

## Minutes of the Lake County Water Quality Committee Meeting

February 28, 2013

Present: John Maursetter, Jan Nicolay, Dale Droge, Bryan Schultz, Gary Pitts, Dave Daniel, Craig Johannsen, Walt Schaefer, Jay Gilbertson, LaDell, Swiden, and Mike Phelps.

The meeting was brought to order at 7:05 pm by Jan Nicolay.

**Agenda:** Jan wanted to add a discussion of the open meeting legislation pending in Pierre. Approved.

**Minutes:** Approved as written.

**Legislative update:** Jay discussed recent events during the present legislative session. There were two bills regarding water that were of interest. The first was Senate Bill number 179 regarding a uniform drainage permit. The bill was amended in committee to remove the changing of the fee cap and remove the section requiring a professional engineer to sign off on the drainage plan. This bill went down in flames.

The other is the watershed districts bill – Jay discussed what watershed districts are. There are only a few small ones set up in this part of the state. Senate Bill 153 – cleans up the present language in the law regarding the formation watershed districts. This bill has cleared the senate and has been passed out of the House Judiciary Committee.

House Bill 1235 – It was amended in the House repealing the law that formed the Regional Watershed Taskforce – it won't make it past the Senate.

**Water Quality Factsheets and Zero-Phosphorus ads** – Jan discussed the Water Quality Factsheets (#1-3) that John had put together. LaDell thought that we should put in “funded by:” in the text to show who paid for the printing of these factsheets.

Jan asked if the Lake Herman Sanitary District can actually provide money for the printing of the factsheets. Are they prohibited by law from doing this? Jay looked up the law and said that it is pretty clear; they are prohibited from doing this.

Printing – Who should we get to do the printing? John will get quotes from Madison Instant Printing and Leader Printing. Dale will get a quote from the DSU print lab.

The committee discussed that, in past years, the Madison Daily leader has put out a spring lawn and garden special section – sometime in May. We need to check into this. We can provide them with all of the information we have – factsheets, etc. We should also check into placing an ad in this special section.

Jan said that Classic Lawn Service was bought by another company and no longer operates out of Chester so we should remove that name from the zero-p fertilizer flyer and ad. John will try to find out who the purchasing company was and see if they provide Zero – P fertilizer. The committee decided that the Zero- Phosphorus ad starting with the question “Why use zero-phosphorus fertilizer?” should be the version of the ad to use.

The Brant Lake Improvement Association and the Lake Madison Development Association will be approached about providing some money for the printing of these items.

Jan suggested that we add the East Dakota Water Development District to the list of possible fund providers for the factsheets. This looks like something that they may be interested in.

**Open Meetings Bill:** As a result of some school district(s) in the state circumventing the present open meetings law, a bill was introduced in the legislature to prevent this from happening again. Jan discussed the way the law is written now and what the bill is supposed to do. Jan and Jay discussed how the law now works regarding small organizations. How do the very small organizations comply with the law now and how would the present proposed changes affect them? Some of these organizations may not even have an actual address – just a P.O. Box. Jay stated that these organizations will probably have to designate a spot where announcements regarding the meetings will always be posted. That should be sufficient. Jan asked about small groups township boards that are only 2-3 people. What if they all meet in a restaurant for coffee one day? Is that a public meeting that should be open to the public and announced? This is confusing. Hopefully, the proposed legislation will clarify that.

**Drainage Ordinance Review:** The committee continued with the review of the present Lake County Drainage Ordinance. Jan began with summarizing what the committee has done so far. The committee continued the review at section 2.05.

The ordinance as it was reviewed by the Committee is attached below.

The next committee meeting will be at 7:00 pm on April 18, 2013 at the Science Center on the DSU Campus.

Meeting Adjourned at 9:00 pm.

Respectfully submitted,

John Maursetter

Lake County

# 2002 DRAINAGE ORDINANCE

LAKE COUNTY SOUTH DAKOTA

Adopted: July 16, 2002

Updated: November 18, 2003

(Section 2.04.1 & 2.05)

Amendment: November 4, 2004

(Section 5.05)

Updated: December 6, 2005

(Section 5.05)

Suggested changes

Questions

Other comments

## **ARTICLE 1.00 GENERAL PROVISIONS**

### **SECTION 1.01. TITLE. Ordinance of Lake County.**

These regulations shall be referred to as the 2002 Drainage **Ordinance of Lake County**

**SECTION 1.02. AUTHORITY.** The authority for this ordinance is promulgated under SDCL 46A-10A and SDCL 46A-11.

**SECTION 1.03. PURPOSE.** These regulations shall govern the drainage of water within Lake County and are designed to enhance and promote the physical, economic and environmental management of the county; protect the tax base; prevent **inordinate** adverse impacts on serviant properties; encourage land utilization that will facilitate economical and adequate productivity of all types of land; lessen government expenditure; conserve and develop natural resources; and preserve the important benefits provided by wetlands.

**SECTION 1.04. INTERPRETATION, ABROGATION, AND SEVERABILITY.** In interpreting and applying the provisions of these regulations, they shall be held to be the minimum requirements for the promotion of public safety, health, convenience, comfort, morals, prosperity, and general welfare. It is not the intent to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where these regulations and other regulations, easements, covenants or deed restrictions conflict or overlap, **whichever imposes the more stringent restrictions shall prevail.** All other county regulations inconsistent with these regulations are hereby repealed to the extent of this inconsistency only. If any section, clause, provision or portion of these regulations is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of these regulations shall not be affected thereby.

**SECTION 1.05. PURPOSE OF CATCH HEADS.** The catch heads appearing with the sections of this ordinance are inserted simply for convenience to serve the purpose of an index. The catch heads shall be wholly disregarded by any person, office, court or other tribunal in construing the terms and provisions of this ordinance.

**SECTION 1.06. SAVING CLAUSE.** These regulations shall in no manner affect pending actions either civil or criminal, founded on or growing out of any regulations hereby repealed. These regulations shall in no manner affect rights or causes of action, either civil or criminal that may have already accrued or grown out of any regulations repealed.

**SECTION 1.07. DISCLAIMER OF LIABILITY.** The degree of public and environmental protection offered by this ordinance is considered reasonable for regulatory purposes and is based on the best available scientific and engineering considerations. The application of this ordinance shall not create liability on the part of Lake County, or any officer or employee thereof.

**SECTION 1.08. DEFINITIONS.** For the purposes of this ordinance, certain terms and words are hereby defined. Unless otherwise noted, all terms contained in this ordinance are defined by their plain meaning.

**5. ADMINISTRATIVE OFFICIAL.** The **Planning Director person or persons** duly appointed by the Board who is responsible for the administration and enforcement of this ordinance.

**10. BENEFITTED AREA.** The area within a drainage district or coordinated drainage area that receives the direct benefit from the drainage projects which have been constructed, or are to be constructed, within the district or drainage area. **Does this definition apply if it is not in a drainage district or coordinated drainage area?**

**15. BOARD.** The Board of Lake County Commissioners.

**20. COORDINATED DRAINAGE AREA.** A defined geographic area containing one or more parcels of real property and more than one land owner which is established via a **public election** to provide a planned network or method of natural or man-made drainage and funded through an assessment on the benefited properties.

**25. DOMINANT ESTATE.** Any parcel of real property, usually at a higher elevation, which holds a common law or statutory right to drain water onto other real property.

**30. DRAIN.** A means of draining either surface or subsurface water through a system of ditches, pipes or tiles, either natural, man-made or natural with man-made improvements including:

a) **CLOSED DRAIN.** A man-made drain or drainage scheme utilizing pipes, tiles or other materials and constructed in such a way that the flow of water is not visible.

b) **LATERAL DRAIN.** A drain constructed after the establishment and construction of the original drain or drainage system and which flows into such original drain or drainage system.

c) **NATURAL DRAIN.** A drainage system on the surface of the ground which operates as part of a natural water course.

d) **SURFACE DRAIN.** A man-made drain on the surface of the ground.

**35. DRAINAGE DISTRICT.** A drainage area with multiple owners that was established under state law prior to July 1, 1985 in which all planning, construction and maintenance of the drainage system conform with a master plan for the district and are funded through an assessment on the benefited acres within the district.

**40. DRAINAGE PROJECT.** Any man-made improvements constructed or installed with the intent to drain water.

**45. HYDRIC SOIL.** Soil types which are formed under saturated conditions.

**50. HYDROPHITIC VEGETATION.** Vegetative types typically adapted for life in saturated soil conditions.

**55. LANDOWNER OR OWNER.** Any individual, firm, or corporation, public or private, or public agency, who has legal title to real property as shown by the records of the Register of Deeds. If the real property is sold under a contract for deed and the contract is of record in the office of the Register of Deeds, both the recorded owner of the real property and the purchaser as named in the contract for deed are deemed owners of the real property.

**60. MEANDERED LAKE.** Any pond, slough, or lake which has had its boundaries established by metes and bounds in the documents of record or in the survey of public lands by the government of the United States.

**65. PERSON.** An individual, firm, partnership, association, corporation, contractor or any other type of private legal relationship, and any governmental organization, which includes, but is not limited to, any agency of the United States, a state agency, and any political subdivision of the state.

**70. ROUTINE MAINTENANCE.** Any maintenance performed on a vested and/or properly registered and recorded drainage system provided:

1) The repair or replacement of a closed, surface, or lateral drain that does not increase the size, capacity or length of the existing drain and the original location of the drain is not altered.

2) The removal of sediment or vegetation from a surface natural drain with man-made improvements if the maintenance does not exceed the original depth and capacity of the channel and the original location of the drain is not altered.

**75. SERVIENT ESTATE.** Any parcel of real property, usually at a lower elevation, which is subject to a legal right allowing a dominant estate to drain water onto it.

**80. STREAM, INTERMITTENT.** A natural drainage channel indicated by a dot and dash blue line on the most recently published USGS 7.5 minute quadrangle maps.

**85. STREAM, PERMANENT.** A natural drainage channel indicated by a solid blue line on the most recently published USGS 7.5 minute quadrangle maps.

**95. VESTED DRAINAGE RIGHT.** A right to drain water from one property to another which has been established on the basis of SDCL 46A-10A or 46A-11A. Any natural right acquired before July 1, 1985 is deemed vested. Drainage with man-made origins or improvements acquired prior to July 1, 1985 is deemed vested if recorded at the register of deeds office before July 1, 1992. Drainage districts are exempt from the recording requirements.

**100. WATER COURSE.** A fixed and determinant route, either natural or man-made, by which water has flowed from one parcel of real property to another and by which water has been discharged upon a servient estate for a period of time, on such a regular basis and in such quantities as to make it a predictably continuous activity. It is not necessary that the force of the flow of water be sufficient to form a channel having a well-defined bed or banks.

**105. WATERSHED.** The area of land which drains, either directly or indirectly, into a slough, pond, lake, stream or water course.

**110. WETLAND.** Those areas which have a predominance of hydric soil, are inundated or saturated by water for at least 15 days during a growing season, and under normal circumstances support hydrophitic vegetation. Reference maps may include the U.S. Natural Resources Conservation Service wetland maps and the U.S. Fish & Wildlife Service National Wetlands Inventory.

**115. REGISTERED AND RECORDED DRAINAGE SYSTEMS.** Any drainage system that has been properly filed at the Lake County Courthouse with the Administrative Official.

## **ARTICLE 2.00 DRAINAGE PERMITS**

**SECTION 2.01. PERMITS REQUIRED.** A drainage permit shall be required prior to commencing the excavation for, or the construction or installation of, a drainage project including, but not limited to, the following:

- 1) Construction or installation of a surface or closed drain ~~located within a watershed area.~~
- 2) Any draining, filling, diverting, in whole or in part, of a pond, wetland, or lake or filling of a drain.
- 3) Construction of any lateral drain.
- 4) Modification of any permitted drainage with the intent of deepening or widening any drainage channel, increasing the size and/or depth of any drainage tile, or the extending or rerouting any drainage work.
- 5) Repairing, replacing or improving any drain.
- 6) Improvements to a drainage district or a coordinated drainage area which were not included in the original plans.
- 7) Any established municipality which drains or authorizes the drainage of water onto rural lands lying outside its boundaries shall, to that extent, be subject to the provisions of this Ordinance. **Is this being enforced?**

**SECTION 2.02. DRAINAGE DISTRICT OR COORDINATED DRAINAGE AREA PERMITS.**

Each individual drainage project constructed as a part of a drainage district or coordinated drainage area shall require a separate permit. However, multiple applications may be reviewed as a single project and notification shall be made accordingly.

**SECTION 2.03. APPLICATION FOR A DRAINAGE PERMIT.** Any person required to obtain a drainage permit under this ordinance shall file an application on a form as provided by the County and the required filing fee with the Administrative Official. The applicant shall provide a detailed site plan showing the location of the proposed construction. The site plan shall include a description of the type and size of the drain, and the location of the proposed outlet. Any application for a proposed drainage project which would empty into an existing drainage system shall include a description of the type and general location of the existing system. The application shall include a copy of any recorded vested drainage records and/or a copy of the U.S. Natural Resources Conservation Service or NRCS CPA-026 with certified drainage systems and referenced wetland maps. The applicant must obtain written approval of the governing agency for any drainage into a road right-of-road way. If the Administrative Official determines that the application is incomplete or if the information contained therein is insufficient to make an informed decision on the application, the application shall be returned to the applicant for revision. The Administrative Official Drainage Board may also require that the applicant provide a detailed survey prepared by a professional engineer or surveyor. The applicant shall also provide copies of the complete application to other affected counties if the application be determined to be of statewide or inter-county significance. This may be better stated if it is changed into a list of “shall do” and “may do” – See below.

The contractor, installer or landowner shall provide to the Planning Department, the GPS data for installed tile in decimal degrees or degrees - minutes seconds electronic format. Contractors or installers without GPS capabilities shall provide an as - installed map for the tile. This information shall be provided not less than 180 days from final date of installation.

The applicant must:

1. File an application on a form as provided by the County and the required filing fee with the Administrative Official.
2. Provide a detailed site plan showing the location of the proposed construction. The site plan shall include a description of the type and size of the drain, and the location of the proposed outlet.
3. Any application for a proposed drainage project which would empty into an existing drainage system shall include a description of the type and general location of the existing system.
4. Include a copy of any recorded vested drainage records and/or a copy of the U.S. Natural Resources Conservation Service or NRCS CPA-026 with certified drainage systems and referenced wetland maps.
5. The applicant must obtain written approval of the governing agency for any drainage into a road right-of-road way.



6. The contractor, installer or landowner shall provide to the Office of Planning & Zoning, the GPS data for installed tile in decimal degrees or degrees-minutes seconds electronic format. Contractors or installers without GPS capabilities shall provide an as-installed map for the tile. This information shall be provided not less than 180 days from final date of installation.

In addition, the applicant may be required to do the following:

1. The ~~Administrative Official~~ Drainage Board may also require that the applicant provide a detailed survey prepared by a professional engineer or surveyor.
2. The applicant shall also provide copies of the complete application to other affected counties if the application be determined to be of statewide or inter-county significance.

If the Administrative Official determines that the application is incomplete or if the information contained therein is insufficient to make an informed decision on the application, the application shall be returned to the applicant for revision.

#### **SECTION 2.04. NOTIFICATION TO OTHER PARTIES.**

For all hearings required pursuant to this article, the County shall, at the applicant's expense, publish notice in a newspaper of general circulation in the area of the proposed drainage once a week for two consecutive weeks. The final published notice shall be published not more than fifteen days, nor less than five days, before the date set for the hearing. At the county's direction, the applicant shall prominently post the property in a manner most visible to the nearest public right-of-way giving notice for the permit hearing; said posting shall be in place during at least fourteen days immediately preceding the permit hearing. The County shall also, at the applicant's expense, give notice by postage prepaid, certified mail, not more than thirty days nor less than ten days from the date set for hearing to:

- 1) All downstream landowners, including established municipalities riparian to the watercourse into which water will be drained, for a distance of 1 mile from the drain outlet. Additional notification may be required at the discretion of the County.
- 2) Any adjoining county which should be directly affected by the water to be drained. For work being done within one mile of their county line.
- 3) The South Dakota Departments of Game, Fish & Parks and Environment & Natural Resources, and US Fish and Wildlife Service if affected.
- 4) The State Highway Department, County Highway Department, Boards of Township Supervisors, for any proposed drainage which will affect the right of-way of any highway or roadways.
- 5) Any person who has notified the County in writing of the person's objection to the drainage project proposed, and who has requested in writing notification of such hearing on the drainage project proposed.

6) The local U.S. Natural Resources Conservation Service.

**SECTION 2.04.1 DRAINAGE PERMITS IN LP 1, LP 2, AND LP 3 DISTRICTS**

Due to the unique situation with the LP 1(I), LP 2(II), and LP 3(III) Districts, a proposed building permit being issued in these areas shall require information relating to the drainage that will be conducted or affected in the course of the building permit being completed. New drainage must be identified as a part of the building permit, a drainage permit, and drainage plan, detailing how runoff from said building will be addressed is required. The person or entity pursuing the drainage work and permit would be required to obtain the necessary signed waivers of adjoining land owners, the appropriate lake association, or homeowner's association, and any road district, if applicable. Definitions of these districts are needed since this is a stand alone document. Are these being enforced with building permits? Are they required to comply with this section?

**SECTION 2.05. DRAINAGE APPLICATION FEE.** A non-refundable fee of \$50 shall be charged for the filing of drainage applications other than routine maintenance when the applicant has obtained the written approval of all downstream landowners for 1 mile downstream of drain outlet. If the applicant does not obtain the signatures of the downstream landowners, the nonrefundable application fee shall be \$100. The application fee shall be interpreted to apply to each individual landowner where more than one landowner signs a single drainage application.

A non-refundable fee of \$25 shall be charged for any permit for routine maintenance per quarter section (160 acres). This fee would be waived if the drainage features are on file in the courthouse within one (1) year of approval of this ordinance or within one (1) year of the purchase of a parcel of property. This fee may be waived if an old drainage system is rediscovered and if its existence prior to July 1, 1992, can be verified.

~~If drainage work is performed without a required permit, the applicant shall pay a nonrefundable inspection fee of \$100.00 in addition to the permit fee. Is this a fine, or is it an inspection fee? If it is a fine then should it be raised? Is this needed since fines are defined in the state statute? Can this be done? Does the \$100 cap apply here?~~

**SECTION 2.06. AUTHORITY OF THE COUNTY TO WAIVE PERMIT HEARING.** The County Administrative Official shall have the authority to waive a public hearing for a drainage permit meeting at least one of the following conditions: ~~for the following projects: All other drainage permit applications will require a public hearing.~~

- 1) A proposed drainage project wherein the applicant has had the downstream landowners for a distance of 1 mile from the project outlet, sign a waiver stating that they have no objection to the construction of the proposed drainage project. Provided notification to other parties is completed per Section 2.04. **Moved from #4: The County shall have the authority to require waivers from other landowners if the potential impact of the proposed drainage extends a distance greater than that described in item 1 of Section 2.06.**

A permit approved by the County shall not become effective until after five working days following the approval, except for a permit for routine maintenance which shall become effective upon approval. Is waiver the appropriate word here? Use notification instead?

2) Routine maintenance whereas the applicant provides to the County a copy of any Vested Drainage Rights and/or a copy of the U.S. Natural Resources Conservation Service form NRCS CPA-026 with certified drainage systems and attached wetland maps.

~~3) Previously permitted and recorded drainage recorded by the County.~~ Covered in #4 below?

4) Drainage system's existing before July 1, 1992, that were not vested by the July 1, 1992, deadline may be recorded if verified by the County that they existed prior to this date.

Moved from above:

All other drainage permit applications will require a public hearing.

#### **SECTION 2.07. APPEALS OF DECISIONS MADE BY THE ADMINISTRATIVE OFFICIAL.**

Any decision of the Administrative Official may be appealed to the Board. The applicant or any person aggrieved by a decision shall file a written appeal with the Administrative Official within five working days of the official's decision. Upon such filing, the Administrative Official shall forward the appeal to the Board.

**SECTION 2.08. HEARING BY BOARD.** Following notification in accordance with Sections 2.04 and 2.12, the Board shall conduct a public hearing on a drainage permit application or the appeal of an administrative decision.

#### **SECTION 2.09. DRAINAGE APPLICATIONS OF STATEWIDE OR INTERCOUNTY SIGNIFICANCE.**

In determining whether the proposed drainage is of statewide or inter-county significance, the Board may consider the following criteria:

- 1) Proposed drainage would affect property owned by the state or its political subdivisions.
- 2) Proposed drainage of lakes having recognized fish and wildlife values.
- 3) Proposed drainage or partial drainage of a meandered lake.
- 4) Proposed drainage which would have a substantial effect in ~~on~~ another county

5) Proposed drainage which would convert previously noncontributing areas (based on twenty-five year rainfall event - four percent chance) into permanently contributing areas.

When an application is determined to be of statewide or inter-county significance, the county commission or drainage board of each county affected shall make a determination on whether the permit shall be granted. Following notification in accordance with Section 2.04, the Board shall conduct a public hearing on such application. Approval by all affected counties is required for permit approval. In the event that one of the commissions or boards is aggrieved by the decision, the aggrieved county may petition the South Dakota Water Management Board for assistance in accordance with SDCL 46A-10A-9.1 through 46A-10A9.5. **Moved from above .**

**SECTION 2.10. EVALUATION OF PERMIT APPLICATIONS.** At a minimum, the following factors shall be considered in evaluating the impact of a proposed drainage project:

**THIS IS WRITTEN HERE IN BLACK AND WHITE, AND IMPLIES THAT THE COUNTY OR ADMINISTRATIVE OFFICIAL DOES THIS, BUT IT IS NOT DONE, BECAUSE THE COUNTY DOESN'T HAVE THE RESOURCES TO DO ALL THIS. THESE ITEMS DO NOT EVEN SHOW UP ON THE PERMIT. HAVE THE STATE'S ATTORNEY LOOK AT THIS TO SEE IF THIS SHOULD EVEN BE INCLUDED IN THE ORDINANCE. HOW DOES THIS LOOK IN RELATION TO SECTION 36-10A-20 OF THE STATE LAW? WHAT IMPACT DOES THIS HAVE ON THE COUNTY/COUNT Y COMMISSIONERS?**

- 1) Flood hazards, floodplain values;
- 2) Erosion potential;
- 3) Water quality and supply;
- 4) Agricultural production;
- 5) Environmental quality;
- 6) Aesthetics;
- 7) Fish and wildlife values; and
- 8) Considerations of downstream landowners and the potential adverse effect thereon including consideration of the following criteria:
  - a) Uncontrolled drainage into receiving watercourses which do not have sufficient capacity to handle the additional flow and quantity of water shall be considered to have an adverse effect.
  - b) Whether drainage is accomplished by reasonably improving and aiding the normal and natural system of drainage according to its reasonable carrying capacity, or in the absence of a practical natural drain, a reasonable artificial drain system is adopted.
  - c) The amount of water proposed to be drained.
  - d) The design and other physical aspects of the drain.
  - e) The impact of sustained flows.

**SECTION 2.11. CONDITIONS TO PERMITS.** Conditions may be attached to a drainage permit to ensure that the proposed drainage is accomplished in accordance with the purposes of this ordinance.

**SECTION 2.12. NOTIFICATION OF BOARD HEARING.** The degree of notification for a hearing by the Board shall be based on the location of the proposed outlet and the type of water body into which the outlet will discharge. Notification shall be made as indicated in Section 2.04. The following exceptions may be used by the Board to notify multiple downstream landowners within the legal section of the drains outlet and 1 mile downstream as follows:

- 1) Landowners, that are located within municipalities, will be considered notified by;
  - a) a certified letter mailed to the municipalities governing board, and
  - b) a notice of the proposed drainage project published in a newspaper of general circulation as defined in Section 2.04.
- 2) Landowners not located in a municipality will be considered notified by;
  - a) Certified letter to the organization generally accepted as representing these landowner's interests. The Lake associations of Lake's Herman, Madison, and Brant will be acknowledged by this Ordinance as representing individual landowner's adjacent to these lakes, and
  - b) A notice of the proposed drainage project published in a newspaper of general circulation as defined in Section 2.04.

The notice shall be mailed at least 14 days prior to the hearing date. The County may recover any notification costs from the applicant.

**SECTION 2.13. PRESERVATION OF LANDOWNERS RIGHTS AND SOVEREIGN IMMUNITY.** The granting or denial of a drainage permit shall in no way affect the legal rights which may otherwise exist between a landowner and any other property (dominant or servient estate). The County, in considering permit applications, shall be protected by the Doctrine of Sovereign Immunity and shall not be subject to any cause of action or claim brought by any person alleging an impact caused by the water which is the subject of the permit application. Check with State's Attorney on this. Since the County isn't doing anything listed in Section 2.10, then this section probably wouldn't apply.

**SECTION 2.14. EXPIRATION OF DRAINAGE PERMITS.** A drainage permit shall expire and become null and void if the authorized construction is not completed ~~commenced~~ within 365 days of the effective date of the permit unless written approval of an extension is given. Does this need a project ending date? Two years? Limited to two six month extensions. What is current practice?

**SECTION 2.15. COMPLIANCE WITH LAWS OR REGULATIONS NOT AFFECTED BY PERMIT APPROVAL.** A permit approved under the provisions of this ordinance shall in no way remove any responsibility on the part of any landowner, tenant or contractor to comply with all applicable local, state or federal laws or regulations.

## **ARTICLE 3.00 DRAINAGE DISTRICTS, COORDINATED DRAINAGE AREAS, DRAINAGE PROJECTS AND DRAINAGE BASIN UTILITY DISTRICTS**

**SECTION 3.01. APPLICATION FOR REPAIR WORK ON A DRAINAGE DISTRICT.** In the event that maintenance is required in a drainage district in which three or more landowners have voluntarily contributed to the cost of previous maintenance, at least sixty percent of the resident landowners served by the drain may file a petition with the County Auditor requesting the Board to take action regarding the necessary repairs. Such petition shall include a map which shows the boundaries of the benefited area of the district in which assessments will be made to cover the cost of the proposed work, the official name or number of the district, the initial and terminal points and general or exact course of the drain, a description of the proposed maintenance, a site plan showing the location of the maintenance, and a statement that the owners agree to future maintenance and assessment of the drain by the Board. All maintenance work and assessments shall be completed in accordance with SDCL 46A-10A and 46A-11.

**SECTION 3.02. COUNTY ACTION ON MAINTENANCE PETITION.** Upon receipt of a petition to maintain an existing drainage district, the Board shall set a date for a public hearing upon the request. The hearing shall be held within 30 days of the receipt of the petition. Any interested person may appear at the hearing in regard to the petition.

**SECTION 3.03. APPLICATION WHEN DRAINAGE DISTRICT EXTENDS INTO MORE THAN ONE COUNTY.** When the drainage district extends into more than one county, the application shall be made to the county which had jurisdiction over the original drainage district. If the original county with jurisdiction is unknown, application for repair work shall be made to all counties affected.

**SECTION 3.04. ABANDONMENT OF DRAINAGE DISTRICT.** Any drainage district established prior to July 1, 1985 may be abandoned and abolished after a petition has been filed with the County Auditor by not less than 25 percent of the drainage district property owners. The petition shall include the name of the drainage district. The Board shall publish notice and hold a hearing in conformance with SDCL 46A-10A. If less than a majority of drainage district owners' petition for the abandonment of a drainage district, the Board shall schedule an election in accordance with 46A-10A-43 at which the property owners within the district shall decide the fate of the district.

**SECTION 3.05. PETITION FOR 'COORDINATED DRAINAGE AREA.** When the landowners of an area propose to develop a coordinated network of drainage projects, a petition shall be filed with the County Auditor requesting the formation of a coordinated drainage area. The petition shall be signed by not less than 25 percent of the landowners within the area and shall conform to the requirements set forth in SDCL 46A-10A-49. The petition shall include an accurate survey and map' verified by a licensed surveyor which shows the boundaries and area of land included within the limits of the proposed coordinated drainage area. The petition shall also detail the type or types of drainage projects that will be included in the proposed area. The Board shall place the proposed coordinated drainage area map in a convenient public office for at least twenty days for examination by those having an interest in the application, and shall set a date for a hearing on the petition.

**SECTION 3.06. HEARING ON COORDINATED DRAINAGE AREA.** The Board, after publishing notice of the hearing, shall hold a hearing on the proposed coordinated drainage area at which any interested person may appear. If the Board is satisfied that the proposed drainage area is in the public interest and that all requirements of SDCL 46A-10A have been met, it may approve the creation of the coordinated drainage district pending the assent of a majority of the landowners within the drainage area at an election to be held within one month of the hearing. However, if the landowners signing the petition represented a majority of the resident landowners in the proposed district, no election need be held.

**SECTION 3.07. NOTICE OF HEARING.** The Board, prior to holding a hearing on a petition to establish a coordinated drainage area, shall publish notice of the hearing in a newspaper of general circulation in the area affected. The notice shall be published at least 14 days in advance of the hearing date.

**SECTION 3.08. COORDINATED DRAINAGE AREA ELECTION.** Any election regarding a coordinated drainage area shall be held in conformance with SDCL 46A-10A-50 through 46A-10A-54.

The board or commission shall give ten days' notice of an election by publication in an official newspaper in the proposed coordinated drainage area. The vote shall be taken by ballot in a form provided by the Board. The ballot shall include the question on whether a coordinated drainage area should be established and a note informing voters that all costs of the drainage area will be paid by the landowners within the area. Establishment of the area shall be effective upon the approval of a majority of landowners within the district. If a majority vote against the establishment of the drainage area, no further proceedings may be taken on a similar request for a period of two years.

**SECTION 3.09. ASSESSMENT OF COSTS TO COORDINATED DRAINAGE DISTRICT.** All costs associated with the coordinated drainage area shall be paid by the landowners within the district. The County may perform necessary construction and/or maintenance and recover the costs by assessing the benefited landowners within the coordinated drainage area.

## **ARTICLE 4.00 DRAINAGE COMPLAINTS**

**SECTION 4.01. JURISDICTION ON DRAINAGE DISPUTES.** Any landowner may take a drainage dispute directly to circuit court. However, pursuant to SDCL 46A-10A-34, the Board may address any drainage disputes in the unincorporated area of Lake County. The Board may provide that certain types or categories of drainage disputes will not be heard by the Board and must be taken directly to circuit court.

**SECTION 4.02. FILING A COMPLAINT.** Any landowner in the county may file a drainage complaint by setting forth the facts of the drainage dispute in writing and submitting it to the Administrative Official. The complaint shall include the name and address of the complainant, the location of the property which has suffered damage or may suffer damage and the location of the property against which the complaint is being registered. When possible the complaint should

detail the type and location of work, and when the work occurred. The Board may require that a drainage dispute include expert reports from a professional engineer or surveyor.

**SECTION 4.03. ADMINISTRATIVE OFFICIAL TO OFFER POSSIBLE RESOLUTION, DECISION ON JURISDICTION BY BOARD.** Upon receipt of a drainage complaint the Administrative Official shall make an investigation of the facts, offer a recommendation for resolution to the parties involved and, if requested by any affected party, forward the complaint to the Board for a hearing. The Board shall make a determination whether they will accept jurisdiction over the particular type or category of drainage which is set forth in the complaint. If the Board does not accept jurisdiction the dispute may be taken to circuit court. If the Board does accept jurisdiction a date for a public hearing on the drainage complaint shall be set.

**SECTION 4.04. HEARING ON COMPLAINT.** When a hearing has been scheduled the Board shall notify all affected parties of the date and time for the hearing. Any interested individual shall have the opportunity to appear and be heard. The Board may make a decision regarding the drainage dispute at the hearing, may defer the item pending additional information from either of the disputing parties, or may hold additional hearings on the dispute.

**SECTION 4.05. APPEAL OF BOARD DECISION.** Any affected party may appeal the Board's decision on a drainage dispute to circuit court.

**ARTICLE 5.00 ADMINISTRATION AND ENFORCEMENT HAVE THIS SECTION REVIEWED BY THE STATES ATTORNEY TO SEE IF IT IS OK OR IF THE WORDING SHOULD BE TIGHTENED UP, ETC.**

**SECTION 5.01. POWERS AND DUTIES.** The Administrative Official is hereby authorized and directed to enforce all the provisions of this ordinance and establish rules for its administration. The Administrative Official may designate technical officers and/or inspectors or other employees that shall be authorized to assist in the administration and enforcement of this ordinance.

**SECTION 5.02. RIGHT OF ENTRY.** Whenever necessary to make an inspection to enforce any of the provisions of this ordinance, or whenever the Administrative Official or an authorized representative has reasonable cause to believe that there exists upon any premises an ordinance violation, the Administrative Official or an authorized representative may enter such premises at all reasonable times to inspect the same or to perform any duty imposed upon the Administrative Official by this ordinance, provided that if such property be occupied, the Administrative Official shall first present proper credentials and request entry; and if such property be unoccupied, the Administrative Official shall first make a reasonable effort to locate the owner or other persons having charge or control of the property and request entry. If such entry is refused, the Administrative Official or an authorized representative shall have recourse to every remedy provided by law to secure entry.

When the Administrative Official or an authorized representative shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant



or any other persons having charge, care or control of any property shall fail or neglect, after proper request is made as herein provided, to promptly permit entry thereon by the Administrative Official or an authorized representative for the purpose of inspection and examination pursuant to this ordinance.

**SECTION 5.03. STOP ORDER AND INJUNCTION.** Whenever any work is being done contrary to the provisions of this ordinance, the Administrative Official may order the work stopped by notice in writing served on any persons engaged in or causing such work to be done, and any such persons shall forthwith stop such work until authorized by the Administrative Official to proceed. In the event of a violation or threatened violation of this ordinance, the Board, may institute injunction or other appropriate action or proceedings, in addition to other remedies, to prevent the unlawful construction or use of any drainage work.

**SECTION 5.04. VIOLATION AND PENALTY.** Any person or his contractor draining water without a permit or expanding his drainage beyond the extent approved by the permit is guilty of a Class I misdemeanor and may be subject, in addition to any criminal penalty, a civil penalty not to exceed \$1000 per day of violation. Any person or his contractor violating any other provisions of this ordinance is guilty of a Class II misdemeanor and may be subject to a fine of \$200, 30 days in jail or both. Each and every day the violation continues may constitute a separate offense.

**SECTION 5.05. PENALTY FOR IMPROPER FILING.** Any person who causes an improper or incorrect drainage map to be officially filed with the Lake County Register of Deeds shall be assessed a \$100 civil retraction fee by Lake County as a civil penalty, and the incorrect map shall be pulled and stricken from the official drainage record. A new and accurate drainage map would then be required to be filed in connection with the particular piece of property at issue and this new filing would be subject to any applicable fees and assessments in place at the time of the re-filing and would be required to go through any process and procedure that is in place at the time of the re-filing in order to have that drainage officially recorded and recognized. If a person who has been found to have violated this section by having an improper map tiled agrees to adhere to the civil penalty and resubmit proper maps in relation to the affected area, Lake County will agree not to pursue any potential criminal charges in relation to the improper filing.

Approved this 4th day of Nov., 2004 in Madison, Lake County, South Dakota. Board of County Commissioners

Attest: Kay A. Schmidt, Lake County Auditor