

TERM OF COMMISSION: October Session of the October Adjourned Term

PLACE OF MEETING: Roger B. Wilson Boone County Government Center
Commission Chambers

PRESENT WERE: Presiding Commissioner Daniel K. Atwill
District I Commissioner Karen M. Miller
District II Commissioner Skip Elkin
Director of Resource Management Stan Shawver
Marty Graham
Deputy County Clerk Cameron Clarke

The meeting was called to order at 9:00 a.m.

Resource Management

- 1. Petition submitted by Edgewater / Waters Edge Recreational Association to vacate and re-plat lot 99 of Waters Edge Estates Plat IV as shown in Plat Book 14 Page 30 of Boone County Records.**

Director of Resource Management Stan Shawver was present on behalf of this item. Mr. Shawver stated Waters Edge subdivision was platted in 1980; lot 99 would be classified as a dam for the subdivision. Mr. Shawver stated subdivision regulations allow for replatting. Mr. Shawver stated there was a procedure developed in the 1990's to give people who have invested in a neighborhood the opportunity to be heard if there is a proposal to change the subdivision. Mr. Shawver stated before a subdivision can be vacated or replatted, the County Commission is required to conduct a public hearing in which they take into consideration: the character of the neighborhood, traffic conditions, circulation, proper location and alignment of streets and roads, property values, public utility services, and whether it will generally adversely affect the health, welfare, or safety of persons owning or possessing real estate in the subdivision to be vacated, or surrounding real estate. Mr. Shawver stated we notified 70 property owners within 500 feet as required by the regulations. Mr. Shawver stated the vacation is being proposed because there were utility easements on the dam, and with the relocation of some water, electric, and sewer lines the easements can be vacated and new ones dedicated.

Commissioner Atwill opened the public hearing on this item.

Marty Graham was present to comment on this item. Mr. Graham stated he is a member of the association in question. Mr. Graham stated he has several comments about why this needs to be replatted. Mr. Graham stated it affects the entire association. Mr. Graham stated there are two issues why this is being replatted. Mr. Graham stated the major issue has become an erosion problem with the dam, which was caused by a water main break in it. Mr. Graham stated he's done some research on this, and when the water

line was built, it was under the Clark Lane Water District. Mr. Graham stated the City now services the utility, and they're in agreement that a water line should never be built in an earthen dam. Mr. Graham stated he doesn't know why it was built in an earthen dam, but that was 30 years ago. Mr. Graham stated Dan Hagan is the developer that built the water main, and due to the improper installation of the water main we have a severe erosion problem underneath the spillway.

Mr. Graham submitted an oral report, as well as two letters he's written as part of his testimony. They can be found at the end of these minutes. Mr. Graham stated it's basically just his objection to the poor development practice of putting a water main in an earthen dam.

Commissioner Miller confirmed that Mr. Graham's objection does not affect anything we're doing here.

Mr. Graham stated no, he would just like it in the record; the damage is done and the waterline has been relocated. Mr. Graham stated the reason the developer discovered the problem, was that three houses were built too low. Mr. Graham stated he's spoken with Commissioner Elkin and Mr. Shawver about this previously. Mr. Graham stated three houses have flooded because their basement floors are below the top of the dam. Mr. Graham stated this is an illogical thing to do. Mr. Graham stated the problem that has come from complaining, is that Dan Hagan has made the false claim that he has built above the flood plain. Mr. Graham stated Dan failed to get a flood plain development permit back when he built from 1989-90. Mr. Graham stated by not getting the permit, there was no regulation to make him build the base of the floors above the dam. Mr. Graham stated he does not expect the Commission to do anything about it now, but he wanted to go on record stating that's why this work has to be done. Mr. Graham stated he has requested in writing that Dan Hagan provide certification to his statement, but he has failed to do so. Mr. Graham stated he received a lawyer letter, and has spoken with his engineers. Mr. Graham stated his engineers cannot certify it. Mr. Graham stated he is concerned that the association director is misrepresenting the facts regarding the way he built the houses. Mr. Graham stated Mr. Hagan has distributed false information regarding this. Mr. Graham stated he requests that Mr. Shawver's office investigate this problem, review his letter, and return a response in writing to me.

Commissioner Miller asked why Mr. Graham is asking for this on behalf of the three houses he doesn't own.

Mr. Graham stated because Dan Hagan is using that as an excuse to have us all pay for his mistake. Mr. Graham stated he's going to do a project with the dam, and then prorate the cost to everyone in the neighborhood. Mr. Graham stated Dan Hagan wants us to pay for his mistake; that's why I'm here. Mr. Graham stated I know better than to believe what he's telling us. Mr. Graham stated I could hire a lawyer and take him to court, but they're not my houses.

Commissioner Atwill asked if Mr. Graham was here on behalf of himself or the association.

Mr. Graham stated he's here as an individual in the association.

Commissioner Atwill confirmed the association didn't meet and authorize Mr. Graham to speak on their behalf.

Mr. Graham stated this is on him.

Commissioner Elkin asked if work had already been done on the dam.

Mr. Shawver stated the utility lines have already been relocated.

Commissioner Elkin confirmed he's going to make modifications to the spillway, and assess the charges to the association.

Mr. Graham stated yes, each individual household will have to pay a portion.

Commissioner Atwill asked how much each household will have to pay.

Mr. Graham stated it depends on the final cost, but he's talking about a \$200,000 project, so we're talking about approximately \$1,000 per household, because it includes the condominiums on the north side.

Commissioner Atwill asked who runs the homeowners association.

Mr. Graham stated Dan Hagan does.

Commissioner Atwill asked if they elect people to run it.

Mr. Graham stated he is self elected; in the subdivision covenants he has written that he can be the director.

Commissioner Atwill stated he would look at the covenants.

Mr. Graham stated according to State Chapter 355, when these dealings are exposed if the association can get 10% of the voting households to agree we can take him to court.

Commissioner Atwill asked if there is a vote on actions taken by the board to assess members.

Mr. Graham stated Mr. Hagan holds 51% of the votes.

Commissioner Miller asked if Mr. Hagan owns 51% of the property out there.

Mr. Graham stated no, that's just how the covenants were written.

Commissioner Elkin asked who owns the water line.

Mr. Shawver stated it originally belonged to Water District #2, but the City took it back in the 80's.

Commissioner Elkin stated the County really has no authority over where water districts run their lines. Commissioner Elkin stated he doesn't think they run them through earthen dams anymore, but we can't control that if they wanted to. Commissioner Elkin stated we could suggest they not do that.

Mr. Shawver stated utilities can request easements wherever they require them.

Commissioner Elkin stated foreign objects in dams are bad; I don't disagree with that. Commissioner Elkin asked if we have minimum floor elevations in our building codes.

Mr. Shawver stated we do not require they provide minimum floor elevations; but if it is close to a flood plain we require they show they're at or above the base flood elevation.

Commissioner Elkin asked if there is a question if these three houses are in or out of a flood plain.

Mr. Shawver stated he thinks Mr. Hagan used Jim Patchett to ascertain they were above the base flood elevation.

Commissioner Elkin stated we installed a cross road pipe close to these houses, and the homeowners were attributing the cross road pipes to their houses flooding. Commissioner Elkin stated we had a lot of rain that year.

Mr. Shawver that was the same year the sewer district lost a line along the Welch dam. Mr. Shawver stated it was close to Waters Edge. Mr. Shawver stated there was so much overflow it washed out their line and they had to stabilize a private dam to protect their sewer line.

Commissioner Elkin stated that's the poster child for how not to maintain a dam.

Commissioner Atwill asked if that dam is above this one.

Commissioner Elkin stated yes, it's probably 150-200 yards away.

Commissioner Atwill asked who owns it.

Mr. Shawver stated Danny Miller did own it, but he's not sure who owns it now.

Commissioner Elkin stated he didn't develop the dam; he bought it after the fact. Commissioner Elkin stated it's in really bad shape.

Commissioner Miller stated she feels for the poor landowner who has to pay the bill for bad development practices, but we didn't have rules back then.

Commissioner Atwill asked if you go to Circuit Court and take him out, what you do afterwards. Commissioner Atwill asked if he owns the dam, how you make him fix it.

Commissioner Miller stated you would expect that he would be required to maintain his property if it has an undue effect on other property. Commissioner Miller stated she doesn't know the law.

Mr. Shawver stated technically he doesn't own it, the Edgewater/ Waters Edge Recreation Association owns it.

Commissioner Atwill closed the public hearing on this item.

Commissioner Elkin moved on this day the County Commission of the County of Boone does hereby **approve** the petition by the Edgewater / Waters Edge Recreational Association to vacate and re-plat lot 99 of Waters Edge Estates Plat IV as shown in Plat Book 14 Page 30 of Boone County Records.

Said vacation is not to take place until the re-plat is approved.

Commissioner Miller seconded the motion.

The motion carried 3 to 0. **Order # 480-2012**

The meeting adjourned at 9:20 a.m.

Attest:

Wendy S. Noren
Wendy S. Noren
Clerk of the County Commission

Daniel K. Atwill

Daniel K. Atwill
Presiding Commissioner

Karen M. Miller

Karen M. Miller
District I Commissioner

Skip Elkin
District II Commissioner

To: Members of Edgewater Homeowners Association

Supplement to Annual Minutes

Re: Marty Graham's Presentation at the Annual Homeowners Meeting

June 27, 2012

Comments by Marty Graham and Responses by Dan Hagan

1. Comment: FEMA says floor must be above flood plain

Response: The floors are above the FEMA 100 Year Floor Plain, See Attached Exhibit A

2. Comment: Void under spillway caused by erosion, no action taken.

Response: Void under spillway caused by broken water main, Exhibit 6

Response: No evidence of entry of outside water, joints in spillway still tight, Exhibit C

3. Comment: Dam spillway working as designed

Response: Spillway now undersized due to upstream development over past 30 years, Exhibit D

Response: Future upstream development will further increase the problem, Exhibit E

Response: Undermining of spillway needs to be addressed ASAP, Exhibit B

4. Comment: If home slabs built above Flood Plain no problem

Response: Spillway is now undersized and cannot accommodate upstream build-out, Exhibit E

Response: Spillway may collapse if not repaired or replaced ASAP, Exhibit B

5. Comment: Notch top of Dam two feet

Response: Doesn't address inadequate size of spillway

Response: Doesn't address necessary spillway repair

Response: Emergency spillways are not intended to be used except in emergencies

6. Comment: 3" of rain caused the problem

Response: 2008 and 2009 record rainfall saturated the ground increasing runoff, Exhibit F

7. Comment: Dan should pay

Response: I didn't cause the increase in runoff over the past 30 years

Response: I didn't cause the undermining of the spillway

Comments by Dan Hagan

1. The spillway needs to be repaired or replaced ASAP to avoid an untimely collapse of the spillway during a heavy rain or other inopportune time

2. Two options:

a. Repair and hope the repair holds, realizing the spillway is undersized

b. Replace with a new spillway designed to handle future runoff

3. Potential liability if spillway collapses
 - a. Impairment of downstream developments and personal liability
 - b. Loss of home values if no lake or no functional lake
 - c. Cost of replacing spillway and washout damage at inopportune time more costly
 - d. Fiduciary Responsibility of EW/WE RA Directors to preserve and protect assets of Edgewater/Waters Edge Recreational Association

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August 8, 2012

To: Edgewater Homeowners Association
C/O Susan Clark, Diversified Mgt.

From: Marty Graham, member
5871 Waterfront Drive South

RE: misrepresentation of the FIRM

In the recent distribution of the meeting minutes, there were several attachments from Dan Hagan. I will address one of Dan's responses which misrepresents what the FIRM (Flood Insurance Rate Map) shows. In his responses, Dan Hagan states the following:

"The floors **are** above the FEMA 100 Year Flood Plain", then refers to "Exhibit A".

Exhibit A is a portion of the FIRM for our area. It must be pointed out that the statement above is not from Dan Brush, P.E., it is Dan Hagan's statement.

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As I have explained at the meeting, the FIRM is a horizontal (flat map) representation of what is supposed to be a vertical datum (elevation data). Let me explain it this way:

Let's imagine that the basement floors which flooded were not there. Instead, let's pretend that the houses were built at the exact same horizontal locations but were built on slab foundations rather than basements and those slab elevations were at the same elevations as the existing main floors. Now let's picture the same flood event of 2009 which flooded the basements. With no basements, the houses, sitting at the exact same horizontal locations on slab, are sitting up high and dry. No flooding. Unfortunately, that is not what we have.

You see, the FIRM does not indicate the elevation of the basements which are at least eight feet below the main floors. In fact, for our location, the FIRM doesn't even notate a 100 year flood plain elevation. Therefore, no one can look at the FIRM and make any determination about elevations.

There are only two sets of data required to certify that a basement floor is ABOVE the 100 year flood plain. None of the data required to make this determination is on the FIRM. The first set of data is the actual basement floor elevations; again, these are never notated on the FIRM. However, I am sure Dan's engineers have this information already.

The second set of data is harder. The 100 year flood plain elevation is not notated on the FIRM for our location because it is an "unstudied Zone A." Basically what that means is that literally, the proper studies to determine the 100 year flood plain elevation for our location have not been completed and approved by FEMA. The FIRM depiction of the flood plain for our location is an approximation at best.

To determine the 100 year flood plain elevation, the proper hydrology studies must be completed by a professional engineer which would route the 100 year storm event through the spillway and dam. The results of this study will determine the elevation of the lake for a 100 year flood event.

Since Dan Hagan has made this claim, I request that Dan simply direct his professional engineer to draft a short letter noting the 100 year flood plain elevation and the elevations of the basement floors proving that the basement floors are ABOVE the 100 year flood plain. This letter would of course need to be signed and sealed by the professional engineer.

Please consider this a written request for information. As you know, the association has five working days to respond.

Thank you,

Marty Graham, member
587 1 Waterfront Drive South
Columbia, MO 65202

cc: members
cc: Stan Shawver
cc: Skip Elkin
cc: FEMA
cc: Brush and Associates

(continues on next page)

September 9, 2012

To: Edgewater Homeowners Association,
Recreation Association,
C/O Susan Clark, Diversified Mgt.

From: Marty Graham, member

RE: Erosion under spillway/ Negligence

The erosion problem underneath the spillway of the dam has come to a critical point. After sixteen years of negligence, Dan Hagan finally "discovered" the erosion problem due to the house flooding problem. Dan Hagan went so far as to describe the house flooding problem as a "silver lining" at the 2011 meeting because it caused him to finally acknowledge the erosion problem which I had warned him about in the summer of 1996.

As I have previously explained, I discovered an erosion hole on the north side of the spillway during a jog the last week of July, 1996. The hole was approximately 3 feet along the retaining wall and about 2 feet wide. It was deep enough that I could surmise the problem had been created from underneath the spillway and that it was not a surface runoff problem. Coincidentally, I had previously noticed water being forced through the cold joint along with air bubbles coming up through the joint during runoff events. This confirmed to me that there had already been a void created under the concrete. Due to the proximity of the cold joint to the erosion hole, I thought that it was possible that erosion from this action had caused the hole.

The next day I called Dan Hagan to inform him of my concerns regarding an erosion problem underneath the spillway. I advised him that this was a problem which needed to be inspected. I specifically told Dan Hagan to have it inspected and not simply fix the hole. A few weeks later I noticed that the hole had been filled. Now I know that no inspections were done to determine the source or extent of the problem.

In 1996 I was not aware that anyone would be so stupid as to build a waterline along the face of an earthen dam. When I found out in 2011 that the cause of the erosion problem was a rupture of a water line, my first reaction was to ask who was stupid enough to do that. The answer; Dan Hagan. Dan Hagan built the water line along his own dam that ruptured and caused serious damage.

I have consulted with City Water and Light regarding this problem. The City inherited our water lines from a now defunct county water district. As the developer, Dan Hagan built the water line without inspection then deeded it over to the old water district. Unfortunately for us, the water district accepted the lines as built. A few years later the City took over the water district service area and ownership of the lines.

City Water and Light engineers have told me that they would not have allowed any water line

placed in an earthen dam. City engineers all agreed that this was poor planning and development and should not have been allowed. They described it as a short cut that should not have been taken. I have also consulted with several professional engineers who work in development and all basically said this was something they would not do and an example of poor planning.

The fact that the water line ruptured where it did is proof that it is stupendously stupid to put a water line across an earthen dam. This is an incredibly, irresponsibly stupid mistake by the developer, Dan Hagan.

All of the pictures that Dan Hagan has presented at our meetings are proof positive that the erosion problem is critical. The pictures are also proof positive that the erosion has been occurring over a long period of time. In 1996 I warned Dan Hagan to have this problem inspected. He did nothing but fill the hole. His inaction for sixteen years is not only an example of pure negligence; it is a dereliction of duty as President of the Recreation Association by Dan Hagan.

Again, the erosion problem could have been determined by a simple inspection by a dam inspector in 1996. Had this been done, the water line rupture would have been found and fixed, and the erosion problem could have been corrected before it came to critical mass. Dan Hagan's inaction after being warned by a City civil engineer is not only negligence, it was dereliction of duty.

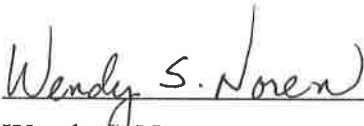
By placing a water line along the dam, Dan Hagan actually caused the erosion problem. It is his fault, his liability. Dan Hagan is responsible for his actions and poor planning. Furthermore, he failed to take appropriate action after being warned about the erosion problem which constitutes negligence and dereliction of duty.

Marty Graham, member
5871 Waterfront Drive South
Columbia, MO 65202

cc: members

p.s. much more information shall be forthcoming

Attest:



Wendy S. Noren *mg*
Clerk of the County Commission



Daniel K. Atwill
Presiding Commissioner



Karen M. Miller
District I Commissioner



Skip Elkin
District II Commissioner

