

APPROVED (March 21, 2011)
REGULAR MEETING OF THE BOARD OF MANAGERS OF THE
MIDDLE- SNAKE-TAMARAC RIVERS WATERSHED DISTRICT
HELD AT 453 NORTH MCKINLEY STREET, WARREN, MN
4:01 P.M. FEBRUARY 22, 2011

The meeting was called to order by Vice President John W Nelson. Managers David Bakke, John W Nelson, Alvin Nybladh, Roger Hille and Ben Kleinwachter were present. Managers Doug Sorenson and Marvin Hedlund were not present. Nick Drees, Connie Kujawa, Danny Omdahl, Ron Adrian, Wallace Diedrich, LeRoy Vonasek, Loren Zutz, Larry Rud and Jim Stengrim were also present.

Loren Zutz taped the meeting with one recorder.

Motion by Mr. Alvin Nybladh, seconded by Mr. Ben Kleinwachter that Connie Kujawa be appointed the recording secretary for purposes of keeping the minutes of the meeting. Motion unanimously carried.

Motion by Mr. David Bakke, seconded by Mr. Roger Hille that the agenda be accepted as presented. Motion unanimously carried.

Craig Bunes joined the meeting at approximately 4:05 p.m.

Motion by Mr. Ben Kleinwachter, seconded by Mr. Roger Hille that the minutes of the January 24, 2011 meeting be approved, as corrected. Motion unanimously carried.

Brian Dwight joined the meeting at approximately 4:08 p.m.

Nick Drees reported that Polk County will be turning jurisdiction of Polk County Ditch #43 and Polk County Ditch #44 to the District, however, as they have a negative balance, he has been informed that Polk County is assessing the benefited properties to clear the negative balance before they transfer the ditches to the District.

The financial report was reviewed and filed for audit purposes.

Motion by Mr. Alvin Nybladh, seconded by Mr. David Bakke that the following bills be paid: from the Administrative funds: that payroll checks numbered 5126 through 5136 inclusive for a total of \$14,185.80; and checks numbered 14860 through 14888 inclusive, and including the service charge for a total of \$40,243.76; from the Project funds that checks numbered 1951 through 1955 for a total of \$29,038.06; and from the RRWMB funds, that check number 141 for a total of \$855.85 be paid. Motion unanimously carried.

At the Open Forum portion of the meeting, Loren Zutz questioned why the Board would need to meet in closed session to discuss the Stengrim Breach of Contract (Agassiz Valley) lawsuit and Jim Stengrim sought clarification as to the meaning of closing the meeting for purposes of legal theories and strategies.

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The Board directed Jim Stengrim to address his questions to the District's legal council when he is present.

Loren Zutz addressed the Board regarding the meeting held December 22, 2010 with the landowners seeking drainage into Judicial Ditch #25-1 and questioned why the Attorney fees were paid from the ditch system funds. He stated the landowners own the ditch and in his opinion he does not want the ditch funds to pay for the meeting.

Loren was directed to put his questions in a letter to the Board for them to review.

Jim Stengrim wanted clarification as to why the Board would not address the questions of Loren Zutz while they're in attendance at this meeting; stated that Kurt Deter said on audio and video that the December meeting could not be paid from the ditch funds of Judicial Ditch #25-1; inquired about a bill from Rinke Noonan for \$533.00 that was paid in November from the Judicial Ditch #25-1 funds; and questioned why there have been no assessments to the properties benefited by Judicial Ditch #25-1 for 4 years.

Nate Dalager joined the meeting at approximately 4:33 p.m.

Jim Stengrim also questioned the amount the District bills for staff time for works on ditch systems and stated the District is profiteering from the charges to Judicial Ditch #25-1; and inquired who the designated ditch inspector is for the District.

Jeff Hane joined the meeting at approximately 4:37 p.m.

Jeff Hane directed Jim Stengrim to submit his questions, in advance, to the Board for consideration.

Jim Stengrim also questioned the status of his bridge on Judicial Ditch #25-1 and why it hasn't been replaced, and stated that the Board must still be in hibernation.

Loren Zutz stated that he doesn't receive any answers when they are submitted in writing and stated he wants the bank statements, for the last 10 years, on Judicial Ditch #25-1 and an audit performed on the Judicial Ditch #25-1 ditch funds.

Nick Drees stated that he was never informed by Kurt Deter that the December meeting could not be billed against Judicial Ditch #25-1 ditch funds and that the levy on the Ditch systems are set arbitrarily.

Motion by Mr. Roger Hille, seconded by Mr. Alvin Nybladh that the following permit be issued:

1. Permit (11-001) to WJS Nelson Farms to install 76 acres of 4" drain tile with a 12" gravity flow outlet in the E2 NE4 of Section 14 of Higdem Township.

Motion unanimously carried.

Elden Elseth joined the meeting at approximately 5:00 p.m.

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Motion by Mr. Ben Kleinwachter, seconded by Mr. Alvin Nybladh that the following be issued:

2. Permit (11-002) to the Marshall County Highway Department to remove a 8.16' x 11.5' SPPA on Marshall County Ditch #7, under Minnesota Trunk Highway #220 and install a 12' x 7' concrete box culvert, in the SW SW of Section 34 of Eagle Point Township.

Motion unanimously carried.

Jim Stengrim asked for clarification on Agenda item (#18) Closed meeting, from the District's Attorney.

Jeff Hane stated the meeting would be closed to discuss legal theories and litigation strategies on the items listed in the agenda.

Correspondence from the Minnesota Association of Watershed Districts concerning the MAWD Legislative Reception scheduled for March 23 and March 24, 2011 in St. Paul, MN; correspondence from Jim Potucek regarding a dike along the property line of section 1/6 of McCrea/Comstock Township; from the Minnesota Association of Drainage Inspectors regarding a meeting scheduled for March 21, 2011 in Willmar, MN; from the Minnesota Viewers Association concerning annual dues; and from the Red River Basin Flood Damage Reduction Work Group supporting the implementation of the Brandt/Angus Impoundment, was distributed.

A discussion was held on the non-compliance of Richard McGregor to remove the dike constructed on the property line of section 1/6 of McCrea/Comstock Township.

It was the consensus of the Board that the District Administrator and the District Attorney attempt to remedy the situation with Richard McGregor, before any civil action would be taken.

Nick Drees was directed to check with the staff and see if they would be interested in attending the Minnesota Association of Drainage Inspector meeting scheduled for March 21, 2011 in Willmar, Minnesota.

Motion by Mr. Roger Hille, seconded by Mr. David Bakke that the District pay the 2011 membership dues of \$125.00, to the Minnesota Viewers Association. Motion unanimously carried.

Nick Drees stated that the Data Practice Requests from Loren Zutz; from 400 Birchmont and from PO Box 131, Warren, MN are available to those who wish to review them.

Loren Zutz stated he wanted to address his data practice request of the materials that were provided to the Marshall and Polk County Commissioners from the Board of Soil and Water Resources. He stated that since he was named in the correspondence that he should not be billed for copying charges as the Counties were provided this material at no charge. Loren Zutz is to be billed for the copies he received from the District.

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Nick Drees announced that a meeting with the landowners in the benefited area of Polk County Ditch #175 has been scheduled for 9:30 a.m., March 2, 2011, at the Alvarado Community Center.

Nick Drees reported that the District received the Order from the District Court affirming the District's request to dismiss the Agassiz Valley Water Resource Lawsuit of Jim Stengrim.

Brian Dwight, from the Minnesota Board of Soil and Water Resources, updated the Board on the status of the District's Overall Plan. He stated the District should consider implementing sections that would address Natural Resource Assessments, a self assessment checklist and Points of Concurrence.

Elden Elseth left the meeting at approximately 5:40 p.m.

Wallace Diedrich and Larry Rud left the meeting at approximately 5:45 p.m.

LeRoy Vonasek left the meeting at approximately 6:05 p.m.

Nate Dalager gave a brief update on the status of the Brandt/Angus Impoundment. He stated that he had met with Nick Drees and Mr. Roger Hille regarding the plan for the Brandt/Angus Impoundment and it appears that the concerns with the plan have been resolved. He also stated that he received correspondence from the Army Corps of Engineers requesting additional information on the permit request submitted for the Brandt/Angus Project.

Mr. John W Nelson reported that he and Mr. Marvin Hedlund have determined that \$1,200.00 per acre be offered for a perpetual easement for the properties along the Brandt/ Angus project, and that the landowner's would keep the rights to their CRP contract.

Motion by Mr. Ben Kleinwachter, seconded by Mr. David Bakke that Nick Drees and Attorney, Jeff Hane, draft a letter to the landowners stating the District would pay \$1,200.00 per acre for a perpetual easement along the Brandt/Angus Project. Motion unanimously carried.

Nick Drees reported that the Flood Damage Reduction Work Group met on February 16, 2011 and that they have sent a letter of support to the Minnesota Department of Natural Resources supporting a 65/35 cost share for the Brandt/Angus Project.

Nick Drees gave a brief report on the Red River Watershed Management Board meeting held on February 15, 2011; and announced that the joint meeting of the Red River Watershed Management Board and Flood Damage Reduction Work Group March Conference is scheduled for March 15-16, 2011 in Moorhead, Minnesota.

The News and Views of the Red River Watershed Management Board was distributed.

Mr. Roger Hille and Mr. David Bakke gave a brief report on the Drainage and Wetland Conference they attended in St. Cloud, Minnesota.

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Nick Drees announced that a joint meeting with the Red Lake Watershed District will be scheduled for sometime in April; and that the Managers should let Connie know by March 7th if they plan to attend the Legislative Breakfast.

Motion by Mr. Alvin Nybladh, seconded by Mr. Roger Hille that the District enter into a joint powers agreement with the Joe River Watershed and the Two Rivers Watershed District for the Tamarac River TMDL. Motion unanimously carried.

Nick Drees reported that the Marshall County Sentence to Serve worked on 3 sites along the Tamarac River; that a Project Work Team meeting for the CD3/Swift Coulee will be scheduled sometime in March; and he gave an update on the Water Retention Committee meeting.

Nick Drees stated that the land rental contract, for the hay land, along the PL-566 floodway has expired.

It was the consensus of the Board that the District advertise, for bids, the hayland along the PL-566 floodway.

Motion by Mr. Roger Hille, seconded by Mr. David Bakke that the District expend funds to purchase a cover and slideout for the District's vehicle. Motion unanimously carried.

Nick Drees distributed a map depicting the approximate water content in the snow cover from various locations within the District.

Craig Bunes left the meeting at approximately 7:25 p.m.

Jeff Hane reported that he has been working on the owner and encumbrance reports and the title work for the Brandt/Angus properties.

Jeff Hane stated that the correct procedure to appeal a permit that has been issued is outlined in Minnesota Statutes and he suggested the Board take no action on the request of Don Narlock to rescind permit (10-019).

Jeff Hane recommended that the meeting be closed pursuant to Minnesota Statutes 13D.05 subd 3 (b) for Attorney/Client Privileges to discuss litigation strategies and legal theories concerning the Stengrim Open Meeting Lawsuit and the Middle Snake Tamarac Rivers Watershed District vs Stengrim (Breach of Contract) lawsuit.

Loren Zutz inquired as to what topics would be discussed during the closed session and requested to be contacted when the meeting will be reopened.

Motion by Mr. Ben Kleinwachter, seconded by Mr. David Bakke that the meeting be closed pursuant to MN Statutes 13D.05 subd 3 (b) for Attorney/Client Privileges to discuss litigation strategies and legal theories concerning the Stengrim Open Meeting Lawsuit and the Middle Snake Tamarac Rivers Watershed District vs Stengrim (Breach of Contract) lawsuit. Motion unanimously carried.

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Ron Adrian, Connie Kujawa, Danny Omdahl, Loren Zutz and Brian Dwight left the meeting at approximately 7:37 p.m.

The meeting was closed at approximately 7:37 p.m.

Motion by Mr. Ben Kleinwachter, seconded by Mr. Alvin Nybladh that the meeting be reopened. Motion unanimously carried.

The meeting was reopened at approximately 8:06 p.m.

Loren Zutz was contacted and indicated he would not be returning to the meeting.

It was the consensus of the Board to cancel the regular meeting scheduled for March 7, 2011. The next regular meeting will be held March 21, 2011 at 4:00 p.m., at the District office.

Motion by Mr. Alvin Nybladh, seconded by Mr. David Bakke that the meeting be adjourned. Motion unanimously carried.

The meeting was adjourned at approximately 8:12. p.m.

Connie Kujawa
Recording Secretary

Ben Kleinwachter
Secretary