

MINUTES OF MEETING
MAPLE RIVER WATER RESOURCE DISTRICT
CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
SEPTEMBER 5, 2013

The Maple River Water Resource District met on September 5, 2013, at 8:00 a.m. at the Cass County Highway Department, West Fargo, North Dakota.

Present were Rodger Olson, Chairman; Jurgen Suhr, Manager; Gerald Melvin, Manager; Carol Harbeke Lewis, Secretary-Treasurer; Brittany C. Moen, Administrative Assistant; Sean M. Fredricks, Attorney for the Board; Mike Opat, Engineer for the Board; Brady Woodard, Moore Engineering, Inc.; Dean Sprunk, property owner in Highland Township; and those whose names appear on the attached roster.

Application to Install a Subsurface Drain No. 20136 for David Braaten / Evan Moe in the SE 1/4 of Section 27, the SW 1/4 NE 1/4 of Section 34, and the S 1/2 NW 1/4 of Section 35 in Davenport Township

David Braaten and Evan Moe discussed the Board's previous approval of *Application to Install a Subsurface Drain No. 20136*. More specifically, Applicants indicated the project will not include any tile in the N 1/2 NW 1/4 of Section 35, owned by Roger Torgerson. Instead, with regard to the NW 1/4 of Section 35, Applicants will only tile the S 1/2 NW 1/4. Evan Moe owns the S 1/2 NW 1/4.

Mr. Braaten asked about easement requirements and indicated the Nettums will not give written easements to accommodate the project. Rather, they have indicated they do not object to the project, but they refuse to sign any written documentation or easements. The Board discussed adverse impacts and agreed that the project will result in prolonged wetness, cattail growth, and could inhibit access at least for portions of the year for downstream landowners. The Board agreed the existing easement requirements, previously attached as conditions to the permit are reasonable and necessary in light of impacts downstream.

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, Applicants seek to install a drain tile system with a common outlet in the SE 1/4 of Section 27, the SW 1/4 NE 1/4 of Section 34, and the S 1/2 NW 1/4 of Section 35, all in Davenport Township, Cass County, North Dakota. The project will include a buried pipe commencing along the east boundary of the NE 1/4 of Section 34 (the tile project in the NE 1/4 of Section 34 will discharge into the buried pipe); the tile discharge will flow through the buried pipe along the east boundary to the north; the portion of the project

in the NW 1/4 of Section 35 will discharge through a buried pipe, under the township road between Sections 34 and 35, where the buried pipe from Section 35 will enter the buried pipe in the NE 1/4 of Section 34; from there, the single buried pipe will run north along the east boundary, into the SE 1/4 of Section 27; in the SE 1/4, the buried pipe will surface and the tile discharge will outlet into a private surface drain that runs to the east and discharges into the township road ditch along the east boundary of the SE 1/4 of Section 27; from there, the tile discharge will flow through the township road ditch along the east boundary of Section 27, where Applicants will install a lift station to pump the tile discharge further north through the township road ditch.

The Board previously provided *Thirty-Day Notices* under N.D. Cent. Code Section 61-32-03.1 to the owners of the NE 1/4 of Section 27 and the SE 1/4 of Section 22. The Board will require Applicants to obtain easements from those landowners, and will require Applicants to obtain written permission from Davenport Township regarding tile discharge, buried pipe, and any other tile infrastructure in the township road right of way.

According to records on file with the Cass County Recorder's Office, Roger Torgerson owns the N 1/2 NW 1/4 of Section 35; Evan and Marie Moe own the S 1/2 NW 1/4 of Section 35; Evan and Marie Moe own the SW 1/4 NE 1/4 of Section 34; and David and Teresa Braaten own the SE 1/4 of Section 27. With regard to the downstream properties, Jim Wieland, Mark Nettum, Galen Nettum, and Tracy Nettum all own interests in the SE 1/4 of Section 22; and Leslie Nettum owns the E 1/2 NE 1/4 of Section 27.

It was moved by Manager Suhr and seconded by Manager Melvin to approve the amended *Application to Install a Subsurface Drain No. 20136* dated June 3, 2013, for David Braaten and Evan Moe in the SE 1/4 of Section 27, the SW 1/4 NE 1/4 of Section 34, and the S 1/2 NW 1/4 of Section 35, in Davenport Township, subject to the following conditions:

- 1) That Applicants 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 Davenport Township, Cass County, North Dakota:
 - a. SE 1/4 of Section 22; and
 - b. NE 1/4 of Section 27;
- 2) That Applicants obtain easements from the owner of any land, besides land owned by Applicants, on which Applicants will construct the tile system;
- 3) That Applicants obtain written permission from the Davenport Township Board of Township Supervisors to discharge into, or otherwise utilize, any of its township road ditches, or to bore through its township road;

- 4) That Applicants obtain written permission from the Davenport Township Board of Township Supervisors to install, operate, and maintain a buried pipe and any other tile components in any of its township road ditches;
- 5) That Applicants notify the Maple River Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;
- 6) That Applicants 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; and
- 7) That Applicants 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.

Drain #14 – request to lower the intercept culvert in the northwest corner of Section 5 in Warren Township

John Rutten met with the Board regarding a request to lower the intercept culvert in the northwest corner of Section 5 in Warren Township. The Board directed Mr. Rutten to submit an *Application to Drain* for the proposed project. Mr. Rutten indicated he would do so.

Application to Install a Subsurface Drain No. 201311 for Virgil Torgerson and Dave Torgerson in Section 19 of Davenport Township

The Board reviewed *Application to Install a Subsurface Drain No. 201311* dated August 27, 2013, for Virgil and Dave Torgerson. Virgil and Dave Torgerson were present to discuss the Project. 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, Applicants seek to install a drain tile system in the N 1/2 of Section 19 and the SW 1/4 of Section 19 in Davenport Township, Cass County, North Dakota. The project will include a pump outlet that will discharge through a buried pipe under Cass County Highway No. 9; the buried pipe will daylight on the west side of Cass County Highway No. 9, and the tile discharge will outlet into Drain #39. The Maple River Water Resource District owns and operates Drain #39.

Because the Project will discharge directly into Drain #39, the application did not require a *Thirty-Day Notice* under N.D. Cent. Code Section 61-32-03.1, and the Board cannot require Applicant to obtain any flowage easements from downstream landowners. However, because the Project will include installation of a pump outlet that will discharge into Drain #39, the Board will require Applicants to install and maintain

erosion protection to protect Drain #39. In addition, the Board will require Applicants to sign a *Utility Permit* from the Maple River Water Resource District that contains and requires other additional measures to protect Drain #39.

According to records on file with the Cass County Recorder's Office, Virgil Torgerson owns the N 1/2 and the SW 1/4 of Section 19 in Davenport Township.

The property Applicants seek to tile is not included in the Cass County Drain #39 assessment district. Therefore, as a condition to utilization of Drain #39 as an outlet for Applicants' tile project, the Board will require Applicants to execute a *Consent to Assessment Agreement*, under which Applicants will agree to become members of the Drain #39 maintenance district.

It was moved by Manager Suhr and seconded by Manager Melvin to approve a *Utility Permit* and to approve *Application to Install a Subsurface Drain No. 201311* dated August 27, 2013, for Virgil and Dave Torgerson in the N 1/2 of Section 19 and the SW 1/4 of Section 19 in Davenport Township, subject to the following conditions:

- 1) That Applicants obtain easements from the owner of any land, besides land owned by Applicants, on which Applicants will construct the tile system;
- 2) That Applicants provide and maintain adequate erosion protection at any and all outlets into Cass County Drain #39 (Applicants are solely responsible for any damages to Cass County Drain #39 as a result of the tile project);
- 3) That Applicants 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;
- 4) That Applicants notify the Maple River Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;
- 5) That Applicants 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;
- 6) That Applicants obtain an approved *Utility Permit* from the Maple River Water Resource District regarding any and all outlets into Cass County Drain #39;
- 7) That Applicants consent to inclusion of their property into the Cass County Drain #39 maintenance assessment district; and

8) That Applicants 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 No. 4156 for Mark Ottis, Dave Torgerson, Brandon Kub and Dale Torgerson in Sections 19, 20, 29 and 32 of Normanna Township

Mark Ottis, Ryan Ottis and Brandon Kub met with the Board to discuss *Application to Drain No. 4156* for Mark Ottis, Dave Torgerson, Brandon Kub and Dale Torgerson in Sections 19, 20, 29 and 32 of Normanna Township. The property owners expressed concern about the City of Kindred developing a storm sewer which will outlet into their proposed project. Sean Fredricks indicated that would be a civil matter, as a city has statutory rights to construct their infrastructure. Manager Olson asked if this project would be a conveyance of Sheyenne River overflow into Drain #34. Mark Ottis indicated that he did not believe so.

Application for Surface Drain No. 4160 for Dave Torgerson, Dale Torgerson and Dean Swenson along the west side of Section 17 in Normanna

The Board reviewed information from the State Engineer regarding *Application for Surface Drain No. 4160* for Applicants Dave Torgerson, Dale Torgerson, and Dean Swenson. Under the application, Applicants seek to construct channel improvements to the east township road ditch along the Section 17/18 township road in Normanna Township. The permitted drain will include a 5,280-foot channel improvement; a bottom width of 8 feet maximum; 3:1 side slopes; and a maximum cut of 1.5 feet. The project will run north along the west boundary of Section 17, north through the township road ditch.

According to records on file with the Cass County Recorder's office, Virgil and Arlys Torgerson own the SW 1/4 of Section 17; and Beulah and Speed Rustad own the NW 1/4 of Section 17.

The Board approved responses to the eight elements under Section 89-02-01-09.2 of the North Dakota Administrative Code, prepared by Mike Opat. 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 Applicants to obtain easements from the owners of the property where Applicants intend to construct the project; further, the Board will require Applicants to obtain permission from Normanna Township to construct, operate, and maintain an improved channel in the township's road ditch. 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 Melvin to approve *Application to Drain No. 4160* for Applicants Dave Torgerson, Dale Torgerson, and

Dean Swenson, subject to the conditions attached by the State Engineer, and subject to the following conditions:

- 1) That Applicants obtain and record (with the Cass County Recorder's office) an easement (and not just a written consent) from the owners of the NW 1/4 of Section 17 in Normanna Township, Cass County, North Dakota, for purposes of constructing, operating, and maintaining a surface drain;
- 2) That Applicants will not construct or improve the drain in any manner that exceeds the dimensions indicated in the application, including a drain length of 5,280 feet from the south boundary of the SW 1/4 of Section 17 to the north boundary of the NW 1/4 of Section 17; an 8-foot bottom width maximum; 3:1 side slopes; and a maximum cut of 1.5 feet;
- 3) That Applicants obtain an easement from the owner of any land, besides land owned by Applicants, on which Applicants will construct the drain; and
- 4) That Applicants obtain written permission from the Normanna Township Board of Township Supervisors to construct, operate, and maintain a surface drain in its township road ditch, or to otherwise utilize its township road ditch;
- 5) That Applicants notify the Maple River Water Resource District in advance of any proposed improvements to the drain, including any increase in the capacity or drainage area affected, and, if necessary, submit an additional permit application; and
- 6) That Applicants 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. The Board directed Sean Fredricks to prepare the requisite *Notice of Decision* and to provide the *Notice* to all parties of record.

Swan Creek – request to replace the culvert in the NE 1/4 of Section 5 in Warren Township

It was moved by Manager Suhr and seconded by Manager Melvin to authorize Moore Engineering, Inc. to size and hire a contractor to replace the culvert in the NE 1/4 of Section 5 in Warren Township. Upon roll call vote, the motion carried unanimously.

Drain #34 – bridge replacement between Section 31 in Warren Township and Section 6 in Normanna Township

Mike Opat presented a profile of Drain #34. He will develop an *Application to Drain* with the profile information setting the standard for the drain.

Drain #64 maintenance

Mr. Woodard continues to work with Burlington Northern Santa Fe Railway Company to repair erosion on Drain #64 near Center Street in Casselton.

Pontiac Township Improvement District No. 73

Dean Sprunk met with the Board to discuss the operation and maintenance of Pontiac Township Improvement District No. 73. Mr. Opat pointed out that the project cannot be operated without an operation and maintenance manual in place. He will be working on a draft and hopes to set up a meeting with the township involved in a few weeks.

The bid opening for Pontiac Township Improvement District No. 73 has been postponed for one week to September 11, 2013, at 2:00 p.m. at the Cass County Highway Department. The Board plans to call a special meeting to award the contract for the project.

State Water Commission inspection of Garsteig, Absaraka and Embden Dams

The Board reviewed the preliminary report from the State Water Commission regarding the inspection of the Garsteig, Absaraka and Embden Dams.

Maintenance assessment districts on the Garsteig Dam and Embden Dam

It was moved by Manager Suhr and seconded by Manager Melvin to authorize the Water Resource District Engineer to proceed with the development of maintenance assessment districts for Garsteig Dam and Embden Dam. Upon roll call vote, the motion carried unanimously.

Upper Maple River Dam

The Board reviewed a proposal from Barr Engineering Company for Final Design Geotechnical Work on the Upper Maple River Dam.

Application to Install a Subsurface Drain No. 20131 for Adrian Kieffer in the NW 1/4 and NE 1/4 of Section 23 in Wheatland Township

The Board previously provided a *Notice of Decision* regarding this application dated June 26, 2013. However, the original *Notice of Decision* erroneously identified and described the project; more specifically, the original *Notice of Decision* did not accurately define the route of the tile discharge. With that in mind, the Board reconsidered the application.

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 N 1/2 of Section 23 in Wheatland Township,

Cass County, North Dakota. The project will include five gravity outlets. Two of the outlets will be northeast of the railroad tracks, in the north railroad ditch; the discharge from both of these outlets will flow east through the railroad ditch until intersecting the east section line; from there, the tile discharge will flow south through the west township road ditch along the township road that borders Sections 23 and 24; the tile discharge will travel south through the township road ditch along the east boundary of Section 23 and along the east boundary of Section 26; the tile discharge will flow south in the west township road ditch until discharging into the Cass County Highway 10 road ditch. The other three gravity outlets will lie south of the railroad tracks, and all will discharge to the east into the west township road ditch that lies along the boundary of Sections 23/24 and 26/25; all of the tile discharge from the south gravity outlets will similarly flow south through the west township road ditch until the discharge reaches the Cass County Highway No. 10 road ditch.

The Board previously provided *Thirty-Day Notices* as required under N.D. Cent. Code Section 61-32-03.1 to Burlington Northern Santa Fe Railway Company, Paul Faught, and Connie Kingsley as landowners within one mile of the outlets. None of the downstream landowners submitted any comments to the Board.

According to records on file with the Cass County Recorder's Office, Adrian and Mark Kieffer own the N 1/2 of Section 23. With regard to the downstream properties, Paul Faught owns the E 1/2 SE 1/4 of Section 23 where the tile discharge will flow, and Connie Kingsley owns the NE 1/4 of Section 26.

It was moved by Manager Melvin and seconded by Manager Suhr to amend its previous decision regarding its approval of *Application to Install a Subsurface Drain No. 20131* dated March 7, 2013, for Adrian Kieffer in the N 1/2 of Section 23 in Wheatland Township, 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 Wheatland Township, Cass County, North Dakota:
 - a. E 1/2 SE 1/4 of Section 23; and
 - b. E 1/2 NE 1/4 of Section 26;
- 2) That Applicant obtain easements from the owner of any land, besides land owned by Applicant, on which Applicant will construct the tile system;
- 3) That Applicant obtain written permission from the Wheatland Township Board of Township Supervisors to discharge into, or otherwise utilize, its township road ditch;

- 4) That Applicant notify the Maple River Water Resource District in advance of any proposed alterations to outlet locations, or addition of any outlets;
- 5) 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; 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.

Upon roll call vote, the motion carried unanimously.

Request for Drainage on Highway Right-of-Way for Craig Runck in the NE 1/4 of Section 34, the E 1/2 of Section 27 and the SE 1/4 of Section 22 in Everest Township

It was moved by Manager Melvin and seconded by Manager Suhr to approve the *Request for Drainage on Highway Right-of-Way* for Craig Runck in the NE 1/4 of Section 34, the E 1/2 of Section 27 and the SE 1/4 of Section 22 in Everest Township. Upon roll call vote, the motion carried unanimously.

Drain #46 cleanout

The Board discussed possible cleaning on Drain #46 and directed Moore Engineering, Inc. to look into the matter.

Minutes

It was moved by Manager Melvin, seconded by Manager Suhr and unanimously carried to approve the minutes of the August 1, 2013, meeting.

Bills

It was moved by Manager Melvin and seconded by Manager Suhr to approve the payment of Checks #5107 through #5133 and the electronic funds transfer, as presented. Upon roll call vote, the motion carried unanimously.

Metro Flood Diversion Project

Mr. Opat reviewed a letter from the Corps of Engineers regarding the design of the Metro Flood Diversion Project. The Corps of Engineers indicated they would meet with the Board to discuss the project with regard to Maple River Water Resource District facilities.

Adjournment

There being no further business for the Board to consider, it was moved by Manager Melvin, seconded by Manager Suhr and unanimously carried to adjourn the meeting.

APPROVED:

Rodger Olson
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer