

Brockway Township
Mulberry Meadows- History and Status of Central Septic System
(as of Mar 2, 2016)

2002-2004: Landworx Midwest, LLC, a Minnesota Limited Liability Company (Landworx), developed the residential plat of Mulberry Meadows in Brockway Township, Stearns County, Minnesota. As part of that plat, the developer, Scott Reinert, installed a central septic system.

- Mulberry Meadows was platted in 2004 by developer Scott Reinert. It was intended to have 43 homes, but 26 were built before the housing market crash.
- The Property was zoned R-1 (30,000 Sq Ft) meaning each home was to be 1 acre in size. However, County Ordinance stated that size could go to 15,000 Sq Ft if a central septic system was installed instead of individual systems.
- On Sep 16, 2004 the Stearns County Planning Commission, and ultimately the Stearns County Board of Commissioners also approved the plan with lot sizes of 15,000 Sq Ft.
- Brockway Township had no authority over zoning prior to 2005, but the Township voiced our desire to Stearns County to have larger lots in Mulberry.
- Because of a concern over a high level of nitrates in the groundwater, Stearns County required Reinert to install a central sewer system to treat wastewater. Eventually, the system was supposed to be turned over to Brockway Township or a private homeowners' association to operate, but that didn't happen for reasons outlined in this paper.
- The Mulberry Meadows system has never met state standards for the amount of nitrates that it releases. The Minnesota Pollution Control Agency (MPCA) tried to work, through a Compliance Agreement, with Mr. Reinert to get the community sewage treatment system into compliance.
- Treatment and disposal of wastewater from homes in Mulberry Meadows is accomplished at a community sewage treatment system (CSTS), under a State Disposal System (SDS) permit issued by the MPCA.
- The CSTS consists of a collection system of lateral pipes and mains; aeration, filtration and chemical treatment systems; constructed wetlands; and disposal fields.
- The CSTS was owned and operated by Stearns Utilities, which is also the regulated party under the SDS permit #MN0066877, dated May 12, 2010. Stearns Utilities also entered into a Schedule of Compliance dated August 19, 2008, and an Amended Nitrogen Mitigation Plan for the CSTS.
- The CSTS was engineered and constructed by North American Wetland Engineering, P.A. with a completion date in the fall of 2005 and a start-up date on November 3, 2005.

- The CSTS exists on Outlot A within the plat of Mulberry Meadows. Outlot A was owned by Landworx. Additionally, various control facilities related to the CSTS exist within a separate access control room of a maintenance building that was owned by Landworx on Outlot A. (Unit B, 5421 Loganberry Circle)
- Stearns Utilities leased the portion of Outlot A containing the CSTS and the control room from Landworx under an annually renewable lease for nominal consideration.
- Homeowners each paid a monthly fee to the developer of approximately \$50/Month to operate the system.

In late fall of 2009: Landowners living in the Mulberry Meadows development begin talking with Brockway Township Supervisors, outside of Board meetings, regarding the issues with their community wastewater treatment system (backups, smells, etc.) and the debris accumulating on Outlot A property where the septic system operates.

- A landowner sent a letter to the MPCA and Attorney General's office, but was not satisfied with the reply.
- Landowners again contacted the Town Board to alert them to the fact that the Developer, the MPCA or the Attorney General's office had not satisfactorily addressed their complaints.
- The Town Board investigated the matter, contacted the MPCA and Stearns County, and determined that the wastewater treatment system was not operating within the MPCA permit requirements and never had.

Beginning January of 2010: Landowners come to the Township to discuss the matter.

- The Township reviewed and investigated the matter and around April 2010 sat down with the Developer and his Attorney, Stearns County staff, and the Township Chair with the Township Attorney. Developer begins to remove debris from area and discussions begin with Developer's Attorney to try to resolve the issues with the system and how it can be managed properly.
- The Township indicated that if an agreement and conditions could be met, they would help the landowners and manage the system.
- By fall of 2011, there had been no progress and the landowners again came to the Board for help. The Township told them that they had no legal standing and that there was not much that could be done except for the possibly of establishing a Subordinate Service District (SSD), with conditions, since neither parties (township and landowners) had ownership of the system.
- The landowners proceeded with a petition to consider creation of an SSD to do wastewater and stormwater services. A Public Hearing was held on the 29th of

December 2011 after legal notice was given and all legal requirements had been met. The Developer's Attorney was in attendance at the Public Hearing and understood the conditions placed in the Resolution. The resolution was mailed to everyone inclusive of the Developer. Those conditions were never met.

- The Township proposed to contract with EcoCheck MSA to provide it with technical and management services related to wastewater treatment systems within the Township. EcoCheck also prepared a work plan, to be implemented over a three-month period, to provide technical and management services related to the CSTS, in anticipation of the transfer of the CSTS to the Township.
- The Township also contracted with Mike Brandt an engineer with MFRA, Inc. (MFRA) to provide technical and engineering services relating to its investigation of the design and construction of the CSTS for compliance with the MPCA permit. MFRA prepared a work plan to provide technical services related to the CSTS, in anticipation of the transfer of the CSTS to the Township.
- All of these were done in a good faith effort to bring the CSTS system into compliance and operating order for the residents in the subdivision.

January 2011: The Township begins working with the Developer's Attorney who provided financial documents and conditions for a resolution.

- January 5, 2011 Developer provides financial information to his Attorney who forwards it to the Township's Attorney for review.
- On January 12, 2011 Eco-Check, on behalf of the Township, is granted permission to do a pre-inspection of the system. Pictures and a report were produced.
- Brockway Township attempted to negotiate with Stearns Utilities for the transfer of the CSTS to the Township. The Township prepared 8 separate draft versions of the "Technical & Management Services Agreement" for the Township to manage and operate the CSTS and once operating properly to take it over completely. Further, Brockway Township also prepared 5 draft versions of the "CSTS Transfer Agreement" for the Township. Unfortunately, the Township and Stearns Utilities were unable to come to an agreement on the issues and negotiations were discontinued.
- Many iterations of agreements and transfer of title documents were drafted and done over the next months; however, it became apparent that the Township and Developer could not reach an agreement.
- The Township continued to meet informally with the MPCA and the County in an attempt to facilitate bringing the CSTS into compliance with the MPCA permit.
- At the end of the year, Stearns County proceeded to a settlement agreement with the Developer. The subdivision agreement between Stearns County, Minnesota, and

Landworx required that the CSTS be owned and operated by either a special district to be formed by the Township or by a customer owned utility. **The Township was not a party to this Agreement.**

- Up to this point in time about \$30,000 had been spent on the issue by Brockway Township.

2012: A meeting was scheduled in February 2012 due to the landowners continuing to object about the situation that had not been resolved.

- A lawsuit was commenced by the MPCA against the Developer and the County became part of that lawsuit.
- In the next months that followed, the Attorney for the Developer removed himself and the whole process went into limbo. Some dialogue continued with the County to find a resolution on the matter.
- In October 2012, Stearns County served the Township with a lawsuit that includes everyone (MPCA, Developer, Bank and the Landowners in Mulberry Meadows).
- Minnesota Association of Townships (MAT) legal counsel is notified and the Township now becomes part of the litigation. Part of the legal fees are paid by the Township insurance with MAT.
- Stearns County intervened in the MPCA's lawsuit against Reinert in hopes of reaching a resolution and making sure any penalties collected go toward fixing the sewer system.
- The county hired an engineering firm to study the sewer system and recommend options for fixing it. According to the report from Barr Engineering, even if it had been operated properly, the system never could have met the state's nitrate standards.
- Barr Engineers' proposed adding to the system some new technology that the engineers were 99 percent sure would meet the MPCA's current rule, which allows a maximum of 10 milligrams of nitrates per liter as a yearly average. The Mulberry Meadows system had been averaging about 17.3 milligrams per liter. These limits are based on federal drinking water standards to protect infants and pregnant women from excessive nitrates, which can cause a potentially fatal blood disorder known as blue baby syndrome.
- The estimated cost of the fix was about \$200,000, which the County agreed to pay upfront and try to collect from Reinert.
- However, the new stricter MPCA rules would require the system to meet that 10 milligram limit every month — something Barr Engineering said could not be done.
- Meeting the stricter standard would require building a different treatment system that could double the cost to between \$350,000 and \$500,000, plus it could increase maintenance costs.
- "It's quite a bit more than I think anybody's ... willing to front," Attorney Miller said from Stearns County.

- Another proposal was to install individual septic systems for a few of the homes, putting the sewer system below a threshold of 10,000 gallons a day. Systems that treat more than that fall under MPCA regulations.
- That would still be costly — an estimated \$8,000 to \$12,000 for each septic system, Miller said. Plus, septic systems provide almost no treatment of nitrates, so the environmental benefit of the centralized system would be lost, he said.
- Adding to the complications was a deadline of 2016, when all the undeveloped Mulberry Meadows lots as well as the sewer system were to go into tax forfeiture. “If that happens, it’s likely all the homes would have to install septic systems”, Miller said.
- Many of these homes would not be able to place one system on their property due to their small sizes (15,000 square feet allowed).

2013: Litigation continues.

- Discussion and negotiations continue off and on during the year until fall 2013 when the process begins to move into the Courts where mediation is first ordered before going to trial.
- The Township continues to attempt to determine how to bring the CSTS into compliance and to negotiate with the parties to the lawsuit under the terms and conditions that the Township would be willing to accept and operate the CSTS either by itself or in cooperation with Stearns County.
- The Mulberry Meadows system never met state standards for the amount of nitrates it releases. The Minnesota Pollution Control Agency had fined Reinert penalties nearing \$1 million that he never paid.
- “Reinert agreed to meet the conditions of his permit, including providing a safe and reliable treatment system”, said the MPCA’s case lead, Teri Roth. Reinert was given a full year after the first enforcement action in 2008 to fix the system, but he failed to take action.
- Reinert said he wanted to help, but he didn’t have money both to pay the fines and to fix the sewer system. Although he never offered to “fix” the system.

2014: Litigation continues.

- The Township continues to attempt to determine how to bring the CSTS into compliance and to negotiate with the parties to the lawsuit under the terms and conditions that the Township would be willing to accept and operate the CSTS either by itself or in cooperation with the County.
- February 2014 - Stearns County and Brockway Township Attorneys work on a Joint Powers Agreement for the residents’ consideration outlining the terms for operating the CSTS.

- The proposed solution put a portion of the residents (six) on a central septic system and a portion of the residents on an individual septic system.
- At this point in time, there were three options for resolution:
 1. The Township takes over, runs and manages the central septic system (once system is fixed to operate properly).
 2. Those homeowners getting their own septic system will manage it themselves.
 3. The homeowners establish a homeowners association and run and manage the central septic system.

Aug 2014- The Township accepts a dismissal without prejudice—meaning that if there were a series of unlikely events that brought this case back to the forefront that the lawsuit would not be barred by the prior litigation.

- Late fall 2014- Stearns County, Reinert, and the homeowners come to an agreement.
 - ✓ The County upfronts money to install some private (six) septic systems.
 - ✓ Reinert agrees to stipulate special assessments against the lots. (note that Reinert failed to pay property taxes on the lots from the year 2004 and forward) When the lots go tax forfeit, it wipes all liens, mortgages, and back taxes. The County can then recertify the assessment, which must be paid before any lot can be sold. The County never comes into title on any of the lots.
 - ✓ Reinert agrees to give the septic system and building to the homeowners association.
 - ✓ The homeowners association agrees to hire a company to operate the septic system.

2015: Litigation ends when the court decides the Township has no responsibility in taking over the Mulberry septic system, a system that does not operate properly.

- Feb 2015- The residents form their own homeowners' association.
 - ✓ The Homeowners' Association was officially incorporated February 16, 2015.
 - ✓ The Declaration for the Homeowners' Association was recorded on February 23, 2015.
 - ✓ May 1, 2015 is the date the system – land, building and all else – transferred to the Homeowners' Association free and clear.
- As of January 2015 nearly \$60,000 of Township money had been spent on the Mulberry Meadows issue. Nearly \$30,000 of that started in 2012 when the Stearns County locked the Township into litigation.

- The Township tracked this money with the intention that the township was to recover the money either from Stearns County or the Mulberry Meadows residents. It is now known that it will not be possible.
- The county agreed to one of the proposed solutions: removing six homes from the central sewer system and installing individual septic systems for those homes. That puts the sewer system below 10,000 gallons a day, the threshold for an MPCA permit. The county plans to make improvements to the existing plant and homeowners' association takes it over.
- 6 individual septic systems were installed.
 - ✓ The receiving homeowners are responsible for \$2500 each, with the option of paying that amount as assessed installments. The County paid the balance.
 - ✓ The County's cost on this will get rolled into the assessment against the vacant lots. Because of the retrofitting, deep tanks and pressurized drainfields, these were expensive systems. These were the most expensive single line-items of the whole endeavor, representing half or more of the expenses to date.
 - ✓ The County had to look at 8-10 properties and design 7 systems – to get 6 in the ground.
 - ✓ There is no environmental advantage to those 6 systems. Common sense says they should have left all lots on, but the MPCA would not budge the criteria. It was the only way to get this under a County permit and out of the MPCA permit without continuing this litigation well into 2016 and possibly beyond.
- The cost to upgrade the system was paid by the county, with plans to assess those costs onto 17 vacant lots in the development in hopes of collecting them when those lots eventually are sold.
- As of Dec 2015, money spent by Stearns County on the issue:
 - ✓ For litigation and project cost combined was \$264,000.
- The option to remove six homes off the system was the MPCA's proposal. The county initially opposed it because individual septic systems won't provide the same nitrate removal as the central plant.
- The vacant lots are in tax delinquency, heading for tax forfeiture in 2016.
 - ✓ They are two payments away from the start of the forfeiture process – October 15, 2015 and May 15, 2016.
 - ✓ As of May 15, 2015, the total back taxes penalties and interest was \$70,287.30.
 - ✓ By the time of tax forfeiture next year, they would be approaching \$85,000.
- September 2015- The lawsuit is complete:
 - ✓ Reinert does not have to pay any fines to the MPCA. Instead of penalties, he agreed he will receive no financial benefits from the remaining lots.

- ✓ The County reached a final settlement with the residents on or about April 28, 2015 – so the residents, like the Township, are out of the litigation.
- What is MPCA's position?
 - ✓ During late 2014, the MPCA agreed that any money collected from the Developer should go first to pay the County's actual expenses – both litigation and project. They signed a stipulation to that effect and it was filed with the Court.

Summary: Two points:

1. It is the opinion and position of of the Brockway Township Board of Supervisors that Stearns County used poor negotiation techniques when they pulled the Township into litigation. There was no need to do so. It would have been far more productive if they would have simply requested our participation in the development of a solution set for Mulberry Meadows. We would have done so willingly. Stearns County never asked. The litigation forced the Township to spend money needlessly. Money that we were unable to recover.
2. The Township, at least under the current board members, will look very carefully and cautiously at any future requests for us to manage a Subordinate Service District for wastewater in the Township. There is no legal obligation for a Township to do so and thus we will consider requests but make sure that upfront, all details are outlined to protect the Township.

George Fiedler, Brockway Supervisor, 03/02/2016