

**PUBLIC HEARING MINUTES**  
**RECLASSIFICATION COMMISSION REPORT FOR MAIN AND**  
**CLASSIFICATION COMMISSION REPORT FOR LATERAL ONE**  
**OF DRAINAGE DISTRICT 67, HARDIN COUNTY**

6/4/2019 - Minutes

1. Open Meeting

Drainage District 67 Board of Trustees Chairperson, Gary Rabe, opened the meeting. Also present were Board of Trustees Keith Helving and Dennis Prochaska; Landowners, Tom and Sheryl Roberts, Byron and Loraine Clark, John Barlow, Kay Helving, Pete Bartlett and Jeff Heinzerth; Lee Gallentine and Zeb Stanbrough from Clapsaddle-Garber Associates (CGA); Drainage Clerk Becca Junker and Former Drainage Clerk Tina Schlemme. Dave Johnson with Law Offices of Brinton, Bordwell & Johnson was present via conference call.

2. Approve Agenda

Prochaska moved, Helving seconded to approve the agenda as presented. All ayes. Motion carried.

3. Introductions/Attendance

Introductions were made and attendance verified.

4. Open Public Hearing

Rabe opened the meeting.

5. Verify Publication

Junker verified the notice of hearing was published in the Times Citizen on May 15, 2019.

6. Explanation Of Reclassification

The hearing was turned over to Gallentine who explained the classification process as detailed in the commission reports for the main tile and lateral one.

When discussing the Main Tile Reclassification Report, Gallentine went into detail on section 4.2 under exceptions. This section reads as follows: "For tract 12, approximately 50% of the construction costs in the recent bid letting for the currently proposed project were associated with requirements by the Union Pacific Railroad to prevent erosion on their property and the resulting protection of the Union Pacific Railroads facilities. As such, the Commissioners felt that tract 12 is the 100% benefit tract for the currently proposed project and should pay 50% of the total reclassification."

In Gallentines conclusion he stressed that this Reclassification Commission Report should be adopted as the basis of payment for the current proposed project. He informed the board that in the future, if projects arise, it will be their responsibility to determine on an individual basis if this Reclassification Commission Report is equitable based on item 4.2 from exceptions that was talked about before and listed within the report. The commission feels it is equitable right now because the project involves work on the railroad and under the railroad with measures to protects their facilities. For instance, if ten years from now there is another project and it doesn't involve the railroad at all and it's all up stream, maybe this is no longer equitable.

7. Written Or Verbal Comments/Discussion

Rabe asked if there were objections from any landowners who were present in the Hearing, there were none. Rabe then presented a written objection from Union Pacific Railroad to all landowners. Junker passed out the written objection so that everyone had a copy to reference to in the future. Gallentine clarified that Union Pacific is not a landowner in the district although they could be acting on behalf of Midwest Railroad Properties. Regardless, he does think this objection needs to be taken into consideration. It was then

requested by Johnson that Rabe bring attention to the first paragraph on the second page of the objection by reading it out loud to the landowners. Gallentine offered to read the paragraph that reads as follows:

"As far as existing benefits in the District, the property owned by Midwestern Railroad Properties ("MRP") consists of fewer than 5% of the total acreage in the District. Due to topography of the MRP property relative to the other property in the District, the MRP property should benefit less, not more, on average than the other property which makes up the District. However, in any event the MRP property does not enjoy 50% of the total benefit in the District and should not be reclassified to pay 50% of the assessments to the District. It is worth noting that if a District project crosses the railroad property and costs more as a result of needing to comply with railroad requirements, the increased cost, if any, from satisfying railroad requirements is independent of the question of how the funding responsibility for the project should be allocated. Funding responsibility for projects crossing the railroad right of way depend on details other than the proportionate benefits among the different property owners in the District. **Union Pacific objects** to the reclassification for the aforementioned reasons."

Johnson then wanted to inform the landowners that he is looking at chapter 468 of the Iowa Code which covers Levee and Drainage Districts and Improvements. The commissioner reports are addressed in section 468.44 states that in the report the commissioners are to set forth the reasons for the assessments. There is a subparagraph four, that provides "Any specific benefits other than those derived from the drainage of agricultural lands shall be separately stated." When the legislature enacted this section, they recognized that there may be specific benefits to land in the district that is not ag land, in this case it is a railroad. Johnson went on to explain that whenever there is a project involving the railroad they have a lot of red tape and requirements like a higher insurance rate and flag men. When writing this letter, Johnson thinks the railroad was thinking about those sorts of things. However, in this particular circumstance, Gallentine has set out in the commissioner's report and the engineers report itself talks about all of the specifications required by the railroad for the tile itself. There are a lot of actual specifications that deal with location and casing around the tile, things that are unique for a railroad because they want it to be so secure to prevent erosion on the upgrade side of the tracks. They do not want there to be a breakdown, erosion or the tracks to move or give in. In this particular case he would submit to the railroad that 50% of the costs of the project was not for their bureaucratic requirements and safety precautions. It was for the actual project itself and the need for the railroad to put in tile that would protect their property. Johnson said he believe this commissioner's report is valid based upon the law because it does look at the particular needs of the railroad for their drainage needs. For that reason, he thinks the proposal is valid under the law and is valid based upon common sense and judgement.

Johnson finished by asking the landowners if they had any questions. It was then asked who pays for the expenses if this case were to go to court. Johnson informed the landowners that the system is set up that each party pays their own unless there are exceptions to that rule. In this case, there are no exceptions so if the railroad would proceed to litigation they would pay for their attorney fees and the District would have to pay for their own attorney fees. These defending fees would be added to the fees for the project cost. Johnson went on to explain that because of this it is important to make sure what they are doing is according to the law to reduce the cost of appeals and the likelihood of litigation.

There were no other comments or objections.

8. Close Public Hearing

Prochaska moved, Helving seconded to close the public hearing. All ayes. Motion carried.

9. Possible Action

Prochaska moved, Helving seconded to approve the Reclassification for the Main. All ayes. Motion carried.

Prochaska moved, Helving seconded to approve the Reclassification for Lateral One. All ayes. Motion carried.

10. Other Business

Johnson informed the Trustees that there is now a 20 day appeal period. Under section 468.42 under Railroad Property - Collections, the railroad is treated differently in that if there is an assessment it is treated as a debt due from the railroad company. Unless paid it may be collected by ordinary proceedings. This is different from the installment language that if you have a landowner with an assessment for over \$500 the landowner can waive objections to the assessment and the board can then decide if the payments are made for 10 or 20 years and what the percentage of interest rate is. If a landowner does select a waiver and installments, then they are waiving any objections there are to the assessments that are approved. The railroad on the other hand, if they don't pay it then an action could be brought against them to require them to pay it.

11. Adjourn Meeting

Prochaska moved, Helving seconded to adjourn the meeting. All ayes. Motion carried.