

MINUTES OF MEETING
MAPLE RIVER WATER RESOURCE DISTRICT
CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
NOVEMBER 3, 2011

The Maple River Water Resource District met on November 3, 2011, at 9:00 a.m. at the Cass County Highway Department, West Fargo, North Dakota.

Present were Rodger Olson, Chairman; Jurgen Suhr, Manager; Wesley Beilke, Manager; Carol Harbeke Lewis, Secretary-Treasurer; Diane Pochardt, Administrative Assistant; Sean M. Fredricks, Attorney for the Board; Chad Engels, Engineer for the Board; Jason Benson, Cass County Engineer; Alvin Zaeske, property owner in Walburg Township; Mike Saewert, property owner in Leonard Township; and Steve Busche, property owner in Normanna Township (by telephone).

Drain #59 of Sections 1 and 12 in Watson Township

Alvin Zaeske met with the Board to discuss concerns about more water on his property due to the culverts installed by the Cass County Highway Department through Cass County Highway 16 between Sections 1 and 12 of Watson Township. Mr. Zaeske would like to see one of the culverts take water to the east. Jason Benson said the same size pipe were installed at the crossing. Chairman Olson said there are water issues to the east too, so more water cannot be sent that direction.

The Board assured Mr. Zaeske the two culverts in Drain #59 in the SE 1/4 of Section 25 and the NE 1/4 of Section 36 in Walburg Township will be installed as discussed at the last meeting. The area will be monitored this spring.

Drain #14 - Channel Improvements – grass seeding

Sean Fredricks informed the Board that the attorney for R.L. Larson Excavating, Inc. confirmed his clients understanding with regard to the grass seeding on the Drain #14 Channel Improvements Project, as set out at the last meeting.

Drain #14 – intercept culvert in the SW 1/4 of Section 35 in Raymond Township

It was moved by Manager Suhr and seconded by Manager Bielke to authorize Moore Engineering, Inc. to hire a contractor to repair the intercept culvert on Drain #14 in the SW 1/4 of Section 35 in Raymond Township. Upon roll call vote, the motion carried unanimously.

Drain #37 Purchase Agreement with Monte Baumgarten

It was moved by Manager Bielke and seconded by Manager Suhr to approve the *Purchase Agreement* with Monte Baumgarten regarding Drain #37 and authorize Chairman Olson to sign the same. Upon roll call vote, the motion carried unanimously.

Drainage Complaint from Steve Busche against Mark Ottis in the N 1/2 of Section 29 in Normanna Township

The Board discussed the Drainage Complaint filed by Steve Busche against Mark Ottis in the N 1/2 of Section 29 in Normanna Township. Mr. Busche spoke with the Board via speakerphone and stated the work has been done to his satisfaction. Mr. Busche was concerned with who would open and close the sluice gate that was installed near the quarter-line of the west line of Section 29 (immediately west of the City of Kindred), should the water go over the intersection at the northwest corner of Section 29. The Board directed Mr. Busche to contact the chosen local third party to close the sluice gate.

It was moved by Manager Suhr and seconded by Manager Bielke to authorize Moore Engineering, Inc. to send a letter to Ken Blilie, Public Works Superintendent for the City of Kindred, requesting his cooperation as the local third party who would close the sluice gate (if needed) during the spring of 2012. Upon roll call vote, the motion carried unanimously.

The drainage has been remedied; therefore, the Drainage Complaint from Steve Busche against Mark Ottis in the N 1/2 of Section 29 in Normanna Township has been satisfied.

Application to Drain #3845 for Dave Torgerson in the N 1/2 of Section 13 in Leonard Township

The Board reviewed information from the State Engineer regarding *Application to Drain No. 3845* for Applicant Dave Torgerson. Applicant seeks to construct a surface drain along the north boundary of Section 13 in Leonard Township, in the south township road ditch, from west to east until the drain discharges into Cass County Drain No. 39 on the east side of the N 1/2 in Section 13.

Applicant constructed this project while the application was pending at the State Engineer's office, and prior to the Maple River Water Resource District's receipt of the application. The Board noted that Mr. Torgerson submitted the application on July 17, 2011, but the Maple River Water Resource District did not receive the application materials from the State Engineer's office until late October.

According to records on file with the Cass County Recorder's office, the Betty Heuer Living Trust owns the N 1/2 NW 1/4 in Section 13; further, Myrtle Nygard owns a life estate in the N 1/2 NE 1/4 in Section 13, and Lila Bratland and Betty Heuer own the remainder interests in that quarter section. The Board will require Applicant to obtain easements from the owners of these parcels regarding construction and maintenance of the surface drain since the owners own their parcels to the section line, subject to statutory easement rights for Leonard Township.

Mike Saewert was present to voice his objections to the project. Chairman Olson explained to Mr. Saewert that he had a discussion with Applicant Dave Torgerson and explained that the Board would likely require a sluice gate on the culvert where the drain will discharge into Drain #39. Applicant already lowered the culvert that discharges into Drain #39 to accommodate the drainage project. More specifically, the Board recognizes there will be some additional flow into Drain #39 as a result of the lowering of this culvert, and, therefore, the Board will require installation of a sluice gate. The Board will require lowering of the sluice gate any time water is breaking out of Drain #39 north of the culvert (or downstream of the culvert). The sluice gate will not close entirely, so during spring flooding conditions when water is breaking out downstream of the culvert into Drain #39, the Board will require Applicant to lower the sluice gate to its lowest position.

The Board adopted Chad 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 will require Applicant to obtain easements from the owners of the property where Applicant constructed the project; the Board will require Applicant to obtain permission from Leonard Township to utilize its township road ditch; the Board will require Applicant to install a sluice gate to control any potential downstream impacts; and the Board concluded that, in light of these measures, there will be no further adverse impacts.

It was moved by Manager Suhr and seconded by Manager Beilke to approve *Application to Drain No. 3845* for Dave Torgerson, subject to the conditions attached by the State Engineer, and subject to the following conditions:

- 1) That Applicant obtain permanent easements from the owners of the N 1/2 NW 1/4 in Section 13, and the N 1/2 NE 1/4 of Section 13, in Leonard Township, Cass County, North Dakota, regarding construction and maintenance of the surface drain;
- 2) That Applicant obtain easements from the owners of any other land not owned by Applicant on which Applicant will construct the drainage improvements;
- 3) That Applicant install a sluice gate on the culvert that discharges into Cass County Drain No. 39 in the NE 1/4 of Section 13 in Leonard Township, and that Applicant operate and maintain the sluice gate at Applicant's sole expense;
- 4) That Applicant operate the sluice gate in the following manner:
 - a. During normal summer, fall, and winter conditions, the sluice gate will remain fully open; and

- b. During spring flooding conditions, if and when water breaks out of Drain #39 north of the culvert with the sluice gate, the sluice gate must be lowered to its lowest position.

5) That Applicant obtain written permission from the Leonard Township Board of Township Supervisors to construct and maintain the drain in its township road ditch, and to otherwise utilize any of its township road ditch; and

6) 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.

To the extent Applicant intends to utilize this surface drain in the future as an outlet for any tile projects, the District recommends, but does not require at this point, that easements from the owners in the N 1/2 of Section 13 contain language permitting tile discharge.

Upon roll call vote, the motion carried unanimously. The Board directed Mr. Fredricks to prepare the requisite *Notice of Decision* and to provide the *Notice* to all parties of record.

Application to Install a Subsurface Drain #201131 for Applicants Bruce Glasow and Dallas Glasow in the SE 1/4 of Section 35 in Maple River Township

The Board reviewed *Application to Install a Subsurface Drain No. 201131* dated September 7, 2011, for Bruce Glasow and Dallas Glasow. The Board concluded the application does not propose drainage of statewide significance, so the Board has jurisdiction to approve the permit (without forwarding to the State Engineer's Office to consider and approve). Under the application, Applicant seeks to install a drain tile system in the SE 1/4 of Section 35 in Maple River Township, Cass County, North Dakota. The project will include a pump outlet that will discharge into the north road ditch along Cass County Highway 16, where the discharge will flow east through the north road ditch along Highway 16 until the discharge ultimately outlets into Cass County Drain #39. The Maple River Water Resource District owns and operates Drain #39.

Because the project will discharge into Cass County Highway 16 right of way owned by Cass County, the Board provided a 30-day notice to Cass County under N.D. Cent. Code Section 61-32-03.1. The County did not submit any comments regarding the proposed project.

According to records on file with the Cass County Recorder's Office, Applicants own the property where they intend to install the tile project in the SE 1/4 of Section 35.

It was moved by Manager Suhr and seconded by Manager Beilke to approve *Application to Install a Subsurface Drain No. 201131* dated September 7, 2011, for Bruce Glasow and Dallas Glasow in the SE 1/4 of Section 35 in Maple River Township, subject to the following conditions:

- 1) That Applicant obtain easements from the owner of any land, besides land owned by Applicant, on which Applicant will construct the tile system;
- 2) That Applicant obtain written permission from Cass County to discharge into, or otherwise utilize, any of its county highway right of way, or to bore through its highway;
- 3) That Applicant notify the Maple River Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;
- 4) That Applicant notify the Maple River Water Resource District in advance of any proposed improvements to the tile system, or any proposed increase in the capacity or drainage area of the tile system and, if necessary, submitting an additional permit application;
- 5) 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 #3835 for Doug Kellerman in the NW 1/4 of Section 26 in Highland Township

The Board reviewed information from the State Engineer regarding *Application to Drain No. 3835* for Applicant Doug Kellerman. Applicant seeks to construct a surface drain in portions of the NW 1/4 of Section 26 in Highland Township, including a portion in the south road ditch of the township road along the 23/26 section line, with a portion of the township road ditch improvement extending into the NE 1/4 of Section 26 as well. The township road ditch improvements will outlet into an existing swale which ultimately discharges into the Maple River.

According to records on file with the Cass County Recorder's Office, Jean L. Kellerman, as Trustee of the Robert E. Kellerman and Jean L. Kellerman Trust, owns the E 1/2 W 1/2 in Section 26, subject to a Contract for Deed in favor of Applicant Doug Kellerman; and Applicant Doug Kellerman owns the W 1/2 W 1/2 in Section 26, and the NE 1/4 in Section 26.

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 Applicant owns the property where Applicant plans to construct the project, and the Board will require Applicant to obtain written permission from Highland Township to construct the project in any of Highland Township's road right of way. As a result, the project will not have adverse impacts on any other parties.

It was moved by Manager Beilke and seconded by Manager Suhr to approve *Application to Drain No. 3835* for Doug Kellerman, subject to the conditions attached by the State Engineer, and subject to the following conditions:

- 1) That Applicant obtain easements from the owners of land not owned by Applicant on which Applicant will construct the drainage improvements;
- 2) That Applicant obtain written permission from the Highland Township Board of Township Supervisors to construct and maintain the surface drain in Highland Township's road ditch, or to otherwise utilize any of its township road right of way; and
- 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 #3836 for Doug Kellerman in the S1/2 of Section 26 in Highland Township

The Board reviewed information from the State Engineer regarding *Application to Drain No. 3836* for Applicant Douglas Kellerman. Applicant seeks to construct a surface drain comprised primarily of improvements constructed in two township road ditches, with the project ultimately discharging into a tributary of the Maple River in the southeast corner of the SE 1/4 in Section 26. The project will commence in the northwest corner of the SW 1/4 in Section 26 in the east township road ditch of the 26/27 section line township road; the project will run south in the east township road ditch, with three surface inlets, until it reaches the southwest corner; from there, the project will include surface improvements in the north township road ditch of the 26/35 section line township road, where the project will continue to the east, with one surface inlet, until the project outlets just north of the southeast corner in the SE 1/4, where the project ultimately discharges into a tributary of the Maple River.

According to records on file with the Cass County Recorder's Office, Jean L. Kellerman, as Trustee of the Robert E. Kellerman and Jean L. Kellerman Trust, owns the SE 1/4 and the E 1/2 W 1/2 in Section 26; Applicant Doug Kellerman owns the W 1/2 W 1/2 in Section 26.

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 Applicant owns the property where Applicant plans to construct the project, and the Board will require Applicant to obtain written permission from Highland Township to construct the project in any of Highland Township's road right-of-way. As a result, the project will not have adverse impacts on any other parties.

It was moved by Manager Beilke and seconded by Manager Suhr to approve *Application to Drain No. 3836* for Doug Kellerman, subject to the conditions attached by the State Engineer, and subject to the following conditions:

- 1) That Applicant obtain easements from the owners of land not owned by Applicant on which Applicant will construct the drainage improvements;
- 2) That Applicant obtain written permission from the Highland Township Board of Township Supervisors to construct and maintain the surface drain in Highland Township's road ditch, or to otherwise utilize any of its township road right of way; and
- 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 #3886 for Brian Roach in the S 1/2 of Section 4 and the NE 1/4 of Section 9 in Wheatland Township

The Board reviewed information from the State Engineer regarding *Application to Drain No. 3886* for Applicant Brian Roach. Under the application, Applicant seeks to construct a surface drain in an existing BNSF railroad ditch, commencing in the SW 1/4 of Section 4 and proceeding to the southeast along the railroad corridor, until the project reaches the east section line of the NE 1/4 in Section 9.

According to records on file with the Cass County Recorder's Office, Brian Roach owns the S 1/2 in Section 4 lying north and east of the railroad right-of-way; and Leslie and Audrey Roach own the NE 1/4 of Section 9 in Wheatland Township. Further, Applicant plans to construct some or all of the surface drain on BNSF right of way.

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 determined the project will not result in adverse impacts to downstream landowners. Further, the Board will require Applicant to obtain permission from the railroad and from Leslie and Audrey Roach to construct the surface drain on their parcels.

It was moved by Manager Beilke and seconded by Manager Suhr to approve *Application to Drain No. 3886* for Brian Roach, subject to the conditions attached by the State Engineer, and subject to the following conditions:

- 1) That Applicant obtain and record a permanent easement from the owners of the NE 1/4 of Section 9 in Wheatland Township, Cass County, North Dakota, to construct and maintain the surface drain;
- 2) That Applicant obtain an easement or some form of written permission from BNSF Railway Company to construct and maintain the surface drain in BNSF's right-of-way;
- 3) That Applicant obtain easements from the owners of any other land not owned by Applicant on which Applicant will construct the drainage improvements; and
- 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.

Requests for Drainage on Highway Right-of-Way

It was moved by Manager Bielke and seconded by Manager Suhr to receive and file the following *Requests for Drainage on Highway Right-of-Way*:

- Goltz Farms LLC and Allen Runck to clean along State Highway 18, from State Highway 46, north to 52nd Avenue, and to clean 1/2 mile of the north State Highway 46 ditch, west of State Highway 18.
- Goltz Farms LLC to clean the west ditch of State Highway 18 from 97th Street SE for approximately 1/2 mile.
- Jay Meyer to clean the south ditch of the frontage road along the north side of Sections 7 and 8 in Mapleton Township

Upon roll call vote, the motion carried unanimously.

Sponsoring of educators / youth leaders for Project WET 2012

It was moved by Manager Olson and seconded by Manager Bielke to sponsor one educator / youth leader within the Maple River Water Resource District to attend a Project WET Program in 2012. Upon roll call vote, the motion carried unanimously.

Minutes

It was moved by Manager Suhr and seconded by Manager Olson and unanimously carried to approve the minutes of the October 7, 2011, meeting, as presented.

Bills

It was moved by Manager Bielke and seconded by Manager Suhr to approve payment of Checks #4869 through #4879 and the electronic funds transfer, as presented. Upon roll call vote, the following Managers voted in favor: Olson, Suhr and Beilke. The Chairman declared the motion passed.

Drain #56 – crossing in the NE 1/4 of Section 26 in Cornell Township

Further discussion was held on the request from Eric Erickson to remove the existing crossing on Drain #56 in the NE 1/4 of Section 26 in Cornell Township and replacing it with a new low water crossing.

It was moved by Manager Suhr and seconded by Manager Bielke to furnish pipe for the installation of a low water crossing on Drain #56 along the north line of Section 26 in Cornell Township on the west side of the drain, provided Eric Erickson installs the pipe and maintains the crossing. Upon roll call vote, the motion carried unanimously.

Adjournment

There being no further business to be considered, the meeting adjourned without objection.

APPROVED:

Rodger Olson
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer