

MINUTES OF THE MEETING OF THE SARGENT COUNTY WATER RESOURCE BOARD
HELD ON TUESDAY, AUGUST 3RD , 2021 AT 2:30 P.M. IN THE WATER BOARD
CONFERENCE ROOM AT THE SARGENT COUNTY COURTHOUSE, FORMAN NORTH
DAKOTA

Managers Present: Via teleconference-Roger Zetocha; Bruce Speich; Michael Wyum; Todd Stein. Present at the courthouse was SCWRD Administrator Wendy Willprecht. Also present via teleconference was Sean Fredricks of Ohnstad Twichell, the Board's attorney, Leon Mallberg and Tyler Speich.

Tyler Speich - REQUEST FOR DRAINAGE ON HIGHWAY RIGHT OF WAY

The Board next considered a REQUEST FOR DRAINAGE ON HIGHWAY RIGHT OF WAY for Tyler Speich regarding a project he plans to conduct on NDDOT's Highway 15 right of way. The REQUEST FOR DRAINAGE ON HIGHWAY RIGHT OF WAY is an NDDOT form, and NDDOT requires water resource district approval to meet NDDOT's federal highway rules. Sean Fredricks explained that the Board only has jurisdiction over drainage in NDDOT right of way if the activity will require a surface drainage permit or a tile permit under North Dakota state law. With that in mind, the Board could "approve" the REQUEST FOR DRAINAGE ON HIGHWAY RIGHT OF WAY for Tyler Speich, but could submit a cover letter to accompany the signed permit for to clarify the Board's jurisdiction (or lack of jurisdiction) in the matter.

Before the Board proceeded with the substantive considerations regarding the application, Mr. Fredricks explained the conflict analysis the Board should conduct regarding Manager Speich's likely conflict in the matter. Section 44-04-22 of the North Dakota Century Code indicates a public official must have a direct and substantial personal or pecuniary interest in a matter to reach the level of a technical and legal conflict that would permit the official to abstain from voting in a matter.

In this case, Tyler Speich is Manager Speich's son. Mr. Fredricks recommended that, in light of Manager Speich's substantial personal interest in the outcome of the Board's decision regarding the permit under Section 44-04-22, that the Board conclude that Manager Speich has a conflict and should not vote on the matter. Manager Stein moved to declare Manager Speich has a statutory conflict regarding the REQUEST FOR DRAINAGE ON HIGHWAY RIGHT OF WAY for Tyler Speich, and to prohibit Manager Speich from voting on the permit. Manager Zetocha seconded the motion. Upon roll call vote, Managers Wyum, Zetocha, and Stein voted in favor of the motion. Manager Speich abstained. The motion carried. With the conflict issues concluded, the Board proceeded with consideration of the Application.

Tyler Speich explained the Highway 15 ditch holds water in Section 17 of Hall Township, and he is proposing to clean out the right of way adjacent to his property, and to lower a township culvert. The Board recommended that Tyler obtain Township permission as well.

Manager Zetocha moved to approve the REQUEST FOR DRAINAGE ON HIGHWAY RIGHT OF WAY, and to direct Wendy Willprecht and Sean Fredricks to develop a cover letter for Wendy's signature to NDDOT to accompany the signed permit. Manager Stein seconded the motion. Upon roll call vote, Managers Wyum, Zetocha, and Stein voted in favor of the motion. Manager Speich abstained. The motion carried.

Application to Install a Subsurface Water Management System No. 2021-09 for Kevin Peterson in the Northeast Quarter of Section 11 in Hall Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 2021-09*, dated July 1, 2021, filed with the Board by Applicant Kevin Peterson on July 28, 2021. Under the Application, Applicant seeks to install a 150-acre drain tile system in the Northeast Quarter of Section 11 in Hall Township, Sargent County, North Dakota. The project will include a pump outlet in the northeast corner of the Northeast Quarter of Section 11; the pump will discharge into the west road ditch along 149th Avenue SE; the discharge will flow east, under 149th Avenue through an existing culvert, and will continue east in the south ditch along Red River Valley & Western's right of way, south of 79th Street SE, along the north boundary of the Northwest Quarter of Section 12; before reaching the quarter line, the discharge will turn north and will flow through an existing culvert under the railroad right of way; the discharge will daylight in the railroad's north ditch and will flow north a short distance before flowing into the Tri-County Drain, a legal assessment drain owned and operated by the Tri-County Joint Water Resource District. The Tri-County Joint Water Resource District has indicated the Northeast Quarter of Section 11 is already assessed into the Tri-County Drain at 100%.

According to the County tax roll information supplied by Applicant, Kevin and Brooke Peterson own the Northeast Quarter of Section 11 in Hall Township. With regard to downstream properties, H&R Land Company, Inc., owns the Northwest Quarter of Section 12 in Hall Township; and BNSF Railway Company owns the land occupied by Red River Valley & Western Railroad.

Manager Speich moved, and Manager Zetocha seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2021-09* dated July 1, 2021, for Kevin Peterson in the Northeast Quarter of Section 11 in Hall Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2021-09, subject to the following conditions:

- 1) that Applicant install and maintain erosion protection at any and all outlets into Hall Township's right of way;
- 2) that Applicant re-establish any areas disturbed installing or maintaining Applicant's tile system;

- 3) that 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 11 in Hall Township under any blanket easements, or otherwise beyond the Water District's existing easement;
- 4) that Applicant must turn off any pump outlets and otherwise close all outlets during "critical flood periods," as determined by the Sargent County Water Resource District;
- 5) that Applicant must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT NO. 2021-09 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; and
- 6) that Applicants remove silt or vegetation, or repair erosion or scour damages *directly* caused by Applicants' tile system, but only up to the discharge into the Tri-County Drain.

Upon roll call vote, the motion carried unanimously.

With regard to condition #6, Applicant's obligations to remove silt or vegetation, or to repair erosion or scour damages, will only arise upon submission of substantial evidence to the Board by a downstream landowner or road authority that Applicant's tile system *directly* caused accumulation of silt or vegetation, erosion, or scouring.

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

- 1) that Applicant obtain written consent from Hall Township to discharge into or otherwise utilize any of the Township's right of way;
- 2) that Applicant obtain written consent from Red River Valley & Western to discharge into, or otherwise utilize, any of its railroad right of way; and
- 3) 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.

Sean Fredricks will provide copies of the Board's NOTICE OF DECISION, SUBSURFACE WATER MANAGEMENT PERMIT NO. 2021-09, and Applicant's downstream flow map to the State Engineer's Office, Hall Township, H&R Land Company, BNSF, Red River Valley & Western, the Tri-County Joint Water Resource District, and Southeast Water Users District.

Application to Install a Subsurface Water Management System No. 2021-10 for Troy Jacobson in the North Half of the South Half of Section 14 in White Stone Hill Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 2021-10*, dated July 1, 2021, filed with the Board by Applicant Troy Jacobson on July 28, 2021. Under the Application, Applicant seeks to install an 83-acre drain tile system in the North Half of the South Half of Section 14 in White Stone Hill Township, Sargent County, North Dakota. The project will include a single gravity outlet that will discharge via a 3” perforated line near the north boundary of the Southeast Quarter of Section 14; the line will discharge directly into a natural watercourse in the Southeast Quarter of Section 14.

According to the County tax roll information supplied by Applicant, Steve Jacobson owns 127 acres in the Southeast Quarter of Section 14 and 82.69 acres in the Southwest Quarter of Section 14; and Steve and Troy Jacobson jointly own 22 acres in the Southeast Quarter of Section 14.

Manager Zetocha moved, and Manager Speich seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 2021-10* dated July 1, 2021, for Troy Jacobson in the North Half of the South Half of Section 14 in White Stone Hill Township, and to authorize the Secretary-Treasurer to sign SUBSURFACE WATER MANAGEMENT PERMIT NO. 2021-10, subject to the following conditions:

- 1) that Applicant install and maintain erosion protection at any and all outlets into the natural watercourse in the Southeast Quarter of Section 14;
- 2) that Applicant re-establish any areas disturbed installing or maintaining Applicant’s tile system;
- 3) that 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 North Half of the South Half of Section 14 in White Stone Hill Township under any blanket easements, or otherwise beyond the Water District’s existing easement; and
- 4) that Applicant must apply for an amendment to SUBSURFACE WATER MANAGEMENT PERMIT NO. 2021-10 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, the motion carried unanimously.

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

Sean Fredricks will provide copies of the Board's NOTICE OF DECISION and SUBSURFACE WATER MANAGEMENT PERMIT NO. 2021-10 to the State Engineer's Office and Southeast Water Users District.

The meeting adjourned at 2:55 p.m.