

MINUTES

STUTSMAN COUNTY WATER RESOURCE BOARD

August 26, 2020

The regular meeting of the Stutsman County Water Resource Board was called to order by Chairman Joel Lees on August 26, 2020, at 9:00 a.m. Members present were Arlyn Schmidt, Dennis Clark, John Schock, and Joel Lees. Additionally, present by phone was Jason Odenbach, supervisor of Paris Township, and Lance Hazer. Individuals present at the meeting were Terry Wanzek, Barry Hazer, Jack Dwyer representing Barry Hazer, Kim Hieb, and Denny Ova. Additionally, Abigail Geroux, Secretary for the Board, was present.

MINUTES

The first order of business was to review the minutes of the July 29, 2020, regular meeting. Upon review, John Schock moved and Arlyn Schmidt seconded a motion to approve the minutes. Motion passed.

W-624 COMPLAINT OF UNAUTHORIZED DRAINAGE- Barry Hazer

The next item on the agenda was to discuss the Complaint of Unauthorized Drainage by Barry Hazer. Joel Lees requested Ms. Geroux provide a short background on the complaint process. Ms. Geroux indicated that because this matter was pertaining to a Complaint that she would be recording that portion of the meeting, and therefore that portion of the meeting was recorded at that time. Ms. Geroux presented a short background regarding the Complaint by Mr. Hazer back in 1984. At the time, Mr. Hazer and the other property owner, Mr. Delton Hieb, ended up agreeing to place two dams on Mr. Hieb's property. As part of that complaint process, the Water Resource Board engaged an engineer to conduct a review of these structures to determine if they would sufficiently hold back water on the property. Based on the engineering report, the engineer concluded that the dams would adequately retain water on Mr. Hieb's property. However, the Stutsman County Water Resource Board did order that a certain drainage cut be closed between areas identified on a map as "Between C and D". This order of the Water Resource Board was then appealed to Stutsman County District Court. During the proceeding of the Stutsman County District Court, the Court did find that the watershed area to be drained was approximately four hundred (400) acres that at the time Delton Hieb

acknowledged he did take actions on his property in order to drain water. However, the Judge found that evidence did not show that there was any adverse effect to the downstream landowner because of the installation of the two retaining structures. Therefore, the Judge dismissed the Order to close the drain. A copy of the judgement and other documents will be placed in the complaint file. Additionally, documents pertaining to that judgement are available for review at the Stutsman County Courthouse.

Ms. Geroux then explained that the complaint before the Water Resource Board encompasses both the area that was the subject of the 1984 complaint and also Mr. Hazer is alleging that there has been activity since the complaint was filed in 1984, which is affecting his property located in two different townships; Paris Township and Valley Spring Township.

The Board then invited Mr. Hazer to present to the Board his complaint. Mr. Hazer was sworn in. Mr. Hazer provided a more thorough background on the Complaint which occurred in 1984. Notably, Mr. Hazer indicated that the 1984 Complaint actually began in April of 1983 when Del Hieb inquired with the Board to seek approval for other actions on his property. Mr. Hazer then outlined the number of meetings that make up the prior proceeding and the Complaint. Mr. Hazer indicated that he was not notified about the subsequent appeal filed by Delton Hieb. Mr. Hazer did acknowledge receiving a document from the Court from 1986 regarding the judgement. Mr. Hazer also explained that he had to build dams on his property so as to not lose his farmstead. Mr. Hazer indicated he previously sought out the approval of the Stutsman County Commission, who indicated to him that he could do what he had to do to save his farm. Mr. Hazer indicated that at one point he had to rebuild one of the dams because the water kept coming through and the water began to circle around to the North side of his property at which point, he installed another dam. Mr. Hazer also indicated that the County also placed a third retaining structure located between Paris and Valley Springs Townships. Mr. Hazer indicated that this structure was not ripped and it is currently one-third to one-half full, but this structure is leaking. Mr. Hazer also indicated that the dam located behind his house is currently leaking. Mr. Hazer also indicated that there appears to be a number of muskrats running around these dams and he is not sure if the muskrats are causing the dams to leak or if it is from another cause. Mr. Hazer alleged that after the 1984 Complaint, Mr. Hieb broke up the remaining part of the Northeast Quarter of Section 5, and that almost all of that water is coming down on Mr. Hazer's property. Mr. Hazer claims that water is coming on his property that never came before. Mr. Hazer noted that Paris

Township installed two culverts in the roadway to accommodate the additional water. Mr. Hazer indicated that he is unable to continue to maintain the dams and is concerned about losing his farm and feed lots. Mr. Hazer expressed his concern that he does not have three years' worth of meetings in order to save his farm.

Next, the Board heard from Kim Hieb, the current owner of the Northeast Quarter of Section 5. Mr. Hieb indicated that he did not know what happened back in 1983 when the dams were installed. Mr. Hieb disputed the fact that the area drains four hundred acres. He indicated the area only drains about one hundred acres. Mr. Hieb indicated that his property contains all kinds of potholes, and he is not sure why it does not show up on the maps. Mr. Hieb did indicate that he does have potholes on his land. Mr. Hieb also indicated that there was a dam on the Southeast Quarter of Section 5 that was recently washed out and this could be causing the problem. Mr. Hieb stated he visited with Mr. Hazer about it but he never heard back from him. Mr. Hieb disputed that he ruined a County road.

There was further discussion between the Board and the parties. Ultimately, both of the parties indicated a desire to have the Board Members to take a look at the property themselves. Additionally, there was discussion regarding the dam in the Southeast Quarter of Section 5. Mr. Hazer indicated that as part of this dam there is a Spillway, and that this Spillway washed out. Mr. Hazer indicated that there is a ravine big enough to bury a truck. Mr. Hazer provided photographs and he presented those photographs to the Board showing some of this property. Mr. Hazer also indicated he would like a survey showing the amount of water coming onto Mr. Hieb's land. Arlyn Schmidt inquired when the color photos were taken, and Mr. Hazer indicated that they were taken this year. Arlyn Schmidt asked whether the dams on his property were leaking but not overtopping, and Mr. Hazer indicated that the dam on the Southeast Quarter of his property is leaking. John Schock then inquired when Mr. Hazer started building the dams, and Mr. Hazer indicated that they were built in 1992 and 1993. Arlyn Schmidt inquired whether the water coming upon the dams had ever been higher, and Mr. Hazer indicated they had not. Arlyn Schmidt inquired whether Mr. Hazer had to build the dams higher, and he indicated no, but that he had to rebuild the East dam but it was not built higher. It was also noted that on some of the documents provided that Dam V was considered the original old dam and the other dam was built on a slough which has been washed out. At this point Dennis Clark moved and Arlyn Schmidt seconded a motion to admit the five photographs as an exhibit on the Complaint. After a vote, motion passed. There was further

discussion amongst the parties and with the Board Members, and John Schock moved and Dennis Clark seconded a motion to conduct a site visit when it was convenient with the parties. After some discussion it appeared that all of the parties were available to conduct a site visit to meet at Mr. Hazer's farm at 9:00 a.m. on August 28, 2020.

Mr. Dwyer then inquired if he could make a closing statement. Mr. Dwyer indicated that he agreed with Ms. Geroux's background assessment of the underlying complaint. He further explained that it was his opinion that there are two activities that Mr. Hazer is concerned about. One is the actions which occurred after the initial complaint in 1983, and whether the drainage was above eighty acres. The second would be whether the actions which occurred in the prior complaint, whether the judgement is now binding on the Water Resource Board. Mr. Dwyer explained that the prior judgement was based on a Century Code Provision which has now been revised. Mr. Dwyer further indicated that the engineering report which was presented to the Water Resource Board and the Court assumed that the both of the retaining structures would be constructed. Next, Joel Lees inquired whether NRCS had been contacted. Mr. Hazer indicated that he visited with Darin Hirschhorn and inquired whether if a land owner opened a drain, if they had the ability to close that drain. According to Mr. Hirschhorn, you could. Ms. Geroux then asked some follow up questions of Mr. Dwyer. Ms. Geroux requested that Mr. Dwyer explain what it is he is asking the Water Resource Board to find. Mr. Dwyer indicated that he is asking the Board find that there has been unauthorized drainage done by Mr. Hieb. They are requesting that the drains be closed and that Mr. Hieb be required to obtain a permit in order to drain his property. Ms. Geroux then requested Mr. Dwyer provide better documentation on the areas that they would like to have closed. Then, a member of the Board inquired if Mr. Hieb's dams were fixed, would that solve the problem. Mr. Hazer in response indicated that he felt that it would be important for the Board to see the property prior to making such a determination.

Next there was additional discussion regarding the impact of muskrats on the existing dams. It was noted that these muskrats could be causing a significant problem on why the water is not being properly held back. It was noted that it might be prudent for Mr. Hazer to contact Cody Krause who works for the Federal Government. He might be able to assist on removing the muskrats. Additionally, there was some discussion and questions by Terry Wanzek regarding the Board's opinion of current legislative changes made to Century Code Provisions pertaining to Unauthorized Drainage. At this point the Hearing ended at approximately 10:55 a.m.

OTHER BUSINESS

The Board discussed the current status of the Joint Board. It was noted that recently there was an owner’s meeting, where fifty-three owners attended the virtual meeting. It was anticipated that they would be looking at bringing this project to a vote in the next few months. Then, there was an update on the Upper Sheyenne Board. It was noted that projects were still on hold, as funding has currently been frozen until a later time.

BILLS

Next, there was discussion of the Bills. Of particular note, Ms. Geroux brought to the Board’s attention the Auditor’s Bills. The Stutsman County Water Resource Board is audited every year by the state, and as part of that audit, the County receives a bill and this year they have passed that bill along to the Water Resource Board. It was noted that in prior years, the Water Resource Board did pay for this audit, but it appeared that for the past couple of years that those bills had not been received by the Water Resource Board. Therefore, the County was requesting that the Water Resource Board pay for the 2019 audit and also the 2018 audit, totaling \$5,000.00. The Board expressed concern on the amount of the audit, and requested that Ms. Geroux obtain an explanation on the cost of the audit. Therefore, Arlyn Schmidt moved and Dennis Clark seconded a motion to pay the bills except to withhold payment on the two bills for the audit until the Board is able to review an explanation on the amount. Motion was approved. Then Dennis Clark moved and John Schock seconded a motion to approve the financials. Motion passed.

CHECK NUMBERS

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| 1. Forum Communication Co. - \$326.00 | #2765 |
| 2. Dalsted and Ryan, P.C. - \$1,093.72 | #2766 |
| 3. Griggs County Water Resource District - \$135.00 | #2767 |
| 4. Stutsman County Auditor - \$2,500.00 | #2768 |
| 5. Stutsman County Auditor - \$2,500.00 | #2769 |

Seeing no further business before the Board, John Schock moved and Arlyn Schmidt seconded a motion to adjourn. Motion passed.

RESPECTFULLY SUBMITTED:

ABBAGAIL GEROUX
Secretary

BOARD APPROVAL OF MINUTES

The board approved the minutes this ____ day of _____,
2020.

JOEL LEES, Chairman, or
ARLYN SCHMIDT, Vice-Chairman