

MINUTES OF MEETING
MAPLE RIVER WATER RESOURCE DISTRICT
CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
FEBRUARY 4, 2011

The Maple River Water Resource District met on February 4, 2011, at 9:00 a.m. at the Cass County Highway Department, West Fargo, North Dakota.

Present were Rodger Olson, Chairman; Jurgen Suhr, Manager; Carol Harbeke Lewis, Secretary-Treasurer; Kimberly Bomstad, Accounting Tech/Administrative Assistant; Sean M. Fredricks, Attorney for the Board; Chad Engels, Engineer for the Board and those whose names appear on the attached roster. Manager Wesley Beilke was absent.

Approach / culvert installation in the NE 1/4 of Section 24 in Everest Township at the same location as the obstruction that Gerald Moderow was ordered to remove

Chad Engels informed the Board that Brady Woodard, Moore Engineering, Inc., reported the flap gate on the north side of the culvert in the NE 1/4 of Section 24 in Everest Township has not been removed. A contractor is in the area and could remove it if the Board wishes to do so.

Gerald Moderow said there are nine culverts coming into Section 24 and four going out. He pointed out that the property is owned by Governor Jack Dalrymple and he indicated he did not want anything changed. Mr. Moderow said he also discussed the matter with Birch Burdick, Cass County State's Attorney. Sean Fredricks said he discussed the matter with Mr. Burdick, but he has not heard anything further. Mr. Fredricks pointed out that the Board has a statutory obligation they have to follow and it would not be appropriate for Mr. Moderow to threaten the Board with the fact that Governor Dalrymple owns the property.

Mr. Moderow believes this is a township matter and the Water Resource District should not be involved. Mr. Fredricks said the action was taken by Mr. Moderow, not the township. The township has been invited to meetings, they did not produce any minutes or take any action.

Mr. Moderow did not dispute that he re-installed an approach, with a 24-inch culvert and a flapgate on the culvert, in the NW 1/4 of Section 24 in Everest Township.

Moore Engineering, Inc. previously shot elevations and Mr. Engels indicated the elevation of the culvert, although slanted and seemingly problematic, is acceptable. However, Mr. Engels indicated the flap gate on the north end of the culvert prevents

water from flowing south. If Mr. Moderow removed the flap gate, he would be in compliance with the Board's July 2009 letter (where the Board suggested the prospect of installing a 24-inch culvert to permit water to flow through the approach). Mr. Engels concluded the approach and culvert (with the flapgate) completely prohibit the flow of water to the south and, therefore, "materially affect the free flow of water" in the ditch.

Manager Olson has visited the site and agreed with Mr. Engels' conclusions. It was moved by Manager Suhr and seconded by Manager Olson:

- a) that, under N.D. Cent. Code § 61-16.1-51, the township road ditch acts as an "artificial drain";
- b) that Mr. Moderow, by his own admission, intentionally installed an approach in the township road ditch with a culvert and a flapgate;
- c) that the approach in the township road ditch with a culvert and a flapgate completely prevents water from flowing south in the artificial drain;
- d) that the approach in the township road ditch with a culvert and a flapgate acts as a "barrier" to the artificial drain;
- e) that the approach in the township road ditch with a culvert and a flapgate "materially affects the free flow of waters" in the artificial drain; and
- f) that, therefore, the approach in the township road ditch with a culvert and a flapgate are an "obstruction" in violation of N.D. Cent. Code § 61-16.1-51.

Upon roll call vote, the motion carried unanimously. The Board directed the Water Resource District Attorney and the Secretary-Treasurer to prepare the proper notice. If Mr. Moderow does not remove the flapgate within the time contained in the notice, Moore Engineering, Inc. will procure a contractor to remove the flapgate.

Drainage complaint from Jeff Lahren against David Braaten and Scott Jacobson in Section 18 of Normanna Township

The drainage complaint from Jeff Lahren against David Braaten and Scott Jacobson in Section 18 of Normanna Township was discussed. Mr. Engels explained that the Natural Resources Conservation Service will handle any wetland issues and the Water Resource District will look into the drainage that was done. Robert Jostad expressed concerns about the amount of drainage going on. He said they cannot take any more water on their property. The Board will look at the matter this spring.

Drainage complaint from Steve Busche against Mark Ottis in the NW 1/4 of Section 29 in Normanna Township

The Board was informed that the drainage complaint from Steve Busche against Mark Ottis in the NW 1/4 of Section 29 in Normanna Township was resolved, so the Order to remedy the illegal drainage was not issued. Mr. Busche later indicated he was not

willing to withdraw his complaint. He said a ditch block was installed south of his property, but he is concerned about the culvert that was lowered two feet at the west end of Main Street between Sections 29 and 30 in Normanna Township. Mr. Jostad said the road south of Mr. Busche's farm is a low township road, so he has no defense. Mr. Busche said if the road goes under water he has no way out. The previous owner would not let him drain the water west to Drain #34.

Mr. Busche asked the Board to plug the ditch approximately 1/4 mile north of the culvert at the west end of Main Street and see how that would work this spring. Manager Olson suggested blocking the culvert rather than the ditch to prevent the flow of water to his property. Mr. Fredricks said the culvert is under township jurisdiction. The Board tabled the matter until the March 4, 2011, meeting. Mr. Busche and Mr. Ottis will be invited to the meeting to discuss the matter.

Drainage Complaint from Dean Sprunk against Kellerman Brothers (David Kellerman, Wayne Kellerman and Larry Kellerman) in the SE 1/4 and the NE 1/4 of Section 36 of Highland Township and the NW 1/4 of Section 31 of Watson Township and Obstruction to Drain Complaint from Dean Sprunk against the Kellerman Brothers in the NE 1/4 of Section 36 in Highland Township and the NW 1/4 of Section 31 in Watson Township

Dean Sprunk expressed his frustration with nothing being done with regard to the complaints he filed against the Kellerman Brothers. Mr. Kellerman said he contacted Highland Township about installing the culvert through the east/west township road north of Mr. Sprunk's farmstead in the NW 1/4 of Section 36. Mr. Kellerman told the township he would pay for the culvert if the township would pay for the installation. The township agreed with that arrangement. The contractor for the township suggested waiting to install the culvert until the frost is out to prevent damage to the road. Mr. Sprunk was in agreement with that.

Mr. Fredricks said the Board agreed to table the complaint to work on points of agreement until Mr. Kellerman's permit applications were received from the State Engineer. The Board has now received the applications. Mr. Sprunk said if the Board makes it so he is protected, he would listen.

Mr. Engels worked with Mr. Kellerman and Mr. Sprunk on the proposed operating plan, which will be made a condition of the permits. Mr. Sprunk said he wants everything documented so there is no confusion in the future. Mr. Fredricks said the document can be recorded against the properties involved. Mr. Fredricks will draft the operating plan and send it out to Mr. Kellerman and Mr. Sprunk for review prior to the next meeting. Chairman Olson emphasized that Mr. Sprunk and Mr. Kellerman need to let the Board know if they are in agreement or not. The Board will assume they are in agreement if they are not in attendance at the next meeting.

Request from American Crystal Sugar Company to drain into Drain #62

Steve Candor and Mark Steinberger met with the Board to discuss drainage into Drain #62 for the proposed American Crystal Sugar Company piling site in Section 4 of Everest Township, east of Cass County Highway 23, south of Tharaldson Ethanol. They hope to start construction this spring and complete the project for fall operation. The Board advised them to submit an *Application to Drain with Drain Tile* to the State Engineer.

Application to Drain with Drain Tile #3675 for Mike Whitmore in the NE 1/4 of Section 6 in Rochester Township

The Board reviewed information from the State Engineer regarding *Application to Drain With Drain Tile #3675* for Mike Whitmore in the NE 1/4 of Section 6 in Rochester Township. According to records on file with the Cass County Recorder's Office, Michael and Cynthia Whitmore are the record owners of the NE 1/4 of Section 6. Mr. Engels spoke with Mr. Whitmore, and he provided Mr. Engels with his plan for a proposed discharge of the tile system. Applicant seeks to discharge the drain tile system into an existing natural swale that flows through the SE 1/4 of Section 6 in Rochester Township, property owned by Abby and Evelyn Johnson. The natural swale then flows through the SW 1/4 of Section 6 and into the Maple River. The project will not cross any roads, and it will not utilize any road ditches.

Mr. Engels reviewed the application and has indicated that, in his opinion, the project will result in adverse impacts to downstream landowners in the W 1/2 of the W 1/2 of the SE 1/4 of Section 6, and the SW 1/4 of Section 6, where the discharge will flow through the natural swale before discharging into the Maple River. The excess flow on these properties will add additional water to the swale, and the swale will remain wet for longer periods of time. The Board adopted Mr. Engels' proposed responses to the eight elements under 89-02-01-09.2 of the North Dakota Administrative Code. The Board further determined no hearing was necessary under Section 89-02-01-09.1(2) of the North Dakota Administrative Code because the Board will already require flowage easements from downstream landowners.

It was moved by Manager Suhr and seconded by Manager Olson to approve *Application to Drain with Drain Tile #3675* for Mike Whitmore, subject to the State Engineer's conditions, and subject to the following conditions:

- 1) That applicant obtain and record (with the Cass County Recorder's office) flowage easements (and not just written consents), including language that permits saline water, from the owners of the following parcels in Rochester Township, Cass County, North Dakota:
 - a. W 1/2 of the W 1/2 of the SE 1/4 of Section 6; and
 - b. SW 1/4 of Section 6.

2) That applicant obtain written permission from the owner of any land, besides land owned by applicant, on which applicant will construct the tile system.

3) That applicant obtain all other necessary and requisite licenses, permits, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

Upon roll call vote, the motion carried unanimously.

Application to Drain with Drain Tile #3713 for Harbeke Farms in the S 1/2 of Section 30 in Rich Township

The Board reviewed information from the State Engineer regarding *Application to Drain with Drain Tile #3713* for Applicant Harbeke Farms/Joe Harbeke in the S 1/2 of Section 30 in Rich Township, on property owned by Carol Harbeke Lewis. The tile system will have two outlets; the first outlet will discharge on the west side of the S 1/2 of Section 30, directly into Cass County Drain #56.

The second outlet will be in the SE 1/4 of Section 30, with the discharge flowing into a natural swale in the SW 1/4 of Section 29. The discharge will continue to flow through the natural swale to the north, over portions of the NW 1/4 of Section 29; then west across the N 1/2 of Section 30; then northwest, through a culvert in the Section 19/20 township road; then west, in the north side of the 19/20 township road ditch for a short distance, then over the SW 1/4 of the SW 1/4 of Section 19; then west through an existing culvert in Cass County Highway 38; then into Drain #56.

Mr. Engels reviewed the application and has indicated that, in his opinion, the west outlet (directly into Drain #56) will not result in adverse impacts to downstream landowners. With regard to the second outlet, in the SE 1/4 of Section 30, Mr. Engels indicated that, in his opinion, the additional flows caused by the tile discharge over the W 1/2 of Section 29, the N 1/2 of Section 30, and the SW 1/4 of the SW 1/4 of Section 19 will result in some adverse impacts to those parcels and that, therefore, the Board should require Applicant to obtain flowage easements regarding those parcels. The Board adopted Mr. Engels' proposed responses to the eight elements under Section 89-02-01-09.2 of the North Dakota Administrative Code. The Board further determined no hearing was necessary under Section 89-02-01-09.1(2) of the North Dakota Administrative Code because the Board is already requiring flowage easements from owners of parcels that will experience adverse impacts as a result of the project.

It was moved by Manager Suhr and seconded by Manager Olson to approve *Application to Drain with Drain Tile #3713* for Harbeke Farms, subject to the conditions attached by the State Engineer, and subject to the following conditions:

1) That Applicant obtain and record (with the Cass County Recorder's office) flowage easements (and not just written consents), including language that permits saline water, from the owners of the following parcels in Rich Township, Cass County, North Dakota:

- a. W 1/2 of Section 29;
- b. N 1/2 of Section 30; and
- c. SW 1/4 of the SW 1/4 of Section 19.

2) That Applicant obtain written permission from the owner of any land, besides land owned by applicant, on which Applicant will construct the tile system.

3) That Applicant obtain written consent from the Rich Township Board of Township Supervisors to discharge into, or otherwise utilize, any of its township road ditches.

4) That Applicant obtain all other necessary and requisite licenses, permits, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

Upon roll call vote, the motion carried unanimously.

Minutes

It was moved by Manager Suhr and seconded by Manager Olson to approve the minutes of the January 7, 2011, meeting. Upon roll call vote, the motion carried unanimously.

Legal drain system for the City of Kindred

Chairman Olson met with a group of people to discuss construction of a legal drain system for the City of Kindred. Mr. Fredricks reviewed the process to form a legal drain.

Bills

It was moved by Manager Suhr and seconded by Manager Olson to approve payment of Checks #4785 through #4796 and the electronic funds transfer, as presented. Upon roll call vote, the following Managers voted in favor: Olson and Suhr. Manager Beilke was absent. The Chairman declared the motion passed.

Adjournment

There being no further business for the Board to consider, the meeting adjourned without objection.

APPROVED:

Rodger Olson
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer