

**REGULAR DRAINAGE MEETING**  
**Wednesday, March 25, 2020 9:30 AM**  
**Large Conference Room**  
**This meeting was held electronically due to Covid-19 concerns.**

3/25/2020 - Minutes

1. Open Meeting

Hardin County Drainage District Chairperson Lance Granzow opened the meeting. Also present were Trustee BJ Hoffman; Trustee Renee McClellan; Jessica Sheridan, Environmental Health; Angela De La Riva, Economic Development Director; Lee Gallentine of Clapsaddle-Garber Associates; Landowner Mike McCartney and Denise Smith, Drainage Clerk.

2. Approve Agenda

Motion by Hoffman to approve the agenda. Second by McClellan. All ayes. Motion carried.

3. Approve Minutes

Motion by McClellan to approve the minutes to drainage meeting dated 3-18-20. Second by Granzow. All ayes. Motion carried.

4. Approve Claims For Payment

Motion by McClellan to approve claims for payment with pay date of Friday, March 27, 2020. All ayes. Motion carried.

DD 1- WO 244 -Claim for Crop Dmg Kitzman/Hess	Hess 2017 Trust	\$ 768.49
DD 25 WO 209 & 1 -Revised Crop Dmg Claim	Jason Martin	\$ 1,007.76
DD 33 WO 278- Haul 1" Clean Rock	Adam Seward	\$ 1,615.50
DD 33 WO 278-Parts, Labor, Equip.	Honey Creek Land Improvement, LLC	\$11,951.00

5. DD 106 - Discuss W Possible Action - Landowner Request To Locate Tile

DD 106 - Landowner Mike McCartney was present by phone, McCartney stated he has laterals that come out of section 10 into his parcel in Section 9, that were not flowing any water at all last year, section 10 is where the District tiles comes into McCartney's field, and is where these laterals are connected. McCartney is wanting to find where the problem is at in the District tile, where all of his laterals come into it. McCartney made the request to NRCS, as section 10 is in a wetland area, the request to the NRCS was to locate the County tile. The NRCS does not care if he looks for private laterals, but when District tile was mentioned, the NRCS stated they wanted a letter of permission from Hardin County, for McCartney to locate the District tile. Granzow asked if McCartney was speaking of private laterals or District laterals, McCartney stated they are private laterals going into Section 10, that hook into the District's 10" main tile. McCartney stated he has already located his laterals and knows there is no water flowing out of his laterals at all. McCartney just wants to locate the District tile, and has a 650' probe with which he could locate the District tile, and search for where the problem might be. Granzow stated that anytime we work on District tile, there is a process to be followed, which includes an Engineer observer. Gallentine asked if this was the spot that the DOT dug up on the north side of Hwy 65 last year. McCartney replied it was on the same line, but back to the west farther, and on the south side of the highway, but was unsure which side of the highway the problem was on without probing the tile. Granzow stated McCartney would like to save the District some money in trying to determine the problem. McCartney agreed, and stated he was not looking to repair the tile, just try to determine where his issue is. Granzow stated he would like the Engineers observer to be there, because if we have to open the District tile, and have to close it back up again, there should be an observer, Granzow inquired what McCartney would need to provide to be his own observer, Gallentine that we would need to provide his proof of insurance, and if he were to bill the District, McCartney would need to submit his hourly rates. McCartney stated he could provide his proof of insurance, but he was not interested in making the repair, or billing the District for his work or to cost anyone any money, he

just wants to find the problem.

McClellan asked what were the minimum insurance coverage needed, Gallentine stated, there has never been a minimum coverage amount specified, just that a Certificate of Insurance coverage was provided to the County by contractors. Gallentine stated that the Trustees would review the coverage submitted and decide if it is adequate. McCartney stated he would like to get his drainage issues solved as quickly as possible. Granzow stated since McCartney is not charging the District he will not need to submit his rates. Gallentine stated that they would just need a day or two of notice to have an observer in the field, and shoot it with GPS. Gallentine stated that McCartney would need to have CGA on site, so when the tile is opened up, CGA can GPS that point, and make sure the tile is put back together according to our District policy. McCartney agreed with that, CGA provided McCartney with their contact information to McCartney to schedule a time to open the tile. McCartney stated he will still need a permission letter to the NRCS. Smith stated she can provide McCartney a letter as soon as he submits his insurance certificate.

McCartney also inquired about the DD 56 hearing, to be held Wednesday, April 1, 2020. McCartney stated in talking with DD 56 landowners, many expressed concerns over voting on the proposed reclassification over the phone, and wanted to know how landowners could provide feedback if that were a very busy conference call. Granzow stated the DD 56 landowner can email or mail their comments to the Drainage Clerk, prior to the hearing, and that would be the best way for them to submit concerns or objections.

Motion by Hoffman to direct Smith to send a letter to the NRCS upon receiving qualified insurance from Mike McCartney. Second by McClellan. All ayes. Motion carried.

6. DD 160 - WO 283 - Discuss W Possible Action - Repair Summary

DD 160 - WO 283 - Gallentine stated this work order is located just south of Ackley, in which Ken Smith turned in a repair request late last fall, when McDowell was in the area doing some pattern tiling. Gallentine stated what CGA found was upstream of the outlet structure there was about 70' of old CMP that was rusted, deteriorated and had collapsed. Gallentine stated that the outlet structure itself is deteriorated, in itself it is not an issue, but felt it should be noted. In the open ditch that this outlets into, along the west side of the RR track that connects the ethanol plant to Ackley, there are some driveway culverts along there that are pretty mangled and started to rust, and although those are a private issue, not a district issue, it should be noted, that they could impact the open ditch if they collapse totally. The main open ditch of DD 155, which is where this outlets into, the main open ditch has some sediment in it and could use a clean out, this sediment extends in the ditch to the next nearest gravel road to the north, and extends for at least a half mile. CGA recommends doing an investigation to see how much sediment there really is in the ditch. Granzow asked if there was a collapsed tile going into the open ditch. Gallentine stated that has been repaired. Granzow stated that DD 160 had some previous repairs, and then took control of their own district, and without a significant complaint on the sediment in the ditch, Granzow will not recommend an investigation. It was agreed by the Trustees to let the issue of the sediment in the ditch, set as it is at this time.

Granzow stated we should draft a letter to the landowners with the rusted culverts, that could cause damage to our open ditch. Gallentine stated he believes those culverts belong to the ethanol plant, so that they can use those drives to access the tracks. Granzow stated that issue should be addressed with the Ethanol plant.

Motion by Hoffman to have CGA draft a letter to the Ethanol plant recommending replacement / repair of the damaged culverts along the open ditch. Second by McClellan. All ayes. Motion carried.

7. DD 143 - WO 261 - Discuss W Possible Action - Investigation Summary

DD 143 - WO 261 - Gallentine stated this was on the north side of Hwy 175, west of Radcliffe, Calvin Hiland reported there is a hole in the field large enough to drive a truck into. CGA determined that a fiber optic utility had damaged a district tile, the utility was notified they needed to do the repair, and the repair was completed without notifying CGA or the Drainage Clerk, so that the district requirements for observation were not met. UPN (United Private Networks) was the utility company involved. There are some photos available of the repair, that was made with dual wall, which the current utility permit does not allow, they did not do any concrete collars at the pipe joints, they packed some pieces of broken tile around the joints, and they did not use any rock backfill. The next photo showed that they just wheel rolled the dirt above the repair and were done. CGA recommends

that UPN be contacted, directed to remove the current repair and install the repair to the permits requirements. Gallentine stated that UPN had been given the Permit specifications when they were notified they needed to do the repair, they just did not adhere to the Permit specifications.

Motion by Hoffman to have CGA contact UPN to request that the contractor get a Utility Permit and repair the damaged area of tile to our Utility Permits specifications. Second by McClellan. All ayes. Motion carried.

McClellan asked if the ground was holding water or had standing water. Gallentine stated CGA has not been out to look at it, and the pictures were provided by UPN at the time of the repair. Hoffman stated he would like to find out from UPN who the contractor was that did the repair, because if they work regularly in Hardin County, they should know better, and we should have a heart to heart conversation with that contractor that this is not acceptable work. It betrays Hoffman's trust that there are contractors that knowingly will violate Permit specifications, they need to be aware that this will be discovered. Gallentine stated he will find out from UPN who the contractor involved is, and let the Trustees know. Granzow asked if the contractor UPN utilized needed to be certified through the County, and the Utility Permit process does not specify that the contractor be certified through Hardin County. Hoffman stated we need to make sure the contractors working on district tile are reputable and responsible.

#### 8. DD 52 - WO 215 - Discuss W Possible Action - Claim For Crop Damages

DD 52 - WO 215 - Tracy Below's claim was discussed last week, Smith provided the work order details, and DD 52 minutes document to provide some history on what has been previously discussed in the meetings regarding this work order. Minute notes from September 5, 2018 were reviewed. Those minutes discussed that Below would like damages for his alfalfa crop that he had lost, it was explained to him at that time that first year damages were not reimbursed. Below stated that with alfalfa there are recurrent year losses, it was also discussed that he could plant a different crop the next year. There was a motion to reconsider damages once the project is complete. Smith stated she had not worked with a claim on alfalfa and needed clarification as Below submitted losses for years 2016, 2017, 2018, and 2019, Smith inquired what years of loss would be acceptable, and what unit of measure would be used on this crop, would it be by the bale, round bale, or by the ton. Smith stated alfalfa is not listed in the USDA's Common Crop Loss Insurance tables. Gallentine stated he did not recall having a Crop Loss Claim on alfalfa before. Hoffman stated he thought that all forage crops were measured by the ton. Granzow stated we have previously discussed that the owner of the parcel, also owned the trees, whose roots were causing the drainage problem, and we discussed at one point whether we would reimburse for crop damage in this instance. Gallentine stated the trees owned by the landowner, Piel Manufacturing, were responsible for causing the crop damages to his tenant's alfalfa crop. Gallentine stated we involved legal to get help with getting the landowner to give permission to get the trees removed. Granzow stated in 2013 we pulled out tree roots once, and pulled out roots from 50' of tile, and that was not enough, Gallentine stated we re-laid the tile and put in solid wall, and moved it further from the trees in 2013, and that was not enough to solve these issues. Granzow stated in 5 years time, we ended up taking out the trees altogether, and although he feels for the tenant, at what responsibility is it of the requested years, that are the district's responsibility or the landowners responsibility. McClellan agreed. Granzow stated the last two years, when work was being done in the district, those losses are the districts responsibility. Hoffman stated that is the problem with waiting so long for the claims, how do we go back to 2016 and compare costs to that year's first cutting of alfalfa or that year's second cutting alfalfa that hasn't been stored inside, there is a precise science to alfalfa pricing, and he does not think this is something we can jump into and make a decision today.

Granzow asked if Below requested a dollar amount on his claim. Smith stated Below did not list a dollar amount as he was unsure of the unit of measure as well, Below listed 3.5 acres as damaged. Below states in his claim, that it was flooded for 2 years, then dug up and open for 2 years, and he could not plant alfalfa in 2020 as you can't plant alfalfa back to back for that many years or it will be toxic. Granzow stated the 2 years of flooding, are not the District's responsibility, and the 2 years that it was dug up and open are the District's responsibility, and he believes those are our damages caused by the contractors work in the field, and we need CGA to verify how many acres were actually disturbed by work. Granzow went on that the work lasted 2 years because we struggled in getting a response from the landowner to remove the trees, it took a year to get a response from the landowner to remove the tress, so should the district be responsible for that first year of waiting on landowner permission, or on the second year only, when work was done in the field. Granzow stated yes, we dug it open, but then waited on the landowner that whole first year, before we could get trees out and do the repair, and Below's issue should be discussed with his landowner, or perhaps the landowner should make the request for

damages if he pays Below for crop damages himself. Granzow stated, should the landowner pay Below for damages, is it fair then, that he is assessed for the cost of crop damage claim along with everyone else in the district, it is a slippery slope on this issue. McClellan stated perhaps this is an issue for legal. Hoffman stated that legal could bring some clarity, as he does not want to be held harmful and he wants there to be some legal guidance.

Hoffman motions to enlist the assistance of attorney Mike Richards for some guidance on the issue, and have CGA verify damaged acres. Second by McClellan. All ayes. Motion carried.

Hoffman stated he will research alfalfa prices for the last two years. Gallentine wanted it noted that he does not recall the District ever paying damages that occurred prior to construction, as that could draw into the conversation how many years has there been a problem, we can't be expected to look back 5 and 10 years into the past for damages. McClellan had issue with this being a district expense when and if there is negligence on the landowners part, as a landowner he has responsibilities in this as well, if it went on an additional year because the landowner was uncooperative. Hoffman appreciated the quality dialogue.

9. DD 25 - WO 209 & 1 - Discuss W Possible Action - Claim For Crop Damages

DD 25 - WO 209 & 1 - Landowner Jason Martin stopped in last week to offer insight on his claim for crop damages and why he had reported additional acres. Granzow explained that there had been potholing done in Martin's field, and the potholes were left open and under pressure, allowing water to bubble out causing the ponds to go larger, and that is why he claimed the additional acres. Gallentine stated the landowner is out there everyday and sees changes, and CGA is there during work and sees what is disturbed. Gallentine appreciated the clarity.

Motion by Hoffman to approve Jason Martin's claim as presented. Second by McClellan. All ayes. Motion carried.

10. Discuss W Possible Action - Wind Turbine Ordinance And Drainage Utility Permit Language & Process

Hardin County's Drainage Utility Permit was discussed by the group. A list of options that could be added to the Drainage Utility Permit was drafted for later discussion and review by attorney Mike Richards. Westhenry loger had expressed an interest in being involved in the conversation but was unavailable by phone. Hoffman stated the CWEC was not seeking a development agreement. De La Riva stated that in wind projects in Illinois that she visited, those counties did a have a development agreement with the CWECs, and neither project received an incentives. Granzow pointed out that we are looking at a Development Agreement between the CWEC and the DRainage Districts, not with the County. De La Riva stated since these projects in Hardin County would go right through the several drainage districts, there needs to be a development agreement, it need not include incentives, especially if the CWECs are not seeking incentives. De La Riva stated an agreement would ensure that when a tile is broken, it will be fixed correctly, and should there be any legal issues, those costs should be paid by the CWEC. De La Riva went on the agreement should give the landowner the right to use the turbine access roads, and allow for aerial applications as needed by the landowner with 24-48 hours notice. McClellan stated the agreement should make sure there is a timely reply from the CWEC in the case of aerial spraying, as those applications may be very time sensitive for farmers, we can't be waiting a month for permission from the CWEC if there is an immediate need for a pesticide/herbicide/fungicide application.

McClellan asked if De La Riva had any sample agreements for reference. Gallentine stated he has shared a copy of the Franklin County wind ordinance. Granzow stated the proposed project and Utility Permit in Hardin County is much more detailed than Franklin County's permit entails. Smith has shared the Franklin County permit with Gallentine. Hoffman stated we should truly use our in county engineers and contractors, as much as possible, rather than allowing the CWECs to utilize contractors from out of state that have no experience in our drainage tile systems. Gallentine stated that in Franklin County, their county attorney recommended against having the Engineer be paid directly by the CWEC, that the drainage districts should pay the engineer and then get reimbursement from the CWEC so that it is clear the Engineer is working for the districts and not the wind turbine company. Granzow stated we should not break it down to a cost per district as they will pass through multiple districts, but rather bill the CWEC for the engineer's services by the hour. McClellan stated if we do it that way we would have to assess the district before we can bill the CWEC for the engineer's time, and that we

should not be passing these costs onto the landowners. Hoffman stated the CWECs should be provided the hourly rates up front, and there should be a penalty if we find they are doing work in the district without the required engineer oversight. Gallentine stated when they were building the Franklin County project, it was basically one of CGA's observerfull time on sight for at least a month to a month and a half. Hoffman asked if CGA had any compliancy issues. Gallentine stated Alliant was the owner and White was the developer, and they were well experienced and they did not have a lot of issues. Hoffman stated we should provide a list of rates for all in county contractors to ensure there is no cost fixing. Smith stated all contractors currently provide the Clerk with a list of rates when the contractors send in their annual Certificate of Insurance. Gallentine stated that Paul Williams and Adam Seward have both expressed an interest in getting into televising. Smith has provided attorney Mike Richards with a copy of the Hardin County Drainage Utility Permit, our current wind turbine Ordinance, a draft of version of our Ordinance with potential changes, and the Franklin County Wind Turbine Permit.

Attorney Richards stated we do not want to have to go through similar hoops put in place by the railroads, for permitting to work on District facilities.

A list of options that could be added to the Drainage Utility Permit was drafted for later discussion and review by attorney Mike Richards.

- Televising District Tile before and after a turbine's construction to review tile condition and ensure if damage is done, that it would be found by televising.
- Require any crane walks to use GPS to map the path of the crane as a record for the District.
- Setback distance of 200' from the outside of the turbine's footing to any district facilities (to include open ditches), to allow for room to make repairs to District tile.
- Utilize the same Utility Permit process that other Utilities use, but construction observation or Engineer's technician on site and chosen by the Drainage Trustees, is paid for by the CWEC/developer. Costs should not be passed on to landowners/the District.
- CWECs should be required to bore their cables under District facilities,so that when we repair district facilities, we don't have to dig past their lines.
- Require CWECs use to our in county District Engineer, and local contractors for tile repair and televising and the costs should be paid by the CWEC/developer, this would include paying an observer to go through the televising videos and look for any damage. A price list for local services/rates should be provided up front, to assure there is no cost fixing.
- If a wind turbine is re-powered, televising of District tile should occur again after re-powering, or any time after a crane walk is done, televising should occur in District tile 100' on each side of crane walk.
- We do not need CWEC's permission to work on/repair our district facilities.

Motion by McClellan to recess and return after the DD 9 Bid Letting and DD 143 Hearing. Second by Hoffman. All ayes. Motion carried.

Motion by McClellan to return to regular drainage meeting. Second by Hoffman. All ayes. Motion carried.

The discussion of options for the drainage Utility Permit continued. Attorney Richards stated we do not want to have to go through similar hoops put in place by the railroads, for permitting to work on District facilities. Hoffman stated that CWEC contractors are not familiar with field tile, and may not be experienced enough to do repairs to District tile to our standards.

- CWEC/developers should pay any legal costs incurred by the district regarding any disputes over drainage repairs that need to be done by CWEC. These costs should not be paid by landowners, especially as the CWEC will pass through multiple districts. This should be paid for with possible mass assessment to cover legal fees, and have this repaid by money placed in escrow by the CWECs.
- If new drainage district construction is required, and any additional costs are accrued due to working around CWEC facilities, those additional costs should be paid by the CWEC's, for the life of the wind turbine.
- If the district ever changes their facilities, ie; upgrade, upsize, or reroute district facilities, the CWEC would be required to match the requirements to meet those changes at the CWEC's expense.

- A \$50,000 fund provided by the CWEC, per drainage district, to cover the cost of drainage repairs for issues caused by the CWECs as they occur, rather than trying to get the district reimbursed for repairs, and to have that fund be replenished by the CWECs as funds are used.
- Any CWEC vehicle or equipment with a gross vehicle weight of 8,000 lbs or over would require a GPS map record of their path.

Granzow stated this language would just be an ordinance for wind turbines only. Hoffman stated we already have a permitting process in place for other utilities. Attorney Mike Richards does not necessarily disagree with any of these options, but cautioned it may result in the wind turbine company stating we simply do not wish to proceed with this project in this area. Granzow stated he is not here to protect the wind turbines, but to protect the already established drainage facilities, and thinks this is not a good area to build turbines in.

Richards said in his experience, the sales people for these wind turbines make many assurances, but in the end the landowners may find, they did not receive what the turbine companies made assurances of providing the landowners. Granzow stated a million dollar revenue to the county for a wind turbine over 35 years, may generate \$35,000,000 in revenue, but we already have more than that invested in the area's drainage infrastructure, and that income does not even touch the costs of what we have already invested. Granzow states there is a great deal of risk for landowners, who have little say in their neighbors choices on wind turbine lease location. Smith stated nearby neighbors, who have not signed a wind turbine lease, have no recourse with the CWEC if they should have drainage issues after the turbine's installation, only those landowners that signed a turbine lease agreement would have recourse with the CWEC. Richards stated there is 2 or 3 large contractors that do turbine installation nationally, and they come from the southern US states, that have a significantly different methods of drainage or agriculture, those contractor will not only be unfamiliar with our tile systems, and they frankly don't care about them their job is to get the wind turbine up and running.

McClellan asked if Richards could share an insights on what other counties in the state have for CWEC ordinances. Richards stated he would do some research on Palo Alto County's recent regulations in regards to wind turbines. Granzow stated he did not want any of the Drainage Districts to be responsible for any of these CWEC turbine costs, either before, during or after construction. Hoffman stated they need to be held harmless for decisions that were not a District decision. McClellan stated the whole west side of the county is in drainage districts, it is a shame they did not choose to locate it the east side of the county where there is less drainage. Granzow stated 49.8% of our county is in drainage, and this project goes through much of that area. Hoffman stated he does not believe there is a landowner that has signed an easement whose land is not in a drainage district.

Granzow had a question about who is responsible for street crossing repairs within a drainage project as well, Richards will research this and get back to the Trustees.

Mike Richards stated he will do some research and return back to the Trustees with his findings on the discussion of the wind turbine ordinance and drainage utility permits.

## 11. Other Business

DD 102 - Wetland Project was discussed. It was on the agenda at the last meeting, Hoffman spoke with Steve Perry, and the bid letting was completed. Smith had emailed Mike Bourland for more information, Bourland was concerned about not having a landowner meeting as he was concerned that the rock bedding alternative would be hard to explain in a letter. Smith can reach out to Bourland for more clarification for a letter to landowners, or the Trustees could consider an online meeting. Hoffman saw the bids, the project from the winning bidder was \$28,000 additional costs, the second place bidder was \$12,000 more in total project costs than the winning bidder, but the cost for the rock alternative was \$3,000, but from what the bid contract stated, that was not part of the State's bid. Gallentine stated, they were correct, the low bidder was based off the money the State was spending, not off the cost of the total project. Hoffman had concerns that this would raise the cost to landowners but not the State. Gallentine stated the low bidder if they just went on State pricing only was Rogness Brothers out of Lake Mills, Rogness's price was \$28,500 for the rock alternative, if they based it off total project costs, it would have been McDowell and Sons, as their rock price was only \$6,365. Granzow asked if the District landowners want to pay \$28,500 for the rock bedding or have no rock bedding. Gallentine stated the rock bedding is still far cheaper than the original project they were proposing, but with this award it looks like you just spent an extra \$22,000. Hoffman stated it would be hard to award the bid to Rogness Brothers without the

alternative and get permission for another contractor to come in and lay the rock bedding. Granzow stated he feels the landowners should choose - either \$28,500 for rock bedding or no rock bedding. Granzow stated perhaps we could negotiate the cost of the rock. Gallentine stated when Hardin County did the projects with Sindelar west of Buckeye, and Rogness did one of those projects with plastic pipe, and spooned it in, and he thinks Rogness would like to spoon it all in without using rock, and that is the last time Gallentine was aware of Rogness working in Hardin County, and this was not a project involved in a law suit. Granzow stated we need to send a letter to landowners, with a yes or no vote option, with response back to the Drainage Clerk. Granzow stated the Trustees do not need landowner permission, and if asked if we need the rock bedding on the project, his answer would be yes. Gallentine stated the large pipe in the District portion is larger concrete pipe. Granzow stated the letter should explain the rock bedding is cheap insurance, Gallentine agreed it may be wiser to just do a mailing with Covid-19 concerns. Smith can send a letter with an enclosed postcard for the mailing, requesting landowner feedback.

Hoffman inquired as to how many open work orders we have at the moment. Gallentine stated we have less than 10 open work orders awaiting a contractor. Gallentine went on that Paul Williams mentioned thought he would take some work orders, but his water and sewer business picked up so he did not take any work orders for Hardin County. Gallentine stated the only contractor that has been picking up work orders is Adam Seward and he has been a game changer.

12. Adjourn Meeting

Motion by Hoffman to adjourn. Second by McClellan. All ayes. Motion carried.