

## **DRAINAGE BOARD**

**April 20, 2021**

### **CALL TO ORDER**

Chairman Larson called the regular meeting of the Davison County Drainage Board to order at 7:00 p.m. Auditor Kiepke took roll call as follows: Members of the Board present were Jay Larson, Chet Edinger, Jerry Buchholz, Gregg Bult, Mark Klumb, Brenda Bode, Denny Kiner. Ex-Officio members present were Acting Drainage Administrator Jenniges, DOE Love and Auditor Kiepke. Absent Highway Superintendent Weinberg.

Guests included Ron Loudenburg, Roland Loudenburg, Bruce Haines, Dave Gukeisen, Marcus Traxler, Tim Neugebauer, Norman Neugebauer, Derek Evans, Don & Cindy Auch, John Millan, Bryce Gillan, Dan Stolp, Gregg Stahl, Robert Stahl, Denise & Steve Hoffman, Derek Mueller, Kenny Hostler, George Rykes, Ed Neugebauer, Attorney Gary Leistico representing Millan Acres LLC and Tim Neugebauer.

Appearing telephonically Attorney Jane Esche, representing Millan Acres LLC, Engineer Joel Toso, representing Millan Acres LLC, Attorney David Ganje, representing Kenny Hostler, Engineer Steve Burian, representing Kenny Hostler, Attorney Jordan Vogel, representing Kenny Hostler.

### **ADMINISTER OATHS OF OFFICE**

Auditor Kiepke administered oaths of office to those board members not in attendance in March which included Denny Kiner, Mark Klumb and Brenda Bode.

### **MEETING EXPECTATIONS**

Chairman Larson recited expectations of the meeting.

A checklist of items to be considered will be provided for each permit and each item will be considered on the following permits. The checklist is on file in the Davison County Auditor's office and the Drainage Administrator's office.

### **APPROVE AMENDED AGENDA**

Motion by Edinger, second by Klumb to approve the agenda, as amended, for the April 20, 2021 meeting. All members voted aye. Motion carried.

### **DECLARE CONFLICTS OF INTERESTS**

Chairman Larson asked for any conflicts of interests.

Hearing none, the meeting proceeded.

### **APPROVE MINUTES**

Motion by Buchholz, second by Edinger to approve the minutes of the March 16, 2021 meeting. All members voted aye. Motion carried.

## **PUBLIC COMMENT & CITIZEN COMPLAINTS**

Chairman Larson asked for any public input for items not on the agenda and reminded them that no action will be taken.

Hearing none, the meeting proceeded.

## **ADMINISTRATION OF WITNESS OATH**

Auditor Kiepke administered an oath to all those in attendance.

## **ACKNOWLEDGE WITHDRAWAL OF NEUGUBAUER DRAINAGE-SECTION 32**

The board acknowledged the withdrawal of the application for Tim Neugebauer for Section 32-102-60, which was tabled at last meeting.

## **NEUGUBAUER DRAINAGE-SECTION 32.**

Tim Neugebauer has made an application for a drainage permit. This application is for Section 32-102-60. The applicant and installer (Derek from Gridline Tile) were present to answer questions. The location to drain is:

- NW ¼ of Sec 32 Twp 102 Rge 60 County Davison
- N ½ of the SW ¼ of Sec 32 Twp 102 Rge 60 County Davison
- W ½ of the NE ¼ of Sec 32 Twp 102 Rge 60 County Davison
- W ½ of the E ½ of the NE ¼ of Sec 32 Twp 102 Rge 60 County Davison
- N ½ of the SE ¼ of Sec 32 Twp 102 Rge 60 County Davison

The outlets of the project will be:

- NE ¼ of Sec 32 T 102 R 60 W Davison County

The drain tile will be installed consistent with the natural topography and drainage of the land, which generally drains to the northeast. The project will outlet into a large wetland area (in the center of the NE ¼ of section 32) via a 15" dual wall closed tile. The water then flows north under 261<sup>st</sup> St. into wetlands that are part of an intermittent stream that flows east through culverts under 408<sup>th</sup> Ave, 409<sup>th</sup> Ave and SD Hwy 37, then south through culvert on 261<sup>st</sup> St and into an unnamed permanent stream in Section 35. It then flows southeast through a culvert under the railroad tracks and 411<sup>th</sup> Ave and into Twelve Mile Creek in section 36.

- a. Application received March 30, 2021.
- b. Applicant and necessary neighbors notified April 6, 2021.
- c. Published in the paper April 10, 2021.

Discussion included:

Acting Drainage Administrator Jenniges stated there is an easement filed for the tile being installed on Derek Mueller's land.

David Gukheisen expressed concern about water in his basement.

Attorney Gary Leistico stated that Gridline and applicant are here to answer any questions. He also pointed out a Certified Wetland determination by NRCS.

Leistico further stated that wetlands and quality are looked at. NRCS requires setbacks to wetlands. Gridline has indicated the setbacks for this project will have no impact to wetland. Non-perforated tile will be used next to the wetland perimeter. The project meets State law and the County ordinance. The purpose of the project is to keep the area rural and not harm any downstream landowners.

Ron Loudenburg, representing Delbert and Lucille Loudenburg Trust, stated he has a serious concern for downstream landowners. He said there is water standing in the ditch already. He said they own land across the road. He believes the only thing that's changed from a month ago is that the outlet was moved down. He stated that if somebody can guarantee property values wouldn't go down, he's all for it.

Roland Loudenburg, representing Delbert and Lucille Loudenburg Trust, stated there will be additional burden to downstream landowners as well as additional culvert concerns.

Board member Edinger said that the direction the water flows is evident.

Roland Loudenburg disagreed.

Gukeisen said that he wanted to reiterate that he has a small acreage. He said that water floods and goes to Sparks' stock dam. From there the water backs up and accumulates by his house. He said his basement has flooded twice. He is now running six sump pumps.

Board member Buchholz asked if the water is being slowed down with the tile?

Attorney Lesticco said the project is draining water where water naturally drains. Tile doesn't increase peak flow, it decreases it. He said tile actually helps people downstream. Water always flows downstream. When you buy property, you have to accept the fact that you will get some water from upstream and you are going to be sending some downstream.

Roland Loudenburg said that not all water moved in that direction. He asked if there are surface drains and was told yes.

Derek Evans of Gridline stated that he is not using electricity or anything else other than gravity. He is also following the natural topography and not moving any surface dirt.

Gukeisen said that sure you can pump downhill. However, you can't increase flow downstream. Water pools, gets to a certain spot and stops. He said this will affect him and his family. He said he can't state enough that there is no outlet.

Based on the findings, motion by Edinger, second by Kiner, to approve the application. A roll call vote was taken as follows. Buchholz – aye, Bult – aye, Edinger – aye, Larson – aye, Kiner – aye, Bode - aye, Klumb – aye. Motion carried.

## **NEUGUBAUER DRAINAGE-SECTION 31 and 32.**

Tim Neugebauer has made an application for a drainage permit. This application is for Section 31-102-60 and 32-102-60. The applicant and installer (Derek from Gridline Tile) were present to answer questions. The location to drain is:

- E ½ of the NW ¼ of Sec 31 Twp 102 Rge 60 County Davison
- NE ¼ of Sec 31 Twp 102 Rge 60 County Davison
- SE ¼ of Sec 31 Twp 102 Rge 60 County Davison
- NW ¼ of Sec 32 Twp 102 Rge 60 County Davison
- N ½ of the SW ¼ of Sec 32 Twp 102 Rge 60 County Davison
- S ½ of the SW ¼ of Sec 32 TWP 102 R 60 County Davison

The outlets of the project will be:

- N ½ of the NE ¼ of Sec 32 Twp 102 Rge 60 County Davison

The drain tile will be installed draining southeast and northeast through 2 excavated tile lines running through 407<sup>th</sup> Ave and then southeast through a solid tile line that outlets on Derek Mueller's land and will flow across George and Debra Ryks's land which will drain into an unnamed permanent stream which flows east/northeast through culverts under 408<sup>th</sup> Ave, 409<sup>th</sup> Ave and SD Hwy 37, then starts southeast going through a culvert under the railroad tracks before dumping into Twelve Mile Creek in section 36.

- a. Application received March 30, 2021.
- b. Applicant and necessary neighbors notified April 6, 2021.
- c. Published in the paper April 10, 2021.

Discussion included:

Acting Drainage Administrator Jenniges stated there are easements filed for the tile being installed on George Ryks' and Derek Mueller's land, as well as an easement allowing water to flow across George Ryks' land.

Board member Edinger wondered about potential erosion.

Derek Mueller from Gridline explained they will clean out a bit of the silt. It is a grass waterway which goes west.

Based on the findings, motion by Kiner, second by Klumb, to approve the application. A roll call vote was taken as follows. Edinger – aye, Bult – aye, Buchholz – aye, Larson – aye, Kiner – aye, Bode - aye, Klumb – aye. Motion carried.

## **MILLAN ACRES LLC DRAINAGE-SECTION 34 and 35.**

Millan Acres LLC has made an application for a drainage permit. This application is for Section 34-103-61 and 35-103-61. The applicant and installer (Bryce from Gridline Tile) were to answer questions. The location to drain is:

- NW ¼ of Sec 34 Twp 103 Rge 61 County Davison
- NE ¼ of Sec 34 Twp 103 Rge 61 County Davison
- E 1320' of S 1080' of NE ¼ of Sec 34 Twp 103 Rge 61 County Davison
- SE ¼ of Sec 34 Twp 103 Rge 61 County Davison
- NW ¼ of Sec 35 Twp 103 Rge 61 County Davison
- SW ¼ of Sec 35 Twp 103 Rge 61 County Davison

The outlets of the project will be:

- NW ¼ of Sec 35 Twp 103 Rge 61 County Davison

The drain tile will be installed consistent with the natural topography and drainage of the land, which generally drains to the east. The tile will outlet into natural waterway of a 3-dot blue line and also Proposed Ditch #5(tile) runs along it. At 406<sup>th</sup> Ave (8,900' downstream) Kibbie Ditch #15 begins.

- a. Application received April 2, 2021.
- b. Applicant and necessary neighbors notified April 6, 2021.
- c. Published in the paper April 10, 2021.

Discussion included:

Attorney Gary Leistico representing Millan Acres LLC, stated the project doesn't impact wetlands, doesn't harm anybody and helps land maintain agriculture status. He further stated that tile benefits everybody downstream.

Acting Drainage Administrator Jenniges said there are already culverts in place crossing north through 255<sup>th</sup> St. This project would prevent water and washout of the culverts and land to the north.

Board member Edinger asked for explanation on the 10" and 6" outlets.

Bryce Gillan of Gridline said that it is a surface ditch.

Based on the findings, motion by Klumb, second by Edinger, to approve the application. A roll call vote was taken as follows. Klumb – aye, Bult – aye, Edinger – aye, Larson – aye, Kiner – aye, Bode - aye, Buchholz – aye. Motion carried.

### **MILLAN ACRES LLC DRAINAGE-SECTION 30.**

It was acknowledged that Court Reporter Stephanie Moen was present as per the request of Kenny Hostler.

Millan Acres LLC has made an application for a drainage permit. This application is for Section 30-103-61. The applicant and installer (Bryce from Gridline Tile) were present to answer questions. The location to drain is:

- SW ¼ of Sec 30 Twp 103 Rge 61 County Davison
- SE ¼ of Sec 30 Twp 103 Rge 61 County Davison

The outlets of the project will be:

- SE ¼ of Sec 30 Twp 103 Rge 61 County Davison

The proposed drain tile project follows the natural course of drainage of the land. The S ½ of 30-103-61 outlets into an unnamed intermittent stream in the SE ¼ of 30-103-61, which goes into SD DOT right-of-way and north under Interstate 90 into unnamed intermittent stream. The water then travels east under 401<sup>st</sup> Ave into the NW ¼ of Section 29, flowing northeast and then northwest and crosses back under 401<sup>st</sup> Ave into the NE ¼ of Section 30. From there, the water flows into a culvert that crosses north under 254<sup>th</sup> St. into an intermittent stream in the SE ¼ of Section 19, which then flows north into Dry Run Creek. Dry Run Creek flows east through the City of Mitchell and into the James River.

- a. Application received April 2, 2021.
- b. Applicant and necessary neighbors notified April 6, 2021.
- c. Published in the paper April 10, 2021.

Discussion included:

Attorney Gary Leistico, representing Millan Acres LLC, said there would be routine maintenance on the ditches, no improvements. He said the washouts are filled in but not the ditches.

He stated that wetland specialist Wayne Bachman put the wetland determinations together, which is an acceptable practice to the NRCS as he was hired as a specialist.

Bachman determined there were two prior converted wetland areas built sometime before 1985 which are not subject to any constraints.

Leistico stated the tile is placed where water would naturally flow.

Leistico said that Ganje says applicant apparently doesn't want to follow the law. However, the law fundamentally favors the application.

Bryce Gillan of Gridline stated that his job is to lay tile with the natural lay of the land. He said they used topographic maps, a very big blue line, multiple outlets and the giant watershed that runs through Millan's land, with the water outletting on Millan's own property into a surface ditch. He further stated the only natural route for the water to flow is to Dry Run Creek. He said a lot of time went into the design of this project to meet row crop needs for Mr. Millan. It's a sizable investment, but it keeps land cropable.

Mr. Gillan stated he had been in Commercial Drainage for ten years but grew up on a farm so has been working with drainage for much longer.

He said this project will not cause reasonable damage downstream. The tile will slow down peak flow of water, it acts like a sponge. It doesn't change the volume of water. He said because you slow down flow, you slow down erosion. There is less erosion with tile than without. The ground filters water before it runs downstream so it is higher quality. The pipe will be buried underground. It will have zero impact on fish or wildlife. When you look downstream, outlets are over a mile away from Hostlers. The ditches the water is dumping into are massive. Approximately 2.07 cubic ft. of water is the amount proposed to be drained. To come up with this you calculate the size of tile and slope. The number of inlets has no bearing as each pipe will only hold so much water.

Chairperson Larson noted the ditch had been there a long time.

Board member Klumb wanted to know the elevation on the east side of 401 where the water dumps.

Gillan said it is less than 5'.

Acting Drainage Administrator Jenniges stated he received the documents from Mr. Ganje on behalf of Mr. Hostler earlier that morning and forwarded them all to the board. He further stated he had all 170 plus pages printed and at the meeting with him.

Kenny Hostler asked the board if they had reviewed all the documents from his attorney. He said there are wetlands getting diverted his way. He said if you look at the lidar map, they go east. He said this will show that he is going to get more water.

Attorney David Ganje stated to Mr. Gillan that the application indicates opinions from Mr. Toso. The court determined the previous application was voided. Was that the same information included in the earlier application?

Chairman Larson told Mr. Ganje that the application of August 2020 was not relevant tonight.

Mr. Ganje said that Steve Burian, President and CEO of Burian & Assoc., with a master's degree in environmental engineering, will discuss problems with the project.

Mr. Burian said that if you have consecutive rainfalls there won't be room for water in the pipeline. He says this will create more water, not less. He said the total volume is more and will create a tail of seven to fifteen days. The tail is surface drainage hydrograph. He said he was only able to discern grade on three out of the six outlets. That leaves a conclusion that the water flow will be 2.5 cubic feet.

According to Mr. Burian, there is no supporting information regarding Mr. Hostler's capacity. His farms acreage is very sensitive. The amount of water proposed to be drained was not indicated. There was no impact of sustained flows provided. There will be no alteration from amount of flow or time of flow. The nature of the two wetland areas in the SE quarter would provide water flow to the east and avoid Mr. Hostler's land. However, water is being conveyed west in a large tile pipeline to the outlet. The natural flow is not to Hostler's. Before the tile, the water would have flowed to a different watershed.

Attorney Ganje stated the paperwork he provided earlier in the day sufficiently addresses the rest of the concerns with this project.

Board member Edinger said that page fifteen talks about tail and asked Mr. Burian if that comes from an Iowa study. Mr. Burian replied that yes, it does. Mr. Edinger asked if he had a South Dakota study. Mr. Burian replied no. Mr. Edinger stated that we have considerably less rainfall in South Dakota.

Chairperson Larson asked Mr. Burian if when he was determining drainage goes east, did he consider the historical photographs? Mr. Larson said the photographs were probably provided by NRCS. They show that drainage has long gone into the west side of the road. The road acts as a dam, preventing water from going east.

Board member Edinger stated the water artificially flows east. He said the prior converted was man-made before the ditch was put in.

Attorney Leistco said the water is not being powered uphill. The water has to go to the NE where there are no wetlands. The prior converted ditch is still there. Anything moving to the east will still move to the east.

After stated the NRCS wetland is part of the application from Mr. Bachman, Attorney Ganje asked Mr. Burian if Mr. Bachman's work shows water going east into a different watershed. Mr. Bachman replied that yes it does.

Attorney Leistco stated that Mr. Toso was on the phone if anybody had any questions.

Mr. Toso said he had calculated 1.7 cubic foot per second would be the amount of water flow. While Mr. Gillan had calculated 2.07, which Mr. Toso felt was very close. Mr. Burian calculated 2.5 which he felt was a little far-fetched. However, Mr. Toso said it would take 2 ½ times the amount Mr. Burian calculated to cause damage.

Mr. Ganje wanted to know if Mr. Toso calculate flow from all outlets or diameter of outlets? Mr. Toso said there was not that much detail put into the report. Mr. Toso did discuss consequences of tail. However, there are many factors that affect tail such as the soil type.

Attorney Jim Davies told the board, at this point, they have several options, there is a checklist to consider. They may table the matter for up to twenty days, they may view the site as a board, but only as a board or they may act tonight.

Based on the findings, motion by Edinger, second by Bult, after being assured by Jenniges that all items had been addressed on the checklist to approve the application.

A roll call vote was taken as follows. Bode – aye, Bult – aye, Edinger – aye, Larson – aye, Kiner – aye, Buchholz - aye, Klumb – aye. Motion carried.

## **MISCELLANEOUS ITEMS**

Illegal Drainage-John Christopher has installed illegal tile in 3-104-62 & 2-104-62.

Acting Drainage Administrator Jenniges reported he had not gotten a letter sent to Mr. Christopher yet.

Board member Edinger is concerned about this because he feels Mr. Christopher needs to be aware of the penalties he may be incurring, which are up to \$2,000 per day plus jail time.

Jenniges said he will get the letter sent as soon as possible. If he doesn't receive a response, the matter will be directed to the state's attorney.

## **DRAINAGE ORDINANCE ADMINISTRATIVE APPROVAL**



Acting Drainage Administrator Jenniges reported that Judge Giles ruled that administrative approval of new drainage is not constitutional. Therefore, the all new drainage applications will have to come before the board.

**SET DATE AND TIME FOR NEXT MEETING**

Chairman Larson set May 18, 2021 at 7:00 p.m. as the next meeting date and time.

**ADJOURN**

At 10:14 p.m., Chairman Larson adjourned the meeting.

**ATTEST**

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Susan Kiepke, Auditor

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Jay Larson, Chairman

Publish Once  
Approximate Cost