

MINUTES

STUTSMAN COUNTY WATER RESOURCE BOARD

August 25, 2021

The regular meeting of the Stutsman County Water Resource Board was called to order by Chairman Joel Lees on August 25, 2021 at approximately 9:00 a.m. in the Commissioner's Room of the Stutsman County Courthouse. Members present were Joel Lees, Anthony Roorda, John Schock, Arlyn Schmidt, and Greg Spenningsby as alternate for the Complaints before the Board. Abbagail Geroux, Secretary of the Board, was also present. Members of the public present were Cindy Schultes on behalf of Erika Schultz, Ruben Schultes, Conrad Schultz, Larry Loose, and Zach Burmeister, attorney for Larry Loose, who appeared by phone. Dennis Clark participated as a member of the public for the two complaints presented to the Board.

MINUTES

The first order of business was to review and approve the minutes of the July 28, 2021 regular meeting and August 13, 2021 special meeting. Upon review, a motion was made by Anthony Roorda and seconded by John Schock to approve the minutes as read. Motion passed.

W-635 - JEROME KOENIG - & W-636 - CINDY SCHULTES - COMPLAINTS OF UNAUTHORIZED DRAINAGE IN THE NE QUARTER OF SECTION 33, TOWNSHIP 143N, RANGE 68W, STUTSMAN COUNTY, NORTH DAKOTA

The next order of business was to address the complaint of Jerome Koenig. Jerome Koenig did not appear, so therefore the Board decided to address the complaint of Cindy Schultes. Ms. Geroux notified everyone present that she would be recording this meeting. The Board heard statements from Cindy Schultes, who was first sworn in. Ms. Schultes first presented additional statements regarding the complaints. She provided additional documents to the Board, which were also provided to Mr. Loose and contained in the Board's filing. Ms. Schultes expressed her concern that continuous pumping of the wells will create a significant amount of water on her property. Mr. Loose purchased the property as-is and he violated the terms of the permit in 2019, because the 2019 application did not include the installation of a pump. Ms. Schultes questioned if the 2019 permit was valid. Ms. Schultes acknowledged that the tiling work was done in May of 2021. She was requesting that the Board remove the tiling and the pump. Ms. Schultes also noted that

after the site visit on August 13, 2021, the pump has been operating continuously.

Mr. Burmeister then presented on behalf of his client. He noted the correspondences that were provided to Ms. Geroux, and Mr. Burmeister also addressed two areas of concern that Ms. Geroux had raised to him, in particular with regards to the language of the new tiling bill. Of particular concern was the removal of language in subsection 1 regarding its impact on describing the total size of the tiling project. The second part of the discussion was related to language that was added to the bill, indicating that pumps were to be exclusively permitted under this section. It was noted that both of these sections created a certain level of ambiguity within them, and so there were concerns raised by Mr. Burmeister and Ms. Geroux regarding its interpretation. Mr. Burmeister did acknowledge that the actual tiling work occurred after the law was in place. Ms. Geroux also provided further discussion to the Board regarding the status of the law and its application to the complaint before the Board. Ms. Geroux indicated that the new law does apply to the complaint before the Board, because the work was done during the effective date of the new law.

Ms. Geroux indicated she reached out to Sean Fredricks regarding the interpretation of the new law that would be subject to permitting. Notably, the new law discusses that any project over 80 acres must be permitted. An outstanding question was with the removal of some language from the prior version of the bill, which specifically indicated that you would not use the watershed area of the project. This language was removed, so questions were raised regarding the intent of that language. Mr. Fredricks, who was familiar with this bill, indicated that it was not the intent to include the watershed area in the tiling project, but rather it was simply a matter of cleaning up the language. The intent of this bill was that it just be the footprint of the project. Based on this, the Board asked if the tiling project matched the map that was previously provided to the Board in 2019. Mr. Loose, who was also sworn in, indicated that he believed the tiling that was done does match the 2019 map. There were some discussions with the Board regarding if there would be any effect on ground water. Anthony Roorda indicated that the tiling would not affect the ground water, because the tiling pipes themselves were not placed low enough that they would affect the ground water in the area. At this time, at approximately 9:45 a.m., Jerome Koenig arrived at the meeting. The Board was then discussed their ability to take specific action on this matter, based on the intent of the new bill. Based on the discussion, Anthony Roorda moved and John

Schock seconded a motion to deny the complaint. Arlyn Schmidt indicated that he felt that the actions taken by Mr. Loose were not neighborly, but based on the new law, there is nothing that the Water Resource Board could do about it. Based on this, a Roll Call vote was taken. Anthony Roorda, John Schock, Joel Lees, and Arlyn Schmidt all voted in favor. Greg Spenningsby abstained. The complaint was denied. Larry Loose left the meeting at 10:15 a.m.

Next the Board addressed the complaint of Jerome Koenig. At this time, the Board worked with Mr. Koenig to confirm the location of the complaint. Mr. Koenig was also sworn in, and he acknowledged that the complaint was supposed to be on the same quarter of land owned by Larry Loose as the complaint presented by Ms. Schultes, which would be the NE quarter of Section 33, rather than the SW quarter that is listed on the complaint. Mr. Koenig expressed his concern about the pump. He indicated that he did not want the water and acknowledged that he would have to absorb the ground water and water coming through the tiling, but did not want to absorb water that was being pumped out. Joel Lees explained to him again that the footprint of this project is clearly under 80 acres, and therefore the Board did not have jurisdiction on the matter. Anthony Roorda moved and Arlyn Schmidt seconded a motion to deny the complaint. Again, it was noted by Arlyn Schmidt that he did not feel that this was neighborly, but that this was not within the jurisdiction of the Board. A Roll Call vote was taken. Anthony Roorda, John Schock, Joel Lees, Arlyn Schmidt, and Greg Spenningsby all voted in favor of the motion. Motion passed.

It was presented to both of the complainants that they have the ability to appeal the Board's decision to the State Water Commission. It was requested that Ms. Geroux provide them in the denial letter where they could present their appeal.

BILLS, FINANCIALS, AND OTHER BUSINESS

The Board then turned to regular business before the Board. The Board noted that they received a notification of tiling, however, in further review, the legal description on the notification does not appear to be correct. They asked Ms. Geroux to obtain corrected notification for the Board. Next, the Board reviewed the Bills and Financials. Anthony Roorda moved and Arlyn Schmidt seconded a motion to approve the bills and financials as presented. Motion passed. Dennis Clark then reported on the Upper Sheyenne River Joint Board. He noted that the Board received the pilot funding of one million dollars for bank restoration. They also have not had a meeting since the

Board was made aware of Griggs County's intent to pull out of the Upper Sheyenne River Joint Board. It is not clear if that is actually occurring.

CHECK NUMBERS

- | | |
|---|-------|
| 1. ND Workforce Safety & Insurance - \$250.00 | #2823 |
| 2. Forum Communications Company - \$232.00 | #2824 |
| 3. Dalsted & Ryan, P.C. - \$1,413.75 | #2825 |

Seeing no further business before the Board, Arlyn Schmidt moved and Anthony Roorda seconded a motion to adjourn the meeting. Motion passed. Meeting adjourned at 10:55 a.m.

RESPECTFULLY SUBMITTED:

ABBAGAIL GEROUX
Secretary

BOARD APPROVAL OF MINUTES

The board approved the minutes this ____ day of _____, 2021.

JOEL LEES, Chairman, or
ANTHONY ROORDA, Vice-Chairman