

MINUTES OF MEETING
SOUTHEAST CASS WATER RESOURCE DISTRICT
CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
APRIL 8, 2011

The Southeast Cass Water Resource District met on April 8, 2011, at 8:00 a.m. at the Cass County Highway Department, West Fargo, North Dakota.

Present were Mark Brodshaug, Manager; Dan Jacobson, Manager; Carol Harbeke Lewis, Secretary-Treasurer; Kimberly Bomstad, Accounting Tech/Administrative Assistant; Sean M. Fredricks, Attorney for the Board; Jeff Volk, Chad Engels and Kyle Volk, Engineers for the Board; Jacob Gust, Sheyenne-Maple Flood Control District #1 Superintendent; Brady Woodard, Moore Engineering, Inc.; George Grossman, City of West Fargo; Tim Solberg, Cass County Planner; Craig Hakanson, City of Horace; Dennis Nipstad, Kelly Perhus and Mark Ottis, property owners in Normanna Township; Jonathon Garaas, Attorney for Mark Ottis and Kelly Perhus; Justin Kristan, Fargo-Moorhead Metropolitan Council of Governments and Kay Anderson, Cass County IT Department. Manager Thomas L. Fischer was absent.

Minutes

It was moved by Manager Jacobson and seconded by Manager Brodshaug to approve the minutes of the March 25, 2011, meeting. Upon roll call vote, the motion carried unanimously.

Approval of agenda order

It was moved by Manager Brodshaug and seconded by Manager Jacobson to approve the order of the agenda, as amended. Upon roll call vote, the motion carried unanimously.

Dike complaints from Dennis Nipstad against Kelly Perhus and Mark Ottis in the NE 1/4 and the NW 1/4 of Section 34 in Normanna Township

Jonathon Garaas informed the Board that his clients, Kelly and Debra Perhus and Mark Ottis conceded that an illegal dike had been constructed in the N 1/2 of Section 34 in Normanna Township and that they plan to hire Industrial Builders, Inc. to open up the dike and later install culverts through it so they will be in compliance with the law.

Mr. Garaas indicated the dike had originally been constructed in 1969, and Mr. Garaas agreed the permitting threshold in effect at the time of the dikes original construction was the 12.5 acre-feet threshold. Mr. Garaas agreed his clients had, in fact, constructed an illegal dike that retains more than 12.5 acre-feet of water without first obtaining a permit as required under North Dakota law. He further indicated that Mr. Ottis and the Perhuses intended to install and construct certain openings and

culverts in the dike so the dike would no longer retain, obstruct, or divert 12.5 acre-feet of water. Mr. Garaas requested that the District permit his clients, Mr. Ottis and Kelly and Debra Perhus, to install and construct the requisite openings on or before July 1, 2011. Mr. Garaas further indicated Mr. Ottis and the Perhuses would permit the District's engineer to review and inspect the work to ensure the dike with the openings and culverts would no longer retain, obstruct, or divert more than 12.5 acre-feet of water.

Sean Fredricks reviewed the complaint process. It was moved by Manager Jacobson and seconded by Manager Brodshaug to issue an Order to Kelly and Debra Perhus and Mark Ottis confirming its previous findings in this matter as follows:

1. That Mark Ottis and Kelly and Debra Perhus constructed an illegal "dike" (as that term is defined under Section 89-08-01-01(4) of the North Dakota Administrative Code) in the North Half of Section Thirty-four (34) of Normanna Township, Cass County, North Dakota.
2. The dike constructed is capable of retaining, obstructing, or diverting more than 12.5 acre-feet of water, and more than 50 acre-feet of water.
3. The parties did not first obtain a construction permit as required under Section 61-16.1-38, or their predecessors, before constructing the dike.
4. The complaining party, Mr. Nipstad, contended the parties constructed the dike in 1997 or 1998. Mr. Garaas contended the parties' predecessors constructed the dike in 1969; that the dike had been farmed across and may have been repaired following flood events; but that the dike had not otherwise been altered since 1969. In either event, the parties agreed construction of the dike required a permit at the time it was constructed since it is capable of retaining, obstructing, or diverting more than 12.5 acre-feet of water.
5. Regardless of the year it was constructed, the dike required a permit under North Dakota law; the law in effect in 1969 and the law in effect in 1997 or 1998 required a permit prior to construction of a dike capable of retaining, obstructing, or diverting more than 12.5 acre-feet of water.

In accordance with N.D. Cent. Code 61-16.1-53, Mark Ottis and Kelly and Debra Perhus must remove the dike constructed in the North Half of Section Thirty-four (34) of Normanna Township, Cass County, North Dakota, by 5:00 p.m. on July 1, 2011. If the parties fail to remove the dike by that date, the Southeast Cass Water Resource District will procure a contractor to remove the dike and will assess the costs of the removal against the real property taxes for the North Half of Section Thirty-four (34) of Normanna Township, Cass County, North Dakota, all in accordance with Section 61-16.1-53.

Upon roll call vote, the motion carried unanimously.

2011 Spring Flood

The Board discussed aerial imaging of the 2011 Spring Flood. Chad Engels informed the Board that Cass County is taking over the project and will decide when to order the flights needed. The Corps of Engineers will contribute \$20,000 and the remaining cost will be split between Cass County, the City of Fargo and Southeast Cass Water Resource District.

It was moved by Manager Brodshaug and seconded by Manager Jacobson to cost share on aerial imagery of the 2011 Spring Flood, at a cost not to exceed \$30,000. Upon roll call vote, the motion carried unanimously.

Brady Woodard gave an update to the Board on the 2011 Spring Flood. There were problems with ice jams at the railroad bridge and at 12th Avenue North on Sheyenne-Maple Flood Control District #1, but they have diminished. They will continue to monitor the project.

Jacob Gust reported that all of the Sheyenne-Maple Flood Control District #1 pumps are working well. He and Chris Gross, Moore Engineering, Inc. will be inspecting the Water Resource District dams.

The Maple River and Rush River are much higher than in 2009. There are no Sheyenne River breakouts by Kindred yet. The second peak on the Sheyenne River will be higher.

Mr. Gust said Cass County is working to change the flows to the north instead of east along Cass County Highway 10, west of West Fargo.

Round Hill Sewer Improvement District No. 2010-1

The bid opening for Round Hill Sewer Improvement District No. 2010-1 is scheduled for April 21, 2011. Manager Brodshaug would like the agreement with the City of Fargo signed and the right-of-way in place for the project before the Board awards a contract.

Request from the Fargo-Moorhead Metropolitan Council of Governments for funding for the construction of the replacement bicycle and pedestrian bridges at Lindenwood / Gooseberry and Oak Grove / Memorial Parks

Justin Kristan met with the Board to ask for funding for the construction of the replacement bicycle and pedestrian bridges at Lindenwood / Gooseberry and Oak Grove / Memorial Parks.

It was moved by Manager Brodshaug and seconded by Manager Jacobson to authorize the Secretary-Treasurer to send a letter to the Fargo-Moorhead Metropolitan Council of Governments stating the Board is not interested in participating in the funding

for the construction of the replacement bicycle and pedestrian bridges at Lindenwood / Gooseberry and Oak Grove / Memorial Parks at this time. Upon roll call vote, the motion carried unanimously.

Sheyenne-Maple Flood Control Projects – Provisionally Accredited Levee (PAL) process

Moore Engineering, Inc. continues to work on the PAL process regarding the Sheyenne-Maple Flood Control Projects.

Reassessments - Drain #35 and Sheyenne-Maple Flood Control District #1 and #2

Kyle Volk reviewed the assessment boundaries and the history of work on Drain #35.

Mr. Engels reviewed the assessment analysis regarding Sheyenne-Maple Flood Control Districts #1 and #2.

Meeting recessed / reconvened

The meeting recessed at 10:00 a.m. for the Cass County Joint Water Resource District meeting and reconvened at 10:15 a.m.

Drain #10 – raising of west berm, north of Cass County Highway 20

Reile's Transfer and Delivery, Inc. has done work to raise the west berm of Drain #10, north of Cass County Highway 20. Moore Engineering, Inc. will survey the site.

Cass County Floodplain Mapping

Mr. Engels reviewed information regarding Cass County Floodplain Mapping.

Letter from Apex Engineering Group, Inc. soliciting views and comments on proposed improvements to the City of Fargo wastewater collection, conveyance and treatment system

It was moved by Manager Brodshaug and seconded by Manager Jacobson to send a letter to Apex Engineering Group, Inc. stating the Board has no comment on the proposed improvements to the City of Fargo wastewater collection, conveyance and treatment system. Upon roll call vote, the motion carried unanimously.

North Dakota Insurance Reserve Fund – proxy for annual meeting

It was moved by Manager Brodshaug and seconded by Manager Jacobson to authorize the Secretary-Treasurer to sign the proxy relating to the North Dakota Insurance Reserve Fund annual meeting on May 18, 2011. Upon roll call vote, the motion carried unanimously.

Bills

It was moved by Manager Jacobson and seconded by Manager Brodshaug to approve payment of Checks #9817 through #9826 and the electronic funds transfers, as presented. Upon roll call vote, the following Managers voted in favor: Brodshaug and Jacobson. Manager Fischer was absent. Motion carried.

Shadow Creek 1st Addition

It was moved by Manager Jacobson and seconded by Manager Brodshaug to send a letter to West Fargo Planning and Zoning stating the Board recommends not reducing riverbank elevations regarding the Shadow Creek 1st Addition. Upon roll call vote, the motion carried unanimously.

Adjournment

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

APPROVED:

Mark Brodshaug
Vice Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer