
Plaintiff:

Kenneth R. Hostler,

vs.

Defendants:

Davison County Drainage

Commission, Millan Acres LLC 1

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JUDGMENT

Pending before this court is Plaintiff's Motion for Summary Judgment dated March 10, 2021 submitted pursuant to this court's Order dated February 5, 2021. Mr. Gary Leistico of the Rinke Noonan Law Firm appeared as counsel on behalf of Defendant Millan Acres LLC. Mr. James Davies appeared as counsel on behalf of Defendant Davison County Drainage Commission. Mr. David Ganje of Ganje Law Office appeared as counsel on behalf of the Plaintiff Kenneth R. Hostler. The court having held a hearing on the Plaintiff's Motion on March 25, 2021, having reviewed all the submissions of all the parties in support of and in opposition to the Motion, having heard oral argument on the Motion, having considered the applicable law, and having entered this court's oral decision on March 25, 2021, the court rules that Plaintiff's Motion for Summary Judgment shall be granted. The surface drainage permit referenced herein is Defendant Millan Acres LLC's drain tile project application for parcels 03000-10361-303-00 and 03000-10361-304-00, which are in the S A of Section 30, Township 103, Range 61, Davison County, as described in Plaintiff's Complaint. The decision approving the pennit referenced herein is the August 10, 2020 approval of Defendant Millan Acres LLC's permit by Defendant Davison County Drainage Commission's drainage administrator, as described in Plaintiff's

Complaint. SDCL § 46A-10A-1 *et seq.* is also referred to herein as the state drainage code.

Davison County Drainage Ordinance is also referred to herein as the Ordinance. The transcript of the court's oral decision entered at the Motion hearing shall be filed in this case and is incorporated by reference into this final judgment. The court determines that there is no just reason for delay in the entry of this final judgment, and Plaintiff's Statement for SDCL § 15-6-54(b) Certification of Final Judgment is adopted in this Final Judgment.

It is adjudged, decreed, and declared as follows:

1. Plaintiff has standing to challenge the Ordinance and drainage pennit decision under the Declaratory Judgment Act and state drainage code.
2. It is further adjudged, decreed, and declared that the Ordinance provisions allowing for the county drainage administrator to individually approve new drainage projects are in conflict with the state drainage code.
3. It is further adjudged, decreed, and declared that the state drainage code requires a petition, notice and hearing by a board of commissioners or drainage commission in this case.
4. It is further adjudged, decreed, and declared that administrative officials can have no vote in the approval of the drainage permit application under the state drainage code.
5. It is further adjudged, decreed, and declared that the conflict between the administrative approval provisions of the Ordinance, §§2:15, 2:03, 2:10, 2:11 and 2:12, and the state drainage code cannot be maintained and therefore the provisions are void and preempted by the state drainage code in this case.
6. It is further adjudged, decreed, and declared that the administrative approval provisions of the Ordinance are invalid and ultra-vires.

7. It is further adjudged, decreed, and declared that the administrator's decision was inadequate as a matter of law. The administrator erroneously interpreted and applied the law in this case.
8. It is further adjudged, decreed, and declared that the administrator failed to provide a legally adequate explanation for his decision in granting the permit in this case.
9. It is further adjudged, decreed, and declared that the administrator did not provide a proper record to show what he may have considered regarding the required factors and conditions under the state drainage code and the Ordinance.
10. It is further adjudged, decreed, and declared that the administrator failed to properly consider evidence on the required factors and conditions under the state drainage code and the Ordinance at the time of his decision.
11. It is further adjudged, decreed, and declared that the administrator abused his discretion and acted arbitrarily and capriciously in this case.
12. It is further adjudged, decreed, and declared that the manner in which the permit was issued deprived the plaintiff of his due process rights in this case.
13. It is further adjudged, decreed, and declared that the administrative drainage permit approval provisions of the Ordinance violate the Fourteenth Amendment's Due Process Clause and violate the South Dakota Constitution's Due Process Clause under the South Dakota Const, at art. VI, § 2 and are void and unenforceable.
14. It is further adjudged, decreed, and declared that other Ordinance provisions not related to the invalid administrative approval provisions of the Ordinance are unaffected by this Final

Judgment pursuant to *State ex rel. Strauser v. Jameson*. 76 S.D. 490, 81 N.W.2d 304 (1957) on separability and Ordinance § 7:04.

15. It is further adjudged, decreed, and declared that this court's judgment is certified and entered now by the court as a Final Judgment pursuant to SDCL § 15-6-54(b) as there is no just reason for delay.

16. It is further adjudged, decreed, and declared that a permanent injunction is denied without prejudice.

17. It is further adjudged, decreed, and declared that the approved drainage permit in this case is void.

BY THE COURT:
Signed: 4/2/2021 10:59:06 AM



Hon. Chris Giles

Attest:
Johnson, Kathy
Clerk/Deputy

