

Draft: These are DRAFT minutes subject to amendment before final approval by the Dickey County Water Resource District.

Dickey County Water Resource District

MEETING MINUTES

February 21, 2024

The Dickey County Water Resource District met at the Dickey County Courthouse in Ellendale ND at 8:00 am on Wednesday, February 21, 2024. Managers Steve Hansen, Keith Hauck, Justin Gemar and John Quandt were all present at the courthouse. Sean Fredricks, the board's attorney and Nathan Trosen, Moore Engineering representative joined via video conference as well as Manager Don Zimbleman. Natanya Olson and Darrell Schrum were also present at the courthouse.

Chairman Hansen called the meeting to order.

O & M manual-Yorktown/Maple recommendations

At the Board's January meeting, the Board approved SURFACE DRAIN NO. 6236 regarding the Board's addition of two pumps at the outlet of Drain No. 1. DWR included a recommendation that the Board operate the pumps in accordance with the O&M Plan for the Yorktown-Maple project. Nathan Trosen noted that was just a recommendation from DWR and not a condition or mandate. When the Board applied for and approved SURFACE DRAIN NO. 6236 the Board follow their own protocol and the Board plans to shut off the pumps when the water is at the bottom of the culverts to be more proactive in managing the water.

Manager Gemar addressed the board on whether to follow up with Dakota Improvement on constructing a landscape area for the pumping site to make it more easily accessible to reach during wet springs. Dakota Improvement gave the board a bid on the project in 2023 but Manager Gemar feels it will need to be rebid by Dakota Improvement. The board gave Manager Gemar the go ahead to follow up and get a new bid and bring it to the next meeting.

Natanya Olson Complaint

NaTanya Olson Drainage Complaint Against Aaron Wipf - COMPLAINT FOR WATER-RELATED ISSUES

The Board next considered NaTanya Olson's COMPLAINT FOR WATER-RELATED ISSUES filed against Aaron Wipf, filed December 22, 2023. Ms. Olson and Darrell Schrum were present.

The Board has discussed this matter at the Board's last three meetings. Under the Complaint, Ms. Olson opposes the tile system that Aaron Wipf and Spring Creek Colony constructed and installed in Section 25

in Lorraine Township. The original tile permit approved by the Board for the system in Section 25 in Lorraine Township, SUBSURFACE WATER MANAGEMENT PERMIT NO. 2020-10 approved on October 21, 2020, included approval for six gravity outlets; five of the outlets proposed discharge into a natural watercourse in the Northeast Quarter of Section 25, and the sixth proposed discharge into a different natural watercourse in the Southeast Quarter of Section 25 that flows to the southeast. Ms. Olson and Darrell Schrum attended the Board's December meeting and indicated Mr. Wipf's system included a pump outlet in the Southeast Quarter of Section 25 and suggested the pump should discharge into a different natural watercourse, one that does not flow across her property in Section 31 in Elm Township. Soon after the December meeting, on December 22, Ms. Olson submitted the COMPLAINT FOR WATER-RELATED ISSUES. The next day, on December 23, Mr. Wipf submitted *Application NO. 2024-01* to amend SUBSURFACE WATER MANAGEMENT PERMIT NO. 2020-10, to modify and amend his permit to include the pump outlet in the Southeast Quarter of Section 25.

Under the Complaint, Ms. Olson noted PERMIT NO. 2020-10 did not include approval of a pump outlet, and further reiterated her contention that the Colony should discharge into a different natural watercourse with their pump outlet, one that does not discharge upstream of her property in Section 31 in Elm Township.

At the Board's January meeting, Mr. Fredricks reminded the Board that, under current law, N.D. Cent. Code § 61-32-03.1 as amended in 2021, the Board had no choice but to approve *Application NO. 2024-01*, with appropriate and legal conditions, or the application would be deemed automatically approved, without any conditions, within 30 days of Mr. Wipf's submission of *Application NO. 2024-01*. Further, the Colony's discharge into a natural watercourse upstream of Ms. Olson's property was not an issue the Board could address by law. Under Section 61-32-03.1, a tile applicant can discharge into any natural watercourse; water resource districts cannot refuse any discharge into a natural watercourse and cannot force a tile applicant to discharge into a different natural watercourse.

The Board explained at both the December and January meetings that, under the tile statute, if Ms. Olson is concerned about additional flows as a result of the Colony's tile discharge into the natural watercourse upstream of Ms. Olson's property, Ms. Olson can pursue civil remedies against the Colony. Section 61-32-03.1(9) provides:

Approval of a [tile] permit under this section does not prohibit a downstream party unreasonably damaged by the discharge of water from a subsurface water management system from seeking damages in a civil action.

At the Board's January meeting, Mr. Fredricks alerted Ms. Olson that, under Section 61-32-03.1(9), Ms. Olson could commence a civil action against the Colony in District Court if she wishes, but the Dickey County Water Resource District could not force the Colony to discharge into a different natural watercourse.

At the Board's January meeting, the Board noted that, under PERMIT NO. 2020-10, the Board did not approve a pump outlet for the Colony's tile system in Section 25 in Lorraine Township. However, although the pump installed by the Colony was not a permitted outlet under PERMIT NO. 2020-10, because Mr. Wipf submitted a new application, under Section 61-32-03.1, the Board had no choice but to approve *Application NO. 2024-01* or the permit would have been deemed automatically approved, without any conditions. Therefore, the Board had no choice but to approve *Application NO. 2024-01*, if the Board wanted to ensure the tile permit included conditions (e.g., erosion protection at outlets into the two natural watercourses).

The Board ultimately approved SUBSURFACE WATER MANAGEMENT PERMIT NO. 2024-01 at the Board's meeting on January 17, 2024. As required by law, Mr. Fredricks provided copies of the Board's NOTICE OF DECISION, SUBSURFACE WATER MANAGEMENT PERMIT NO. 2024-01, and downstream flow map to the Department of Water Resources and Southeast Water Users District. Section 61-32-03.1 did not require service of the approval documents on Ms. Olson, but Mr. Fredricks mailed copies of the approval documents to Ms. Olson as a courtesy since the tile system was the subject of Ms. Olson's Complaint. Mr. Fredricks mailed the NOTICE OF DECISION and permit approval documents on January 18, 2024. The statutory appeal period has since expired.

Under the drainage complaint statute, Section 61-32-07, the Board only has jurisdiction to order a landowner to "close or fill" any unpermitted "drain, lateral drain, or ditch ... opened or established by a landowner or tenant contrary to this title [Title 61 of the North Dakota Century Code]." In other words, if a landowner constructs or installs a drain without a permit, as required under Title 61 of the Century Code, a water resource district can order that party to close or fill the unpermitted drainage. However, if a party obtains a permit for any drain, the drain is no longer "contrary to" Title 61 of the Century Code. In this case, although the Colony originally installed the pump without a permit to do so, the tile statute, approved by the North Dakota Legislature in 2021, well after the passage of the drainage complaint statute, required the Board to approve the new tile application submitted by the Colony. The Colony submitted *Application No. 2024-01*, and the Board either had to approve that application with conditions or the application would have otherwise been deemed automatically approved without any conditions. The Board opted to approve the application to ensure the Board's ability to attach conditions. With that in mind, the pump outlet is an approved and permitted tile component, included within a valid tile permit, and the Board no longer has any jurisdiction to order or force the Colony to close or fill the tile system.

Because the tile system in Section 25 in Lorraine Township is a permitted system, including the pump, under Sections 61-32-03.1 and 61-32-07 the Board no longer has any jurisdiction to order the Colony to "close or fill" the system and, therefore, the Board concluded dismissal of Ms. Olson's COMPLAINT FOR WATER-RELATED ISSUES was the Board's only option.

Manager Gemar moved to dismiss the COMPLAINT FOR WATER-RELATED ISSUES filed by NaTanya Olson filed against Aaron Wipf regarding his tile system in Section 25 in Lorraine Township due to lack of jurisdiction under Sections 61-32-03.1 and 61-32-07. Manager Quandt seconded the motion. 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 the parties of record.

Meeting Minutes

Manager Quandt moved to approve the January 17, 2024 meeting minutes. Manager Zimbleman seconded the motion. Upon roll call, the motion passed unanimously.

Financial Statement/Bills

The board considered bills from Ohnstad Twichell of \$3235.85 and Moore Engineering of \$615. Secretary Hansen gave the financial report. Manager Hauck moved to approve the financial report and bills. Manager Gemar seconded the motion. Upon roll call, the motion passed unanimously.

There being no further business to discuss, the meeting was adjourned.

APPROVED:

Steve Hansen, Chairman

Attest:

Judy Hansen, Secretary