

REGULAR DRAINAGE MEETING
Wednesday, May 6, 2020 9:30 AM
This meeting was held electronically due to Covid-19 concerns.

5/6/2020 - Minutes

1. Open Meeting

Hardin County Drainage Trustee Chairperson Lance Granzow opened the meeting. Also in attendance were Trustee BJ Hoffman; Trustee Renee McClellan; Lee Gallentine and Heather Thomas of Clapsaddle-Garber Associates (CGA); Terry Swenson, landowner; 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 Hoffman to approve the minutes to Drainage Meetings dated 4-15-2020 and 4-29-2020. Second by McClellan. All ayes. Motion carried.

4. Approve Claims For Payment

Motion by Hoffman to approve claims for payment with pay date of Friday, May 8, 2020. Second by McClellan. All ayes. Motion carried.

DD 9 WO 229 - Prof Svcs After 3/27/20 to 4/24/20	Clapsaddle-Garber Assoc	\$ 906.77
DD 22 WO 176 - Gehrke Pay Estimate # 6	Gehrke Inc.	\$26,893.16
DD 25 WO 1 - Prof Svcs After 3/27/20 to 4/25/20	Clapsaddle-Garber Assoc	\$ 3,314.60
DD 48 WO 237 - Prof. Svcs After 1/25/19 to 4/25/20	Clapsaddle-Garber Assoc	\$ 2,127.90
DD 48 WO 274 - Prof Svcs After 3/27/20 to 4/25/20	Clapsaddle-Garber Assoc	\$ 4,814.70
DD 56 WO 204 - Prof Svcs After 3/3/19 to 4/25/20	Clapsaddle-Garber Assoc	\$ 1,237.20
DD 56 - WO 3 - Prof Svcs Aft 10/31/19 to 4/25/20	Clapsaddle-Garber Assoc	\$ 1,144.00
DD 86 WO 252 - Prof Svcs 3/27/20 to 4/25/20 Reclass	Clapsaddle-Garber Assoc	\$12,329.40
DD 119 WO 249 - Prof Svc After 1/31/20 to 4/29/20	Clapsaddle-Garber Assoc	\$ 250.40
DD 124 WO 259 - Prof Svcs After 3/27/20 to 4/25/20	Clapsaddle-Garber Assoc	\$ 3,400.45
DD 128 WO 279 - Prof Svcs Afr 1/31/20 to 04/25/20	Clapsaddle-Garber Assoc	\$ 521.55
DD 167 WO 208 - Prof Svcs After 3/27/20 to 4/25/20	Clapsaddle-Garber Assoc	\$ 1,343.20

5. DD 1 WO 244 - Discuss W Possible Action - Pay Estimate # 3

DD 1 WO 244 - This is the payment for the road crossing on DD 1 that McDowell did earlier in the year, it is Gallentine's understanding that this will be paid by Secondary Roads as it is for work done on the road crossing.

Motion by McClellan to approve payment on DD 1 WO 244 Pay Estimate 3. Second by Hoffman. All ayes. Motion carried.

Smith will send the pay estimate on to Secondary Roads for payment.

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

DD 52 WO 215 - Smith stated we received a crop damage claim from Tracey Below on WO 215, that was sent off to attorney Mike Richards for an opinion. Attorney Richards has gotten back to us, and Richards reply was shared with the Trustees. Mike Richards reviewed the claim made by Tracey Below, Richards reply states that the information provided by Below is not enough to substantiate his claims associated with alleged damages caused by drainage tile, and that there is technically no obligation in this circumstance to

provide any compensation to Below, as drainage districts are not subject liability to demands for money damages. Richards cited several cases, and goes on to say a landowner within the district can sue a drainage district to compel, complete or correct the performance related to the tile, but drainage districts are not susceptible to suits for damages, and cites several cases in his letter. Richards letter states that the case of Holler vs Board of Supervisors (1980) is particularly relevant, in Holler the Court concluded that a landowner can not sue a drainage district for damages caused by flooding from maintenance or a failure to maintain a drainage system, in short Richards thinks Drainage District 52 should deny the claim for damages submitted by Below. Smith stated when she shared Tracey Below's claim with Richards, Smith shared a history of the District's minutes so the Richards had an understanding that we struggled to get permission from the landowner to get the trees removed, and waited for a very long time to get the landowners signature of permission for tree removal.

Granzow stated that we as Trustees should be responsible for one year of damages, for the year that we dug up and repaired in the field, but can't say we are responsible for the full spread of years. Granzow stated that we have paid out other claims for damages as well, and feels we are responsible only for the year that we were dug up. McClellan stated that may be true but this district has a history with these trees, but the trees were the owner's responsibility to remove. Gallentine stated the first time we looked at repair, we moved the tile farther out in the field, and did not take any trees out. Granzow stated we have dealt with Piel's on this for many years, and in December of 2010 they moved the tile further out away from the trees. McClellan asked if these trees would come back now that they have been cut. Granzow stated that the trees have been cut, and Seward will remove brush and come back to treat the trees for regrowth.

Granzow stated we dug a trench and left it open for a year while we were working on the trees, and believes a crop was destroyed for that one year, if the crop was destroyed other years, that may be more the landowner's responsibility. McClellan feels Below should seek a rent rebate from the landowner. Hoffman agrees. Granzow does not feel the flooding is our responsibility in the other years, but that the year it was dug up is our responsibility. Granzow stated the first year we were waiting on an easement, second year of damages was due to waiting on the landowner's permission to remove the trees.

Motion by McClellan to pay one year of crop damages to Below. Second by Hoffman.

In additional discussion on the motion, Smith asked at what rate do we pay on alfalfa crops as they are not included in the USDA Crop Insurance tables, whether it would be by the ton or by the bale. Granzow asked Gallentine if he had a verified total on the acres. Gallentine stated he did not have that at the moment, and stated the 3 acres sounded strong but it is really about the acres the contractor has driven over. Granzow stated he would have to have CGA come back with verified acres. Hoffman stated we do not know what the quality of the hay would have been, if it would have been a fair rated cutting, a first cutting or a third cutting. Granzow stated it was the year we dug it up, and there is a large price difference on hay between years. Gallentine stated that we dug it up in the fall of 2018, and didn't get it fixed until last year, based off McDowell's August of 2018 invoice. Granzow stated by August he should have had 2 cuttings already, outside of the flooding. Gallentine stated it would have been later in 2019, that it was completed, because the trees weren't removed until December and then the work order was assigned over the winter from 2019 to 2020, so that is when the tile would have been replaced, the winter of 19-20, and the tile was open for a little bit more than a year. McClellan asked if that would be one year or two of crop damages. Gallentine stated that is a tough call, because although the tile was open for that amount of time, a significant portion of that time was because we were waiting on a response from the landowner to get permission to cut the trees down. Granzow stated we could look at this as a claim for reseeding versus damages, otherwise it would have been fixed the winter of 2018 and been reseeded the winter of 19 if we had not been waiting on the landowner. Granzow stated he was unsure what crop damages we destroyed outside of the one cutting if we went in in August. Granzow stated we don't pay claims for flooding, we only pay damages for the work we do. Granzow stated we are looking at possibly one cutting and seeding, third cutting would mean less bales, and would have to choose one or the other, the seeding or crop damages. Hoffman stated since it carries into one season from the next. Granzow stated it only carried from one season to the next due to the landowner not responding to the request for permission to cut the trees. Gallentine stated our first letter went out to Piel in August 20th of 2018, and we never heard anything back and had to get attorney Mike Richards involved. Hoffman stated had there been effective communication between the landowner and tenant some of the issues could be resolved, and better communication between the landowner and Trustees. Granzow stated he thinks it is more the seeding than the crop damages, we could pay for one or

the other. McClellan stated we could pay for one or the other, not both. Granzow stated we can pay for the seeding of alfalfa.

Motion by McClellan to pay one year of crop damages to Below. Second by Hoffman. All opposed. Motion failed.

Motion by Hoffman to pay for the seeding of the 3.5 acres of alfalfa in the claim due to the previous discussion. Second by McClellan.

In additional discussion on this motion, Granzow asked if we would hire to seed it or take Below's recommendations on the cost/bill. Hoffman stated we should have someone seed it, McClellan agreed. Hoffman stated it should go to lottery, Gallentine recommended contacting Adam Seward.

All ayes. Motion carried.

7. DD 22 WO 176 - Discuss W Possible Actions - Claim For Crop Damages 2020-5 & Update

DD 22 WO 176 - Granzow shared photos of the crop damage submitted by Swenson. Smith stated Swenson's claim was for 3 acres of crop damage in a corn field due to work done by the contractor, the area of damage begins in the northwest corner of the field and moves further south in the parcel where tile repair was done. Granzow stated it was discussed last week that CGA will verify the actual area of damage, but it may spread out a little bit farther. Heather Thomas stated you can see some yield loss in the areas that are more exposed. CGA calculated 2.216 acres of crop damage, that were mowed down, Thomas stated she could understand a bit more than the 2.216 acres but didn't want to set a precedence, as this has been how it was done during the past, the 2.216 acres represents what was actually mowed off during construction. McClellan stated some crops could be driven over during construction, but the photos look close to the driveway. Granzow called Swenson, but received no answer.

Motion by Hoffman to table Swenson's Claim for Crop Damages 2020-5. Second by McClellan.

Terry Swenson joined the meeting via phone. Granzow stated that CGA claimed 2.2 acres, and Swenson claimed 3 acres. Granzow asked how accurate were Swenson's figures in comparison, and what additional information he could provide. Swenson stated it was hard to guess when he measured it, if CGA verified the acres, he would not argue with their numbers at all, and 2.2 acres was fine with him, he stated they drug corn stalks through it when they field cultivated it so it was hard to get a good start/stop measurement on it. Granzow thanked Swenson. Swenson asked how the process worked, Smith stated it would be figured at 2.2 acres and presented for signature of approval at next week's meeting, and we use the USDA Crop Loss Insurance figures for a dollar amount for the 2019 crops prices. Once the claim is approved it will be paid with next week's claims, and will get payment out with next week's claims. Swenson thanked the Trustees.

Motion by Granzow to vote down the previous motion. All ayes. Motion carried.

Motion by Hoffman to pay the crop damages claim 2020-5 at 2.2 acres based on the 2019 USDA Crop Loss Insurance calculations. Second by McClellan. All ayes. Motion carried.

8. DD 11 WO 294 - Discuss W Possible Action

DD 11 WO 294 - Robert Smuck reports 2' tile blowout in SW corner of parcel # 882213300003, along fence line shared with Shirley Madole's parcel to the south. Smuck had Gehrke out to look and Gehrke states it is DD tile. Smith stated the map reflects where district tile meets his fenceline with Madole's property.

Motion by Hoffman to send CGA out to investigate and report back, if it is a quick repair, to have CGA send the work order to the lottery. Second by McClellan. All ayes. Motion carried.

9. DD 32 & DD 3 - WO 2020-10 Discuss W Possible Action - Midland Power Drainage Utility Permit

Application

DD 32 & DD 3 - WO 2020-10 Midland Power Coop has submitted a Drainage Utility Permit Application for DD 32 & DD 3, for an overhead line rebuild 1.5 miles along H Ave., Alden Township, Sections 29 & 32.

Granzow asked if Gallentine had any concerns, Gallentine replied he did not, Midland has been very easy to work with on the Drainage Utility Permit.

Motion by McClellan to approve the Midland Power Cooperative Drainage Utility Permit 2020-10. Second by Hoffman. All ayes. Motion carried.

10. DD 122 & DD 8 Lat 2 - Discuss W Possible Action - Warranty Feedback

DD 122 & DD 8 - Smith stated we mailed out postcards back on January 24th to review the warranty work on DD 122 & DD 8 Lat 2, on the repair project from work order 132, the warranty expires on June 27, 2020. Smith stated we had received no feedback from landowners on this, we had given landowners additional time on this because we wanted them to have an opportunity to get in the field and view this spring, since last year's wet wether may not have been an easy year to review for drainage. Smith stated things have dried out somewhat this spring, and people have had a chance to get in the field, and we have had no feedback reported. Smith asked if CGA had received any feedback. Gallentine stated he had no feedback, which is surprising as landowner Marv Kramer lives in this district and if there is an issue Marv is usually good at reporting it. The Trustees agreed.

Motion by Hoffman to direct Smith to contact Marv Kramer and verify that there are no issues on DD 122 and DD 8 Lat 2 tile warranty. Second by McClellan. All ayes. Motion carried.

11. Other Business

Smith stated she received an invoice from Davis Brown Law Firm for review of utility permit application, and wind energy moratorium information that we shared with attorney Mark Richards during our work session on the wind turbines. Smith has not received an opinion yet from Richards, Richards told Smith an opinion would be forthcoming in the next week or so. Smith asked once we have that opinion from Richards, because this is not an invoice tied to a specific work order, how do we want to approach payment of this invoice. Smith stated the last invoice for IRUA legal issues was paid through Rural Services. Granzow stated he does not plan on paying a bill until we have an opinion. McClellan asked if we had a line item in our budget for Rural Services. Smith stated yes, and typically those invoices would be handled by Mindy McClelland. Granzow stated this is not a rural services issue, but we could reimburse rural services once we do an all district assessment. Smith stated she had not included this payment in today's claims but was just seeking guidance on how to handle it when the opinion had been provided. McClellan stated that could be paid out of Rural Services at that time. Smith will bring it back as a separate agenda item when that time comes.

Thomas stated she had received an update from contractor Adam Seward hat he would begin work on Randy Silvest's wetland repair tomorrow, Thomas stated Silvest would be notified that they would work on his parcel. Seward also asked Thomas if there were more work orders coming in, and Thomas told him yes we have had a few, and stated it sounds like Seward will be ready to take on new work orders in the near future.

12. Adjourn Meeting

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