

Dickey County Water Resource District

MEETING MINUTES

September 21, 2022

8:00 a.m.

The Dickey County Water Resource District met at the Dickey County Courthouse on Wednesday, September 21, 2022 at 8:00 a.m. Managers Steve Hansen, Keith Hauck, Don Zimbleman, Justin Gemar and John Quandt were all present at the meeting. Sean Fredricks, the board's attorney and Nathan Trosen, Representative for Moore Engineering joined via video conference. Joey Gemar, representing Wright Township and Erik Larson were also present.

Chairman Hansen called the meeting to order.

Jeff Quandt tile permit proposal

Application to Install a Subsurface Water Management System No. 2022-10 for Jeff Quandt in the South Half of Section 17 in Clement Township

The Board next reviewed an *Application to Install a Subsurface Water Management System No. 2022-10* filed September 14, 2022, by Applicant Jeff Quandt. Under the Application, Applicant seeks to install a 280-acre drain tile system in the South Half of Section 17 in Clement Township, Dickey County, North Dakota. The project will connect to the project constructed under SURFACE DRAIN PERMIT NO. 5559, approved by the Dickey County Water Resource District for permittees Robert Wiek, Kevin Carlson, and Shawn Carlson. More specifically, Applicant's tile project will connect to the pump constructed in the Southeast Quarter of Section 17 of Clement Township under SURFACE DRAIN PERMIT NO. 5559. The pump discharges via a pipeline that runs to the southeast and discharges into an open ditch commencing in the Northeast Quarter of Section 20; the ditch runs south, in the west road ditch along 104th Avenue SE, along the east boundary of the Northeast Quarter of Section 20; at the quarter line, the ditch runs under 104th Avenue through a control structure and a 24" culvert and daylights in the east road ditch, along the west boundary of the Southwest Quarter of Section 21 and runs approximately 600 feet; the ditch then discharges into a 900-foot, 15-inch dewatering pipe that runs to the southeast and discharges directly into Dry Run in the Southwest Quarter of Section 21.

According to records on file with the Dickey County Recorder's office, Jeffrey and Jeanette Quandt own that portion of the Southeast Quarter of Section 17 where Applicant intends to install the tile system. Robert Wiek owns the Northeast Quarter of Section 20; and Kevin Carlson and Shawn Carlson own the Southwest Quarter of Section 21.

Before discussing the merits of *Application No. 2022-10*, Sean Fredricks explained the conflict analysis the Board should conduct regarding Manager Quandt's likely conflict in the matter since the Applicant is Manager Quandt's brother. Sean 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, Manager Quandt has a direct and substantial personal interest in the matter that creates a likely conflict. Manager Hauck moved to conclude and declare that Manager Quandt has a conflict and should not participate in any votes regarding *Application No. 2022-10*. Manager Zimbleman seconded the motion. Upon roll call vote, Chairman Hansen and Managers Hauck, Zimbleman, and Gemar all voted in favor of the motion. Manager Quandt 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 issue concluded, the Board proceeded with discussion regarding the application.

Manager Hauck moved, and Manager Gemar seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2022-10* filed September 14, 2022, for Jeff Quandt, regarding a proposed tile project in the South Half of Section 17 in Clement Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2022-10, subject to the following conditions:

1. Applicant will coordinate with the permittees under SURFACE DRAIN PERMIT NO. 5559 to install and maintain erosion protection at any and all outlets into Dry Run.
2. Applicant will turn off any pump outlets and otherwise close all outlets during “critical flood periods,” as determined by the Dickey County Water Resource District.
3. Applicant will re-establish any areas disturbed installing or maintaining Applicant’s tile system.
4. Applicant will not install Applicant’s tile system within 20 feet, on either side, of any rural water lines Southeast Water Users District has in the South Half of Section 17 in Clement Township under any blanket easements, or otherwise beyond the Water District’s existing easement(s).

5. Applicant must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT NO. 2022-10 in advance of any proposed alterations to outlet locations, the addition of any outlets, or improvements or modifications to the tile system that could increase the capacity or drainage area of the tile system.

Upon roll call vote, Chairman Hansen and Managers Hauck, Zimbleman, and Gemar all voted in favor of the motion. Manager Quandt abstained. The motion carried.

Under Section 61-32-03.1, the Board cannot attach any additional conditions to Applicant's permit. However, for Applicant's protection, and to ensure protection of Applicant's tile system, the Board will recommend that Applicant comply with the following:

1. The Board recommends that Applicant obtain an easement or written consent from the permittees under SURFACE DRAIN PERMIT NO. 5559 to connect to or utilize any components of their project.
2. The Board recommends that Applicant, in coordination with the permittees under SURFACE DRAIN PERMIT NO. 5559, obtain written permission from the Clement Township Board of Township Supervisors to construct, operate, and maintain any portions of the project within any Township road right of way, or to otherwise utilize any of the Township's road ditches.
3. The Board recommends that Applicant obtain all other necessary and requisite licenses, permit, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

Sean Fredricks will provide copies of the Board's NOTICE OF DECISION, SUBSURFACE WATER MANAGEMENT PERMIT NO. 2022-10, and Applicant's downstream flow map to the Department of Water Resources, Clement Township, Robert Wiek, Kevin Carlson, Shawn Carlson, and Southeast Water Users District. Applicant's detailed project design map is an exempt record, and the Board will not provide copies to any third parties.

Jason Hildenbrand tile permit proposal

Application to Install a Subsurface Water Management System No. 2022-11 for Jason Hildenbrand in the Northeast Quarter of Section 20 in Valley Township

The Board next reviewed an *Application to Install a Subsurface Water Management System No. 2022-11* filed September 16, 2022, by Applicant Jason Hildenbrand. Under the Application, Applicant seeks to install a 161-acre drain tile system in the Northeast Quarter of Section 20 in Valley Township, Dickey County, North Dakota. The project will include a single pump outlet located along the east boundary of the Northeast Quarter of Section 20; the pump will discharge into a natural drain that flows to the east, under 86th Avenue SE.

According to Dickey County tax data provided by Applicant, Jason and Sabrina Hildenbrand own the Northeast Quarter of Section 20 of Valley Township where Applicant intends to install the tile system.

Manager Gemar moved, and Manager Zimbleman seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2022-11* filed September 16, 2022, for Jason Hildenbrand, regarding a proposed tile project in the Northeast Quarter of Section 20 in Valley Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2022-11, subject to the following conditions:

1. Applicant will install and maintain erosion protection at any outlet into the natural drain in the Northeast Quarter of Section 20 of Township.
2. Applicant will turn off any pump outlets and otherwise close all outlets during “critical flood periods,” as determined by the Dickey County Water Resource District.
3. Applicant will re-establish any areas disturbed installing or maintaining Applicant’s tile system.
4. Applicant will not install Applicant’s tile system within 20 feet, on either side, of any rural water lines Southeast Water Users District has in the Northeast Quarter of Section 20 in Valley Township under any blanket easements, or otherwise beyond the Water District’s existing easement(s).
5. Applicant must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT NO. 2022-11 in advance of any proposed alterations to outlet locations, the addition of any outlets, or improvements or modifications to the tile system that could increase the capacity or drainage area of the tile system.

Upon roll call vote, the motion carried unanimously.

Under Section 61-32-03.1, the Board cannot attach any additional conditions to Applicant’s permit. However, for Applicant’s protection, and to ensure protection of Applicant’s tile system, the Board will recommend that Applicant comply with the following:

1. The Board recommends that Applicant obtain written consent from Valley Township if Applicant’s pump will be within the Township’s road right of way.
2. The Board recommends that Applicant obtain all other necessary and requisite licenses, permit, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

Sean Fredricks will provide copies of the Board’s NOTICE OF DECISION and SUBSURFACE WATER MANAGEMENT PERMIT NO. 2022-11 to the Department of Water Resources, Valley Township, and Southeast Water Users District. Applicant’s detailed project design map is an exempt record, and the Board will not provide copies to any third parties.

Wright Township discussion

Joey Gemar was present to update the board on the Wright township request for financial support on proposed culverts they would like to replace in the township. Mr Gemar presented their proposal to the County Commissioners during their last meeting and the commissioners approved the bid Mr Gemar presented from Dakota Improvement of \$28,916.58. It is under the assumption that the County Commissioners, the Dickey County Water Resource District and Wright Township will split the bid in a 1/3, 1/3, and 1/3 manner between the three entities. Mr Gemar proposed 3-24 in. culverts and a 30 in. culvert with a sluice gate. The bid is also for any gravel or other materials needed to complete the project and the labor done by Dakota Improvement. Mr Gemar mentioned that the project could potentially be pushed back until next spring with harvest approaching for most. Manager Hansen mentioned that the materials should be committed to as the prices could go up by next spring and someone could store the

purchased materials on their property until such time they are used. Sean Fredricks noted the draft agreement he previously prepared; under the agreement, the Board would provide one-third cost-share in exchange for the Township's agreement to install gates and to operate the gates in accordance with the Board's Yorktown-Maple Operation and Maintenance Plan. Mr. Gemar agreed to sign the agreement. Manager Quandt moved to approve the 1/3 cost-share commitment by the Dickey County Water Resource District, with the understanding that the County Commissioners would also commit 1/3 of the total project cost, and contingent upon Wright Township's execution of the agreement. Manager Zimbleman seconded the motion. Upon roll call, the motion passed unanimously. Fredricks will email the agreement to Mr. Gemar.

Dickey County Drain #1 discussion

Manager Gemar updated the board on the functionality of the drain and that it seemed to be working in his opinion. He is in constant contact with the beaver trapper the board has hired to manage the beaver damages. He will contact Mr. Christofferson again for an update of the matter.

August Minutes

Manager Zimbleman moved to approve the August 17, 2022 meeting minutes. Manager Quandt seconded the motion. Upon roll call, the motion passed unanimously.

Financial Statement and bills

The board considered bills from Ohnstad Twichell of \$910.24, Moore Engineering of \$717.50, Starion Bond-Yorktown-Maple: Interest only payment of \$12,507.50, and Dakota Improvement of \$34,455.40. Secretary Hansen gave the financial report. Manager Gemar moved to approve the financial statement and bills. Manager Hauck 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

