

June 6, 2024

The Grant County Commission met at 8 AM with Commissioners Buttke, Mach, Stengel, Street and Tostenson present. Chairman Tostenson called the meeting to order. Motion by Stengel and seconded by Buttke to approve the May 21, 2024 minutes. Motion carried 5-0. Minutes filed. Motion by Mach and seconded by Buttke to approve the agenda with the additions of selecting the Post Election Audit precinct and races, discussion of 149<sup>th</sup> Street and 480<sup>th</sup> Avenue intersection and Kauffman Slough. Motion carried 5-0.

Present from the public were Ben Wollschlager, Tim Scherer, Doug Wollschlager, Ryan Wollschlager, and Tom Wollschlager. Staff members present were Commissioner Assistant Layher, Drainage Officer Berkner, Hwy Supt Peterson, and States Attorney Schwandt.

**Public Comment:** Chairman Tostenson called for public comment three times. There were no comments.

**Drainage:** Chairman Tostenson adjourned the Board of Commissioners and convened the Commission acting as the Drainage Board.

Permit DR2024-03 for Ben Wollschlager located in the N1/2SE1/4 in 25-119-48 Vernon West Township tabled from the May 7, 2024 meeting was scheduled for today's meeting.

Chairman Tostenson asked Drainage Officer Berkner to review the report for Drainage Permit DR2024-03 for Ben Wollschlager, which is an amendment to the outletting direction of flow that was permitted under DR2023-53. DR2024-03 failed to pass during the Drainage Board meeting on April 16th and is being reconsidered due to a motion passed by the Drainage Board on May 7th when additional information became available.

Berkner stated permit DR2024-03 is for pattern tiling approximately 35 acres located in the N1/2 of the SE1/4 of Section 25 in Vernon West Township with one open inlet to drain east through one 8" main tile directly into a recorded vested drainage waterway instead of draining south through a 10" shared main tile permitted with DR2023-53 that is used by multiple landowners.

According to Berkner's notes from the April 16th Drainage Board meeting, the two landowners directly downstream of the new route to drain east with permit DR2024-03 claimed during the public hearing on April 16th that their previously permitted drainage designs, approved in 2012 and 2022, both use pumps to remove water from the vested drainage ditch that DR2024-03 proposes to use to drain the 35 acres, and that the already permitted DR2023-53, and its southern route to drain, eliminates their additional cost in electricity and maintenance for them to run their pumps longer.

Berkner said during original Drainage Board discussion on April 16th much of the board's discussion concerned a portion of the County's Drainage Ordinance that DR2023-53, already approved for the same 35 acres owned by Ben Wollschlager, was of a "reasonable design," language that is found in the county's Drainage Ordinance, that allowed Ben Wollschlager to drain his land to the south and also met the concerns of the two downstream landowners opposed to DR2024-03 which if approved would drain across their land to the east.

Berkner's report said one of the claims made by Ben Wollschlager about the design of DR2023-53 that was compelling him to make an amendment request with DR2024-03 was multiple times this spring, after the shared 10" main, draining to the south, was installed, during heavy run-off events water was actually backing up through that main from the creek it dumped directly into and if he was to connect to that main it would also back water up onto his property. The alternate route of DR2024-03, draining to the east, eliminates that risk.

Berkner then presented new information that was not available during the April 16th meeting using LIDAR topography and elevation maps from the county's GIS website, along with recent pictures provided by Ben Wollschlager from this spring. It supports his claims that the DR2023-53 design is prone to water flooding backward through the 10" main onto his property if he were to connect to that main.

It is Berkner's opinion that the project is supported by questions asked in Section 101, 313 and 317 of the county's drainage ordinance. It is using the same route for draining its surface water that was guaranteed when it was recorded by the County's Register of Deeds as a vested drainage waterway in 1992. He also stated careful consideration was still needed for making a final decision to approve DR2024-03.

Before inviting the Drainage Board discussion, Chairman Tostenson reminded those in attendance the public hearing concerning DR2024-03 had already occurred on April 16th and no additional public comments would be allowed unless a person was called upon.

Chairman Tostenson opened Drainage Board discussion. Most of the dialogue was devoted to interpreting what rights a landowner has that is seeking to drain water through a vested drainage waterway. States Attorney Schwandt was asked to review the County's Drainage Ordinance and go over the Drainage Board's responsibilities when considering granting the drainage permit relating to DR2024-03 request.

Chairman Tostenson voiced the opinion by virtue of the vested drainage waterway being officially recorded with the county, a right allowed by South Dakota State Law, that that downstream waterway had no choice but to accept naturally occurring surface water draining from an upstream property even if the downstream landowners had chosen to use pumps to drain the same waterway.

Tostenson emphasized that by denying the upstream vested drainage rights in favor of a downstream landowner, who in this case chose to modify the downstream vested waterway, it would create a precedent for the County's Drainage Board that would cause legal problems.

Commissioner Street defended the position of the downstream landowners with the pumps. Street said it is always best for neighbors to work together and he thought it was the county's responsibility, if necessary, to condition a scenario when granting any drainage permit, that, if possible, encourages neighbors to work together. Street said he thought it was just the right thing to do as a Drainage Board.

Commissioner Stengel's opinion on supporting granting DR2024-03 is the fact that it is using a vested drainage waterway that had been legally recorded by the upstream land area.

Commissioner Mach concurred vested drainage waterways have always been preferred by the Drainage Board when granting drainage permits. But he also understands the concerns of the two immediate downstream landowners of the alternate route for DR2024-03. Mach added the original route of DR2023-53 also had downstream landowners and homeowners already prone to flooding where DR2024-03 reduces that additional risk of flooding their land and buildings. Mach also had concerns about the Drainage Board engineering the best path for drainage

water. If a reasonable plan is submitted, the board's responsibility is to only consider that design and leave it up to the party that engineered it to defend it if necessary.

Commissioner Buttke remarked whenever possible it would be nice for neighboring landowners to get along and work together, but it was hard to ignore that a vested drainage waterway had been properly recorded.

States Attorney Schwandt was asked to comment about the status of DR2023-53 if DR2024-03 passed. Schwandt stated DR2023-53 would be voided for Ben Wollschlager and replaced with the new drainage permit DR2024-03 design.

Chairman Tostenson called for a roll call vote for the motion on the floor to approve drainage permit DR2024-03. Stengel: Aye, Mach: Aye, Street: Nay, Buttke: Aye, Tostenson: Aye. Motion carried 4-1.

This concluded the business for the Drainage Board. Chairman Tostenson adjourned the Drainage Board and reconvened as the Board of Commissioners.

**HWY: ROW application:** Supt Peterson presented the right-of-way application ROW2024-06 from Whetstone Valley Electric Coop to bore under CR 8 on 149<sup>th</sup> Street to replace underground electrical wire. Motion by Mach and seconded by Buttke to authorize Chairman Tostenson to sign the ROW Agreement ROW2024-06 for Whetstone Valley Electric Coop as presented. Chairman Tostenson recused himself from the vote and handed over the Chair to Vice-Chairman Stengel. Vice-Chairman Stengel called for the vote. Motion carried 4-0. Vice-Chairman Stengel gave the Chair back to Chairman Tostenson.

**149<sup>th</sup> & 480<sup>th</sup> Intersection:** Discussion was held on this intersection by the Henze Addition after they reviewed the engineering study. Hwy Supt Peterson advised them to take into consideration the cost of it and lack of serious accidents at the intersection. The county highway department will fill in the corners, so they aren't so steep. Commissioner Assistant Layher cautioned the Commission to consider the financial side of their decision if the need isn't warranted. With the jail bond passing, the garage and gazebo needing to be moved if the new jail is built on that site, and the proposal to install an elevator in the courthouse, funds will be needed for those projects. Chairman Tostenson asked to have the intersection decision put on the next meeting agenda for June 18, 2024.

Kaufman Slough: Commissioner Street said he was contacted by several landowners around the Kaufman Slough, and they said they will be working together to get a permit to help with the north pipe drainage. Street called Game, Fish & Parks in Waubay and the representative there said GFP does not have any jurisdiction over that north drainage pipe. The Commissioners agreed it is the landowner's responsibility to do the drainage.

**Travel:** Motion by Stengel and seconded by Buttke to approve travel expenses for Deputy DOE Taylor Stotesbery to the annual Assessor School in Oacoma and Deputy Colleen Stein to the annual Basic Assessor School in Pierre. Motion carried 5-0.

**County Assistance:** None

**Executive Session:** Motion by Stengel and seconded by Buttke to enter executive session at 9:40 AM for the purpose of a personnel issue(s) pursuant to SDCL 1-25-2 (1). Motion carried 5-0. Commissioner Assistant Layher, States Attorney Schwandt and Auditor Folk were present. Chairman Tostenson declared the meeting open to the public at 9:50 AM. Motion by Stengel and seconded by Mach to approve an interim wage increase for 4-H Administrative Assistant, Melissa Mueller to \$25.00 per hour effective May 15, 2024 with an end date to be determined later. Motion carried 5-0.

**911 Contract:** Motion by Stengel and seconded by Mach to approve an amended E-911 contract with the City of Watertown due to the surcharge increase to \$2.00 per line effective 7-1-2024 through 12-31-2024. Motion carried 5-0.

**Dispatch Contract:** Motion by Mach and seconded by Stengel to approve the 2-year contract for 2025 & 2026 with the City of Watertown for non-emergency dispatch at the same contract amount of \$24,000 per year. Motion carried 5-0.

**Primary Election Canvass:** The Board canvassed the results of the June 4th Primary Election. The results are as follows:

Milbank 1-1  
Ballots Counted 132  
Voters 132

Milbank 1-2  
Ballots Counted 33  
Voters 34

Milbank 2-1  
Ballots Counted 49

Milbank 2-2  
Ballots Counted 122

Voters 49

Milbank 3-1  
Ballots Counted 25  
Voters 25

Milbank 3-3  
Ballots Counted 166  
Voters 166

42 Alban  
Ballots Counted 90  
Voters 90

44 Blooming Valley-Farmington-Lura  
Ballots Counted 53  
Voters 53

46 Grant Center  
Ballots Counted 71  
Voters 71

49 Mazeppa-Osceola-Marvin  
Ballots Counted 32  
Voters 32

53 Troy & Strandburg  
Ballots Counted 20  
Voters 20

Voters 122

Milbank 3-2  
Ballots Counted 25  
Voters 25

41 Adams-Albee-Reville-Vernon  
Ballots Counted 91  
Voters 92

43 Big Stone City & Twp  
Ballots Counted 158  
Voters 158

45 Georgia-LaBolt-Madison  
Ballots Counted 75  
Voters 75

47 Melrose  
Ballots Counted 96  
Voters 97

52 Stockholm Town & Twp  
Ballots Counted 25  
Voters 25

54 Twin Brooks Town, Twp & Kilborn  
Ballots Counted 52  
Voters 52

Total ballots cast were 1,315 with a 27.59% turnout.

Motion by Street and seconded by Buttke to certify the canvass of votes as correct and to sign the canvass certificate for the Secretary of State's Office. Motion carried 5-0.

**Post Election Audit Selection:** Auditor Folk explained the Post Election Audit process to the Commissioners and conducted the Post Election Audit selection of the precincts to be hand counted. Precincts 49 Mazeppa-Osceola-Town of Marvin and 41 Adams- Albee- Reville-Vernon were selected by random draw to meet the minimum requirement of 100 ballots to be hand counted. The statewide race of the

Presidential Democratic candidates will automatically be hand counted as that is the only statewide race. All the other contests on the ballots were included in the random draw for the other race to be hand counted. The State Senator for District 04 was selected. The Post Election Audit will be held on June 12, 2024 at 9:00 AM in the basement community room of the courthouse.

**July 5<sup>th</sup> Holiday:** Commissioner Assistant Layher stated the Governor has closed the State offices for July 5<sup>th</sup> for the state employees. The Commission discussed closing county offices on July 5<sup>th</sup> as well. Motion by Mach and seconded by Buttke for non-essential county offices to be closed on July 5<sup>th</sup> for a four-day holiday weekend. Motion carried 5-0.

**Unfinished Business:** Commissioner Assistant Layher reported the Shooting Sports program with 4-H has questioned if they can store the program shot guns at the 4-H Complex. States Attorney Schwandt researched this, and they can store the county owned guns there. There is coverage with the county's insurance policy.

Chairman Tostenson reported that the addition to the Community Transit building is coming along despite weather delays. Tostenson also discussed veteran's transportation current roadblocks and will try to get our U.S. Senators involved to fix these.

**New Business:** Commissioner Assistant Layher stated the 4-H Complex needs a new floor scrubber. They have a quote of \$10,500. The leaders will meet and decide how much they can contribute to it.

**Correspondence:** Commissioner Assistant Layher stated the county has received a security grant award check for \$13,352.67 for secured entry to the courtroom.

**Claims:** Motion by Buttke and seconded by Mach to approve the claims. Motion carried 5-0. ADVANCED TECHNOLOGIES, SRP supplies 291.75; MNB CLEANING, prof services 700.00; AUTOVALUE, supplies 1,282.90; BERENS MARKET, supplies 43.75; CENTER POINT, books 661.48; CHS, diesel & ethanol 9,847.72; CITY OF MILBANK, water & sewer 444.93; CITY OF WATERTOWN, 911 surcharge 6,486.68; CONSOLIDATED READY MIX, gravel 1,229.46; DELORIS RUFER, lib rent 100.00; DEPT OF AG & NATURAL RESOURCES, dues 100.00; DUANE ATHEY, repairs & maint 90.00; ELECTION SYSTEMS & SOFTWARE, supplies 164.45; FIRST BANK & TRUST/VISA, gas, dues, supplies 4,096.84; FISHER SAND & GRAVEL, gravel 387.99; FLAT RATE, gravel 508.20; GRAJCZYK LAW OFFICE, court appt atty 3,550.00; GRANT CO SOIL

CONSERVATION, allocation 13,000.00; GREEN ROBY OVIATT, court appt atty 4,639.80; HMN ARCHITECTS, prof services 5,642.91; INSIGHT, comp equip 893.25; ITC, phone & internet 2,387.98; JASON SACKREITER, garbage service 330.00; KRISTIN WOODALL, prof services 165.75; LEWIS FAMILY DRUG, drugs 763.32; LINCOLN COUNTY AUDITOR, prof services 330.50; DE CASTRO LAW, court appt atty 1,023.50; MCLEOD'S PRINTING, supplies 165.08; MICROFILM IMAGING SYSTEMS, scanner rent 787.00; MIDCO, lib internet 108.92; NORTHERN CON-AGG, gravel 11,031.83; NORTHWESTERN ENERGY, natural gas 465.54; OTTER TAIL POWER, electricity 1,386.10; REGENCY MIDWEST VENTURES, motel 396.00; SDAAO, registration 800.00; STAR LAUNDRY, rentals 151.14; VALLEY RENTAL & RECYCLING, allocation 650.00; VALLEY SHOPPER, publishing 28.83; TOTAL: 75,133.60.

Payroll for the following departments and offices for the May 28, 2024, payroll are as follows: COMMISSIONERS 7,861.04; AUDITOR 10,380.73; ELECTION 1,498.50; TREASURER 6,177.24.; STATES ATTORNEY 7,571.14; CUSTODIANS 3,672.91; DIR. OF EQUALIZATION 4,659.22; REG. OF DEEDS 4,991.73; VET. SERV. OFFICER 1,359.60; SHERIFF 17,799.31; COMMUNICATION CTR 9,205.70; PUBLIC HEALTH NURSE 1,382.40; ICAP 0.00; VISITING NEIGHBOR 2,073.67; LIBRARY 9,217.86; 4-H 4,193.70; WEED CONTROL 2,536.13; P&Z 1,446.40; DRAINAGE 632.80; ROAD & BRIDGE 29,886.19; EMERGENCY MANAGEMENT 2,749.50. TOTAL: \$129,295.77.

Payroll Claims: FIRST BANK & TRUST, Fed WH 9,290.91; FIRST BANK & TRUST, FICA WH & Match 15,401.30; FIRST BANK & TRUST, Medicare WH & Match 3,601.92; ACCOUNTS MANAGEMENT, deduction 80.76; AMERICAN FAMILY LIFE, AFLAC ins. 1,663.92; ARGUS DENTAL, ins. 582.87; WELLMARK-BLUE CROSS OF SD, Employee and Commission health ins. 54,366.86; COLONIAL LIFE, ins. 37.98; DEARBORN NATIONAL, life ins. 296.94; LEGAL SHIELD, deduction 38.85; OFFICE OF CHILD SUPPORT ENFORCEMENT, child support 2,085.00; OPTILEGRA, ins. 455.97; SDRS SUPPLEMENTAL, deduction 1,358.33; SDRS, retire 14,437.99. TOTAL: \$103,699.60.

**Consent Agenda:** Motion by Buttke and seconded by Street to approve the consent agenda. Motion carried 5-0.

1. Approve step increase to 6-month step of \$16.25 for Julie Anderson effective 5-17-2024



It is the policy of Grant County, South Dakota, not to discriminate against the handicapped in employment or the provision of service.

The next scheduled meeting dates will be June 18, 2024 and July 2, 3 (Wednesday for Budget) and 16, 2024 at 8 AM in the basement meeting room. Motion by Buttke and seconded by Stengel to adjourn the meeting. Motion carried 5-0. Meeting adjourned.

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Kathy Folk, Grant County Auditor

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William Tostenson, Chairman, Grant County Commissioners