that we did not want to be responsible for placing the dirt and wetlands. Mr. Montgomery signed the agreement. Chairman Hansen

talked with Jim Keller with Kelcon and gave him the go ahead to start work at his discretion. He said that Kelcon’s bid came in at $6,500. Chairman Hansen stated seeing how Kelcon does if he is interested in extending his contract and continue on to clean the ditch under the pipe that goes into Archibald’s property. Board Member Roche said they cleaned it themselves 3 or 4 years ago. Chairman Hansen stated he had the County Attorney look at the Hold Harmless Agreement and he said it looked good.

1. **2017 Budget Presentation by Chuck Palmer with Christensen, Palmer, and Ambrose**

Chuck Palmer with Christensen, Palmer, and Ambrose presented the 2017 budget. He said he took the budget form last year. Mr. Palmer stated that he left the money in the budget for the detention basins. He said he left the total revenue at $87,300. He said the expenses were under budget but did not include the maintenance project. He said that they might want to bump up the maintenance line item because it is set at $5,300. Mr. Palmer stated if the project is $6,500 they may want to bump it up to $10,000 to help with the maintenance projects for next year. Chairman Hansen stated we have a couple basins that we need to clean out this next year. He suggested bumping it up to $15,000. Chairman Hansen said we did very little this year. He anticipates doing more in 2017. Mr. Palmer stated that he adjusted transfers at the bottom of the budget sheet to whatever is extra in the General Fund he adds it to the Capital Projects so you will have that money available for big projects, and have the fund balance to where the State is happy. Chairman Hansen stated what they would spend in maintenance they probably will not be spending in Prof. & Tech. He said that project is already designed and once they get it out for bid, it will be easy. Board Member Roche asked what falls under the budget line Staff/Train/Legal he felt it was a little high. Chuck stated that he could see what the actual comes in at and could take some out of there. He said they could move some of that from Staff/Train/Legal and move it up to maintenance. Chairman Hansen stated that Staff is usually $100.00 a month, they do not have legal, and they are already trained. Board Member Thurgood stated that $3,000 would be enough. Chairman Hansen reviewed that they are going to change maintenance to $15,000 and change Staff/Train/ Legal to $3,000.

1. **Set Budget Public Hearing**

Chairman Hansen stated they need to have a public hearing on the budget. The budget public hearing will be held on January 18, 2017.

1. **Approval of the 2017 Meeting Schedule**

Chairman Hansen asked the board members if it would be a good idea to change the meeting time to 5:30 p.m. on Wednesday instead of 5:00 p.m... He said it gives the board members enough time finish up their other workday. Everyone agreed.

**MOTION:** Board Member Thurgood moved to adopt the 2017 meeting schedule with the change of the meeting time from 5:00 p.m. to 5:30 p.m. Board Member Roche seconded the motion. All in favor.

1. **Payment Approval**

Chairman Hansen stated that there is one invoice for payment. Susan Obray in the mount of $50.00.

**MOTION:** Board Member Roche moved to pay the invoice for Susan Obray for $50.00. Board Member Thurgood seconded the motion. Roll call vote.

Board Member Roche Yes Board Member Thurgood Yes

Board Member Hirschi Yes Chairman Hansen Yes

**Motion Approved:** 4 Yes 0 No

1. **Agenda Items for Next Month**

Budget Public Hearing

Maddox Lane Clean Up

Chairman Hansen stated a couple meeting ago Mr. Nebeker and the road going down to the Cherry Creek Basin down in the southwest corner of town. Chairman Hansen stated Mike Mitchell bought a strip of land that is the description that describes the lane that goes down to the basin and across the railroad tracks. He said his description ends on the east side of the railroad tracks. He said someone made some changes to the lane. Chairman Hansen stated that he is looking for someone to pay him for damages to the lane. Chairman Hansen received a letter from Mike Mitchell who owns property he read it to the board members.

Greg,

I am writing to inform you that it looks like I am going to have to pursue damages through small claims court. One thing the court will want to see is how I have tried to work this out prior to going to court.  Here is what I have found out to this point and I am requesting to know your position of this matter.   Right now I only have two groups with motive to widen the road; a farmer and his son, and the flood control district and its contractor.  Did you by chance hire any other workers to do work in that area? If so they may be liable for the damages and I would need to know who they are.  Between May and July I made 3 different trips to the area and interviewed neighbors to figure out what happened, here is what I have found and perhaps you can help fill in anything that I might be missing.

I was able to discover who widened the road most recently, His name is Kent Nebeker. He farms the property directly west of the railroad tracks. He contends that the road was already widened.  He said after it was widen it was still too narrow so he wanted the road wider to fit his equipment down the lane.   He admitted he had his son finish widening the road.  He dumped the dirt over the fence onto the cherry ridge pit.   He acknowledges that he was wrong but claims he should not be on the hook for all of the damages.  In talking to some of the neighbors, their stories agree that the road was widened at two different times.  I looked over different satellite pictures of the area and it does show the road was widened before the Nebekers worked on the road.  The exact time or month the work was performed is not clear but it is clear it was previously widened.  The Satellite image, as well as the neighbor’s stories, supports Kent Nebeker’s argument that the road had previously been widened and he had simply “touched it up”.   He had motive, but it still left me with a question, who did most of the work?

I spoke with Paul Nelson that farms the property to the south of the road.  He told me that they didn’t widen the road.  He informed me that they only use the road as an occasional access road for irrigation.  They wouldn’t spend the money to widen the road. No motive.

I spoke with the city.  They said they did not widen the road.  They also said they do not have any reason to maintain that road.  Your original reply was stating that you thought it would be the city or county that would maintain that road. Why do you think they would have worked on that road? Help me define their motive.

I even spoke with the railroad and they said they would not spend money to widen such an obscure access road.  No motive.

The only other possibility that I can see is someone stealing dirt.  To me it doesn’t stand up to reason that someone would work that hard for just gravel.   The fact is someone ran the bucket perfectly down the sides widening it evenly out, leveled it perfectly, and did not dig deeper than the fence, this would have been a lot of extra work.  Let alone to do that much work would have required some very expensive equipment.  In order to move that much dirt someone would have had to have a dump truck and some sort of a loader, All to steal a few hundred dollars’ worth of gravel.  Besides if it was a thief they would have taken the path of least resistance and went to work on the mounds on the sides getting the most amount of dirt for the least amount of work.   The work on this road was far too much work to be a thief.

 After some effort, I was able to reconnect with Kent Buttars.   He mentioned that you had discussed the matter with him. (Learning from him that you had spoken, left me puzzled as to why you didn’t at least give me his phone number.)  He was very clear that they did not widen the road during the canal project.   After talking to neighbors in the area one individual said he thought they widened it when they were building the fence.  I reached back out to Kent Butters trying to inquire whether or not one of his workers might have widened the road when building the fence.  He would not answer my calls and I finally sent him a text, to which he replied; “Well you need to find someone else to point your finger at. It was not us!!!!”.   In our text discussion he also wrote that the road was widened after they built the fence.  He is obviously very adamant that it was not them.

The fence created a motive to widen the road and this leads me back to the flood control district and its contractor.   There would have been a problem after the fence was built, the lane would have been too narrow for full-size equipment.  As far as I can tell it would have been as narrow as a pickup in some places.  The size of equipment that was used on the channel or would be needed to maintain the catch basin would not fit down the road without it being wider.  Either the present needs of the channel project, or the future needs for equipment access, are the only motives I can see to do that much work.

The situation is my property rights have been violated, and the damages to my investment are clear.  I believe that a judge will see clearly as I do that all of the facts point at a farmer and his son, and the flood control district and its contractor.  I have decided to forgo the cost of hiring an attorney and only claim the maximum damages allowed by small claims court totaling $10,000. It is my belief that the damage to the overall value of my investment exceed $10,000 therefore that is the minimum that I am willing to settle for.  I am sure you will talk it over with Kent Buttars and let me know your position.

Mike

Chairman Hansen read his response to the e-mail that was sent from Mike Mitchell:

Mike,

I am not going to spend anymore of my time on your frivolous claim. The Flood Board did not make any improvements to the road. We did not build the fence. We do take equipment down the lane on occasion to do the required maintenance of the debris basin and the channel which feeds the basin.

If in fact Mr. Nebeker did grade and widen the road, it was an improvement to the road. Check with your attorney, those farmers that use the lane have done so for well over 20 years and therefore have developed a Prescriptive Right to use the lane. If that use was to take a combine or larger equipment down the lane to get access to their property and the condition of the lane hampers or denies them the use they have had historically, they have a right to make improvements necessary to continue to enjoy those prescriptive rights. You will have a very difficult time proving damages when in fact, apparently improvements were made to the lane. One other issue you will run into, the parcel or strip of land as described in your deed does not follow the alignment of the existing lane. It lies to the south of the lane.

If you wish to communicate this issue further, contact Steve Hadfield, the Box Elder County Attorney. The Flood Board is technically under the jurisdiction of Box Elder County.

K. Greg Hansen

Chairman of the Box Elder Co. Perry Flood Control Board

Chairman Hansen stated that he gave it to the County Attorney and he did not have a problem with the response.

**Adjournment**

Board Member Thurgood moved to adjourn. Board Member Roche seconded the motion. All in favor.