

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING
MAPLE RIVER WATER RESOURCE DISTRICT
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
JUNE 1, 2023

A virtual / conference call meeting of the Maple River Water Resource District was held on June 1, 2023, at 8:00 a.m.

Present were Rodger Olson, Chairman; Gerald Melvin, Manager; Chad Miller, Manager; Carol Harbeke Lewis, Secretary-Treasurer; Nina Stone, Accountant; Melissa Hinkemeyer, Administrative Assistant; Sean M. Fredricks, Ohnstad Twichell, P.C.; Kurt Lysne, Alexa Ducioame, Brady Woodard and Levi Hanson, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; Duane Breitling, Cass County Commissioner; Ben Horken, R.J. Zavoral & Sons, Inc.; Doug VanMeter, North Dakota Soybean Processors, LLC; Kardell Blumhardt and Asko Rajaniemi, Otter Tail Power Company; Sidney Steinweg, Davenport Township property owner; Karl Baumgarten, Durbin Township property owner.

Agenda

It was moved by Manager Miller, seconded by Chairman Olson and unanimously carried to approve the order of the agenda, as presented.

Minutes

It was moved by Manager Miller and seconded by Chairman Olson to approve the minutes of the May 4, 2023, meeting. Upon roll call vote, the motion carried unanimously.

Wheatland Channel – Grand Farm crossings in the NE 1/4 of Section 8 in Everest Township

Discussion was held on the Grand Farm Subdivision plat in the NE 1/4 of Section 8 in Everest Township regarding the Wheatland Channel. Sean Fredricks stated the existing Easement on the property for the Wheatland Channel should be released and a new *Permanent Easement* approved with the document number of the new *Easement* printed on the plat. The *Permanent Easement* will allow the Water Resource District to continue to maintain and construct future improvements of the Wheatland Channel. Following the approval and recording of the *Permanent Easement*, the parties can consider a Permanent Access Agreement for the Grand Farm crossing of the Wheatland Channel on the property. It was noted Grand Farm has removed the previously planned pedestrian crossing on the property at this time.

A motion was made by Manager Miller and seconded by Chairman Olson to do the following regarding the Wheatland Channel in the NE 1/4 of Section 8 in Everest Township:

- Release the existing Easement on the property
- Approve and authorize the Chairman to sign the *Permanent Easement* with Grand Farm

Upon roll call vote, the motion carried unanimously.

Manager Melvin joined the meeting at this time.

Upper Swan Creek Channel Improvement Project No. 2020-01

Discussion was held on damage to the crossing between Sections 21 and 28 in Casselton Township that was installed as part of Upper Swan Creek Channel Improvement Project No. 2020-01. Ben Horken said the site was inspected and there is significant damage to the crossing. A portion of the culvert for the crossing can potentially be salvaged. R.J. Zavoral & Sons, Inc. is currently working on a plan to repair the crossing. Mr. Horken indicated he believes the damage to the crossing was due to overland flooding this spring. Kurt Lysne stated the testing completed during project construction confirms the crossing was constructed as designed. Moore Engineering, Inc. was unable to reach this area during the spring flood, there were many roads that were overtopped with water this spring. The Board directed Mr. Horken to work with Moore Engineering, Inc. and bring a proposal to a future meeting regarding the repair of the crossing between Sections 21 and 28 in Casselton Township regarding Upper Swan Creek Channel Improvement Project No. 2020-01. Brady Woodard indicated he will reach out to Casselton Township officials to inform them the Board is working with the contractor to repair the crossing.

Drain #39 Improvements - Sections 24 and 25 of Maple River Township

Additional minutes regarding the Drain #39 Improvements Project in Sections 24 and 25 of Maple River Township are attached hereto.

Buffalo-Lynchburg Project No. 2023-01

Mr. Lysne reported Moore Engineering, Inc. is currently surveying and preparing preliminary plans for Buffalo-Lynchburg Project No. 2023-01.

Cornell Township Drainage Improvement District No. 80

Mr. Lysne discussed the petitioner's preferred project alignment for Cornell Township Drainage Improvement District No. 80 and the preliminary determination of benefits regarding the project. Moore Engineering, Inc. will attend an upcoming Barnes County Water Resource District meeting to discuss the project as a portion of the project watershed is in Barnes County. The project will greatly improve drainage for the watershed and the planned surface drain will be deepened to allow for gravity tile outlets. Mr. Fredricks noted the project will require a Joint Powers Agreement with Barnes County Water Resource District.

A motion was made by Manager Melvin and seconded by Manager Miller to approve and authorize the Chairman to sign the *Consent Letter* regarding Ohnstad Twichell P.C.'s

representation of Maple River Water Resource District regarding Cornell Township Drainage Improvement District No. 80 with Barnes County Water Resource District. Upon roll call vote, the motion carried unanimously.

Davenport Flood Risk Reduction Project

Mr. Lysne updated the Board on the Davenport Flood Risk Reduction Project. The Conditional Letter of Map Revision (CLOMR) has been submitted to FEMA for their review. A letter was also sent to the NDDWR to update them on the project, noting there may be an additional future cost-share request submitted for the project. Alexa Ducioame reported the Corps of Engineers has approved the Section 404 Permit for the project. Wetland credits should be purchased before the quotes expire, as the wetland mitigation for the project is a condition of the Section 404 Permit for the project.

It was moved by Manager Melvin and seconded by Manager Miller to authorize the Secretary-Treasurer to sign the Section 404 Permit from the Corps of Engineers and to approve the purchase of wetland mitigation credits in the amount of \$47,136 regarding the Davenport Flood Risk Reduction Project. Upon roll call vote, the motion carried unanimously.

Sidney Steinweg offered comments regarding the design of the Davenport Flood Risk Reduction Project. Mr. Steinweg suggested the levee be placed on the east side of the Red River Valley & Western Railroad Company tracks west of the City of Davenport. Discussion was also held on Mr. Steinweg's overland flooding concerns regarding the project. The Board thanked Mr. Steinweg for his comments.

Regional Conservation Partnership Program – Upper Maple River Watershed

Mr. Lysne updated the Board on the RCPP – Upper Maple River Watershed Plan. The public scoping / plan update meeting regarding the Plan was held on May 30, 2023. Moore Engineering, Inc. is currently obtaining access to property so the Natural Resources Conservation Service can update the cultural resource inventory for the Plan. Moore Engineering, Inc. will also be attending an upcoming Barnes County Water Resource District meeting to update them on the Plan.

Complaint for Water-Related Issues from Harold Miller against Dobler Trust for unpermitted drainage in the NE 1/4 of Section 8 in Cornell Township

Discussion was held on the *Complaint for Water-Related Issues* from Harold Miller against Dobler Trust for unpermitted drainage in the NE 1/4 of Section 8 in Cornell Township. Manager Melvin noted that Harold Miller is Manager Miller's dad. Sean Fredricks explained the conflict analysis the Board should conduct regarding Manager Miller's potential conflict in the matter. Mr. Fredricks explained the law in North Dakota regarding conflicts, Section 44-04-22 of the North Dakota Century Code, provides the relevant standard. That statute provides:

A person acting in a legislative or quasi legislative or judicial or quasi-judicial capacity for a political subdivision of the state who has a direct and substantial personal or pecuniary interest in a matter before that board,

council, commission, or other body, must disclose the fact to the body of which that person is a member, and may not participate in or vote on that particular matter without the consent of a majority of the rest of the body.

The Section 44-04-22 test requires a multi-step analysis. In this case, Mr. Fredricks concluded Manager Miller does, in fact, have a direct and substantial personal interest in the matter that creates a technical conflict. Manager Melvin moved to conclude that Manager Miller has a conflict and should not participate in any votes regarding this Complaint. Chairman Olson seconded the motion. Upon roll call vote, Chairman Olson and Manager Melvin voted in favor of the motion. Manager Miller abstained. The motion carried.

There is an additional conflict statute specific to water resource districts, Section 61-16-08.1 of the Century Code, that provides the County Commission with discretionary authority to appoint alternate water managers if a full-time member has a conflict. However, that statute was effectively superseded by Section 44-04-22 when the Legislature adopted Section 44-04-22 in 1995 (Section 61-16-08.1 went into effect in 1985). Section 61-16-08.1 does not provide a definition for what qualifies as a “conflict of interest” and does not provide a mandatory process; rather, the legislative history of Section 61-16-08.1 indicates the Legislature approved that statute to provide a process for water managers to avoid situations where they are not comfortable voting on a matter and is not a mandatory process. Conversely, the process under Section 44-04-22 is mandatory for conflict situations, provides a detailed test for determining if a conflict exists, and provides a detailed process for a Board to proceed even if a conflict does exist. The Legislature enacted Section 44-04-22 after passing the vague and optional Section 61-16-08.1 and, therefore, the process under Section 44-04-22 controls all conflict matters.

With the conflict matter concluded, the Board proceeded with discussion of the Complaint.

Manager Melvin moved to direct Moore Engineering, Inc. to investigate the matter. Chairman Olson seconded the motion. Upon roll call vote, the motion carried unanimously.

Notifications to Install Subsurface Water Management Systems

The Board received and filed *Notifications to Install Subsurface Water Management Systems* from the following parties at the following locations:

- Aim Ag Drainage
 - SW 1/4 of Section 16 in Tower Township
 - NE 1/4 of Section 36 in Howes Township
 - SW 1/4 of Section 18 in Walburg Township
 - SW 1/4 of Section 9 in Gill Township
- Ellingson Companies
 - SW 1/4 of Section 7 in Tower Township

Utility Permit for Otter Tail Power Company to install an underground electric line under and on Drain #62 right of way in the SE 1/4 of Section 33 and the SW 1/4 of Section 34 in Casselton Township – request to extend the original Utility Permit approved June 2, 2022, for one year

Discussion was held on the *Utility Permit* for Otter Tail Power Company to install an underground electric line under and on Drain #62 right of way in the SE 1/4 of Section 33 and the SW 1/4 of Section 34 in Casselton Township. Kardell Blumhardt indicated Otter Tail Power Company has changed the route stated in the *Utility Permit* that was approved June 2, 2022. Mr. Blumhardt indicated the portion of the project in the SE 1/4 of Section 34 of Casselton Township is being abandoned. The Board asked Mr. Blumhardt to submit a new map encompassing the changes to the route.

It was moved by Manager Miller and seconded by Manager Melvin to do the following:

- Cancel the *Utility Permit* for Otter Tail Power Company to install an underground electric line under and on Drain #62 right of way in the S 1/2 of Section 34 in Casselton Township that was approved June 2, 2022.
- Approve the *Utility Permit* for Otter Tail Power Company to install two underground electric lines buried parallel on and under Drain #62 right of way in Section 33 of Casselton Township, contingent on approval by the Water Resource District Engineer.

Upon roll call vote, the motion carried unanimously.

Utility Permits for MLGC, L.L.C. to install fiber optic cables across natural watercourses in the NE 1/4 SE 1/4 of Section 35 in Addison Township and the SE 1/4 SE 1/4 of Section 35 in Addison Township

Mr. Lysne said he is coordinating the design of the crossings in the NE 1/4 SE 1/4 of Section 35 in Addison Township and the SE 1/4 SE 1/4 of Section 35 in Addison Township with MLGC, L.L.C. to ensure the crossings will not impact the future pond for the Davenport Flood Risk Reduction Project.

It was moved by Manager Miller and seconded by Manager Melvin to approve the *Utility Permits* for MLGC, L.L.C. to install fiber optic cables across natural watercourses in the NE 1/4 SE 1/4 of Section 35 in Addison Township and the SE 1/4 SE 1/4 of Section 35 in Addison Township, contingent upon approval by the Water Resource District Engineer. Upon roll call vote, the motion carried unanimously.

Utility Permit for Casselton Development, LLC to install a 72” storm sewer outfall pipe into Swan Creek Diversion on parcel #38-0000-04807-140 west of North Dakota Highway 18

Mr. Lysne discussed the *Utility Permit* for Casselton Development, LLC to install a 72” storm sewer outfall pipe into Swan Creek Diversion on parcel #38-0000-04807-140 west of North Dakota Highway 18. Mr. Lysne stated the applicant has not demonstrated the planned outlet erosion protection is sufficient to protect the Swan Creek Diversion channel. As designed, it is anticipated the outfall would damage the facility. The Board tabled the matter until the applicant has submitted a design that is satisfactory to the Water Resource District Engineer.

Cass County Planning

The Board discussed the plat for Grand Farm Subdivision in the NE 1/4 of Section 8 in Wheatland Township regarding the Wheatland Channel.

A motion was made by Manager Melvin and seconded by Manager Miller to authorize the Chairman to sign the Grand Farm Subdivision plat, contingent that the document number for the *Permanent Easement* between the Water Resource District and Grand Farm is referenced on the plat. Upon roll call vote, the motion carried unanimously.

2024 budget and 2023 maintenance levy assessments

The Board discussed the 2024 budget. The Secretary-Treasurer indicated the annual contribution to the Flood Control, Mitigation and Retention obligated fund could potentially be reduced. The Board tabled the 2024 budget until the Cass County Joint Water Resource District discusses contributions to the Flood Control, Mitigation and Retention obligated fund for 2024.

A motion was made by Manager Melvin and seconded by Manager Miller to approve the Maple River Water Resource District 2023 maintenance levy assessments. Upon roll call vote, the motion carried unanimously.

Bills

It was moved by Manager Melvin and seconded by Manager Miller to approve payment of Check #6140, the wire transfers and electronic funds transfers, as presented. Upon roll call vote, the following Managers voted in favor: Olson, Melvin and Miller. The Chairman declared the motion passed.

Lynchburg-Buffalo Project No. 2016-01 – berm erosion in the SW 1/4 of Section 29 in Durbin Township

Karl Baumgarten discussed berm erosion from spring flooding at the intersection of Cass County Highway 9 and Buffalo Creek in the SW 1/4 of Section 29 in Durbin Township regarding Lynchburg-Buffalo Project No. 2016-01. Mr. Baumgarten indicated property owners are inquiring about repair of the berms and noted Cass County placed sandbags at the location during the spring flood. Mr. Lysne said the project has a minimum design berm elevation so if the berm has eroded below that minimum elevation, the berm will need to be repaired to the minimum design elevation. The Board directed Moore Engineering, Inc. to compare the current height of the Buffalo Creek berms in the SW 1/4 of Section 29 in Durbin Township to the minimum design elevation for the berms.

Mr. Baumgarten also inquired about the height of the Buffalo Creek crossing at Cass County Highway 9 regarding Lynchburg-Buffalo Project No. 2016-01. Mr. Baumgarten suggested Cass County Highway 9 be raised to help avoid overland flooding that occurred this year. The Board directed Moore Engineering, Inc. to review the hydraulic report for the crossing and verify the crossing meets North Dakota stream crossing standards. Moore Engineering, Inc. will also discuss the matter with the Cass County Highway Department and bring more information on the matter to a future meeting for discussion.

Adjournment

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

APPROVED:

Rodger Olson
Chairman

ATTEST:

Carol Harbeke Lewis
Secretary-Treasurer