

MINUTES OF MEETING
MAPLE RIVER WATER RESOURCE DISTRICT
CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
FEBRUARY 4, 2016

The Maple River Water Resource District met on February 4, 2016, at 9:00 a.m. at the Cass County Highway Department, West Fargo, North Dakota.

Present were Rodger Olson, Chairman; Jurgen Suhr, Manager; Gerald Melvin, Manager (by phone); Carol Harbeke Lewis, Secretary-Treasurer; Brenda Lovgren, Administrative Assistant; Sean Fredricks, Attorney for the Board; and Mike Opat, Engineer for the Board.

Minutes

It was moved by Manager Suhr, seconded by Manager Melvin and unanimously carried to approve the minutes of the January 7, 2016, meeting.

Application to Install a Subsurface Drain #20156 for E. Lynn Overboe in the SE 1/4 and NE 1/4 of Section 20 in Normanna Township – review of conditions

The Board previously approved *Application to Install a Subsurface Drain #20156* dated July 17, 2015, for E. Lynn Overboe at its meeting on September 3, 2015. As a condition to the Board's approval of the permit, the Board required Applicant to obtain flowage easements from downstream landowners in the E 1/2 E 1/2 of Section 17 in Normanna Township. The project includes a pump outlet in the northeast corner of Section 20 that will discharge into the west road ditch of Cass County Highway 15; from there, the tile discharge will flow north in the west Highway 15 road ditch along the east boundary of Section 17 and will continue north.

The Board required flowage easements along the east 33 feet of the E 1/2 of Section 17 in light of the fact that Cass County, when the county acquired right of way for Highway 15 in 1987, only acquired "the west 32 feet of the east 65 feet" of the E 1/2 of Section 17. With regard to the east 33 feet, the county evidently relied on the statutory 33-foot easement on either side of section lines. In other words, Cass County does not own the first 33 feet along the Section 17 section line, but then owns the next 32 feet, for a total of 65 feet of Highway 15 right of way. The Board required Applicant, E. Lynn Overboe, to obtain flowage easements from Eleanor Braaten regarding the east 33 feet of the NE 1/4 of Section 17, and Virgil and Arlys Torgerson regarding the east 33 feet of the SE 1/4 of Section 17. The Board reasoned that the tile project would result in adverse impacts to those landowners' properties, including prolonged wetness, cattail growth, and potential access issues.

However, the Board has since re-evaluated the easement requirement in this instance in light of the fact that the adjacent landowners do not own the west 32 feet of the east 65 feet. In this instance, the tile discharge in the county highway right of way will not result

in adverse impacts to those adjacent landowners because they lack the ability to farm or otherwise utilize the highway right of way due to the county's ownership of the west 32 feet of the east 65 feet.

In light of the Board's re-evaluation of adverse impacts regarding this project, the Board remains convinced Applicant, Lynn Overboe, should obtain written permission from Cass County to discharge into or otherwise utilize any of its Highway 15 right of way. However, the Board does not believe the tile discharge in the county highway right of way will adversely impact the owners of the E 1/2 E 1/2 of Section 17. With that in mind, It was moved by Manager Suhr and seconded by Manager Melvin to amend the Board's previous approval of *Application to Install a Subsurface Drain #20156* dated July 17, 2015, for E. Lynn Overboe in the E 1/2 of Section 20 in Normanna Township, to remove the condition that Applicant obtain and record flowage easements from the owners of the east 33 feet of the E 1/2 of Section 17 in Normanna Township. Upon roll call vote, the motion carried unanimously.

Application to Install a Subsurface Drain #201523 for Wayne Fleischfresser in the W 1/2 of Section 35 in Eldred Township

The Board reviewed *Application to Install a Subsurface Drain #201523* for Wayne Fleischfresser. The Board reviewed the criteria in Section 89-02-01-09 of the North Dakota Administrative Code and concluded the project does not meet any of the "statewide" elements; therefore, 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 W 1/2 of Section 35 in Eldred Township, Cass County, North Dakota. The project will include a single gravity outlet along the southeast corner of the SW 1/4 in Section 35; the outlet discharges directly into a natural watercourse in the NW 1/4 of Section 2 in Highland Township.

Mike Opat reviewed the application and indicated the project will discharge directly into a natural watercourse in the NW 1/4 of Section 2 in Highland Township, and he recommended that the Board require Applicant to install and maintain erosion protection in the natural watercourse to protect both the natural watercourse and downstream landowners. The Board did provide a *Thirty-Day Notice* under N.D. Cent. Code Section 61-32-03.1 to Lonnie and Valerie Scharbow, the owners of the NW 1/4 of Section 2 in Highland Township. However, upon further review, Mike Opat and the Board concluded the tile discharges directly into a natural watercourse, and, therefore, the Board cannot require Applicant to obtain any flowage easements from downstream landowners.

According to records on file with the Cass County Recorder's Office, Wayne and Joanne Fleischfresser own all of the W 1/2 of Section 35 in Eldred Township.

It was moved by Manager Suhr and seconded by Manager Melvin to approve *Application to Install a Subsurface Drain #201523* for Wayne Fleischfresser in the W 1/2 of Section 35 in Eldred 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 provide and maintain adequate erosion protection at the outlet into the natural watercourse in the NW 1/4 of Section 2 in Highland Township;
- 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 must close all outlets during flood occurrences or under conditions that may cause adverse impacts to downstream landowners, as determined by the Maple River Water Resource District; 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.

Application for Surface Drain #4767 for Joel Hoyme, Derek Swenson, Elisabeth Esser, Mark Ottis, Geoffrey G. Rich and Elaine Swenson in the NW 1/4 of Section 2 and the N 1/2 of Section 30 in Normanna Township – review of conditions

The Board previously approved *Application for Surface Drain #4767* for Applicants Joel Hoyme, Derek Swenson, Elisabeth Esser, Mark Ottis, Geoffrey Rich and Elaine Swenson, at its meeting on January 7, 2016. As a condition to the Board's approval of the permit, the Board required Applicants to obtain a *Utility Permit* from the Maple River Water Resource District regarding Applicants' plan to utilize Drain #34 as an outlet. More specifically, under the application, Applicants seek to construct channel improvements to the south township road ditch along the Section 20/29 and 19/30 section line in Normanna Township. The permitted drain will include 5,700 feet of channel improvements; a bottom width of 6 feet maximum; 3:1 side slopes; and a maximum cut of 2.5 feet. The project will run from the west side of the railroad tracks in the NW 1/4 of Section 29 to the west along the north boundary of the NW 1/4 of Section 29 and the N 1/2 of Section 30 until ultimately discharging into Cass County Drain #34. The property that will drain into the improved channel is within the Drain #34 maintenance assessment district.

The Maple River Water Resource District owns and operates the culvert in the northwest corner of the NW 1/4 of Section 30 that discharges into Drain #34. Ryan Ottis approached the Board regarding the *Utility Permit* condition the Board attached to its original approval of the permit. Mr. Ottis suggested the *Utility Permit* was not necessary since the Board already owns and operates the culvert that discharges into Drain #34.

The Board differentiated between tile projects that discharge directly into legal assessment drains from this project. With regard to tile projects, the Applicant or tile operator maintains control over the gravity or pump outlet that discharges into the legal assessment drain and, therefore, the drain is at some risk since the Board does not control the outlet. In this case, however, the Board does control the outlet into Drain #34, and that control obviates the need for a *Utility Permit* since the Board can protect Drain #34 via the culvert outlet.

It was moved by Manager Suhr and seconded by Manager Melvin to amend the Board's previous approval of *Application for Surface Drain #4767*, originally approved on January 7, 2016, to remove the condition that Applicant obtain an approved *Utility Permit* from the Maple River Water Resource District. Upon roll call vote, the motion carried unanimously.

Upper Swan Creek Channel Improvements - State Water Commission Agreement for Cost-Share Reimbursement

It was moved by Manager Melvin and seconded by Manager Suhr to approve and authorize the Chairman to sign the *State Water Commission Agreement for Cost-Share Reimbursement* regarding Upper Swan Creek Channel Improvements. Upon roll call vote, the motion carried unanimously.

Lynchburg Channel / Buffalo Channel maintenance

Mike Opat reviewed a preliminary plan and profile for the proposed maintenance of the Lynchburg Channel and Buffalo Channel, from State Highway 18, east to the outlet at the Maple River. The Board discussed financing options for the project. Moore Engineering, Inc. will talk with local landowners regarding the need for the maintenance project. Ohnstad Twichell, P.C. will draft a Resolution of Necessity regarding the Lynchburg Channel / Buffalo Channel maintenance.

It was moved by Manager Suhr and seconded by Manager Melvin to authorize Moore Engineering, Inc. to complete a cost estimate regarding the Lynchburg Channel / Buffalo Channel maintenance project and report back to the Board on the matter. Upon roll call vote, the motion carried unanimously.

Drains #15, #37 and #39 surveys

Mr. Opat reviewed profiles of Drain #15, Drain #37, upstream of Cass County Highway 6, and Drain #39 with the Board.

It was moved by Manager Suhr and seconded by Manager Melvin to authorize Moore Engineering, Inc. to prepare the cost-share request to submit to the State Water Commission regarding improvements to Drains #15, #37, and #39. Upon roll call vote, the motion carried unanimously.

State Water Plan for the 2017-2019 biennium – projects / programs to submit

Moore Engineering, Inc. is compiling a list of projects / programs to submit for the State Water Plan for the 2017-2019 biennium. The matter will be discussed further at the next meeting.

Application for Piper First Subdivision in the NW 1/4 of Section 17 in Addison Township

The Board directed the Secretary-Treasurer to respond to the application for Piper First Subdivision in the NW 1/4 of Section 17 in Addison Township, with input from the Water Resource District Engineer.

Administration

As recommended by the Cass County Joint Water Resource District, it was moved by Manager Suhr and seconded by Manager Melvin to match the current Red River Joint Water Resource District Per Diem rate of \$135, retroactive to January 1, 2016. Upon roll call vote, the motion carried unanimously.

Bills

It was moved by Manager Suhr and seconded by Manager Melvin to approve the payment of Checks #5501 through #5510, and the electronic funds transfers, as presented. Upon roll call vote, the following Managers voted in favor: Olson, Suhr, and Melvin. The Chairman declared the motion passed.

Adjournment

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

APPROVED:

Rodger Olson
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer