

## REGULAR DRAINAGE MEETING

Tuesday, June 30, 2020 9:30 AM

This meeting was held in-person and electronically due to Covid-19 concerns.

6/30/2020 - Minutes

1. Open Meeting

Hardin County Drainage Chairperson Lance Granzow opened the meeting. Also in attendance were Trustee Trustee BJ Hoffman; Trustee Renee McClellan; Landowner Floyd Hammer; Darrell Meyer, County Attorney; Michael Pearce, Network Specialist; Jessica Sheridan, Environmental Health; Angela De La Riva, Economic Development; Lee Gallentine of Clapsaddle-Garber Associates; and Denise Smith, Drainage Clerk.

2. Approve Agenda

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

3. Approve Minutes

Motion by McClellan to approve the minutes to Drainage Meeting dated 06-22-20 and DD 120 Landowners Meeting dated 06-24-20. Second by Hoffman. All ayes. Motion carried.

4. Approve Claims For Payment

Motion by Hoffman to approve claims for payment with pay date of Thursday, July 2, 2020. Second by McClellan. All ayes Motion carried.

DD 11 WO 294 - Televis tile & truck mileage	Williams Excavation LLC	\$2,327.00
DD 52 WO 215 - Review of Crop Dmg Claim 2020-4	The Davis Brown Law Firm	\$ 385.00
DD 86 WO 172 - Tile repair, labor, equip & rock	Williams Excavation LLC	\$1,381.00
DD 158 - WO 285 - Televis county main & truck mileage	Williams Excavation LLC	\$1,623.00

5. Discuss W Possible Action - Drainage Ditch - City Of Union

Landowner Floyd Hammer discussed the drainage ditch in the City of Union. Hammer thanked the Trustees for beng so helpful, Hammer spoke with the Trustees, the Auditor's office, Secondary Roads are all doing a great job. Hammer presented the Trustees with a letter addressed to the Hardin County Board of Supervisors acting as Drainage Trustees, in which Hammers discusses the issue of siltation of the drainage ditch which runs from South Hardin Golf Course through the city of Union. Hammers notes in his letter the siltation of the ditch has long been a problem to the landowners within the city, and Hammers stated the question was presented to the Union City Council with little discussion and no action indicated to be taken by the Council. The letter goes on to state that Hammers spoke with both the County Engineer and the Drainage Clerk about this issue, Smith provided Hammer with a copy of Iowa Code sections regarding the establishment of a drainage district.

Hammer stated when he bought the GMI building in 1996, and this issue has not been addressed since then, the ditch is silting in and we had the rains of Monday last week the water was within inches of touching the bottom of the bridge, and there are some planks falling off the bridge, and if they do fall it will cause more problems. Hammer stated after the meeting with City Council, the town council did not get very excited about it. Hammer stated he has included the copy of Iowa Code provided by Smith and a map image of the city of Union along with his letter to the Trustees. Hammer has spoken with Vaux Industries, Heart of Iowa Telephone Co-op who are all property owners adjoining or abutting the ditch. Hoffman stated that he had spoken with Nathan and Bernie and it does not take much rain and they have to deal with flooding in that ditch, and this is the first time anyone has made a formal request besides stating can we just clean out the silt and debris in the ditch. Hoffman appreciates Hammer coming here and formally wanting to do something, because asking the Engineer's office to come and clean out the ditch may not be a delegated authority, so this may be the only process.

Hammer presented a map that shows the current course of the creek, Hammer stated many years ago there may be a survey done about straightening the creek, and there may be some paperwork somewhere that covers that. McClellan stated straightening it may be easy until you come to a residential area, Hammer stated the two residential properties in that location have been abandoned or condemned. Hammer stated an engineering survey would tell us if we meet the code requirements, short term Hammers thinks we need to clean out the ditches, long term look at if we should make a new course for the ditch. Hammer stated when he bought the GMI building, he put in a loading dock that has a direct drain into the creek, this drain is now 18" of sediment over the drain, and Hammer put a standpipe on it, otherwise the creek was backing up into the loading dock. Hammer stated if we could eliminate the weeds in the creek that may be helpful too.

Granzow stated what it sounds like Hammer wants to do is create a drainage district. Hammer stated if that is a way to fix the problem then yes, otherwise it will get worse. Granzow stated that this could be done two ways, the city could do it on it's own and assess taxpayers, or the district will do it and it will have an assessment. Hoffman stated the remittance would be different for a drainage district. Hoffman stated you will have to establish the watershed of the entire area, which would probably entail the golf course itself. and however far out it goes to the river. Hammer stated once you get to the south edge of Union there may be enough fall you don't need to go any further than that. Granzow stated that may determine who the controlling interest is, the city of Union, or the unincorporated area, the watershed would determine that. Granzow stated this would create a new watershed, and the engineer would draw up a report, Granzow stated he had never established a new drainage district. Gallentine stated he had not either, and we would have to have an engineer's report for establishment, and a hearing for establishment, and decide who would be in charge of it, by default the Supervisors are District Trustees, and if enough of it lies within the city limit is it could be transferred to city control. It was discussed that the district could end at the creek or at the river, as some of the area south of town is a river flood plain.

Granzow stated the better process would be for the city to handle the expenses for this project, it would be more efficient for the public not to get into a drainage district. Hoffman stated drainage laws are more stringent than municipal laws, and if drainage is not flowing, we have to maintain drainage, if the facility is not working to it's full potential, by law we have to do repairs to restore drainage. Hoffman stated a drainage district can be Trustee managed or owner managed with private trustees, but once the engineering report comes in it may show the golf course as having a high percentage of benefit, it may come in that they would owe a significant amount of whatever work is done. Hoffman stated each property owner in the district would be responsible for the costs, for example Radcliffe is part of a drainage district that is having issues and when you pass on the highest percentage of benefit to a golf course or one or two residents, on a million dollar project you could have one person paying \$500,000 for that. Hoffman stated in Radcliffe, the golf course is a major beneficiary, they could be on the hook for a half million or more dollars. Hammer stated it appeared to him that this would start at the south end of the course. Granzow stated the golf course would likely be part of the assessment.

Hoffman stated the first step would be getting the formal petition put together, so that the engineer with Clapsaddle-Garber comes in with a report and states these are the boundaries we recommend the drainage district be comprised of, every parcel in that district will be responsible for something one way or another, and once we receive a complaint that something is not functioning properly, we have to do something. Granzow stated which would be your complaint, once that process is initiated it will go forward. Smith stated we would have to establish your district before your request for improved drainage could move forward, we would require signatures on the petition, and although Hammer's letter lays out some names of landowners, we would require signatures on a formal petition of these landowners, and once that is done there are some other requirements moving forward. Smith stated if the engineer generates a report there is a cost associated with that, that cost would be applicable to the district if you choose to establish a district, if you choose not to establish a district, there may be the requirement of a bond to cover those costs. Smith stated in the event you choose not to become a drainage district, the bond would be used to pay those costs associated with creating the engineer's report. Gallentine stated for repairs, engineer's reports usually run \$5,000 to \$7,000, if we are talking district establishment that is probably on the low end because we are creating something brand new. Gallentine stated if the district is not established, the bond would cover the engineering costs, hearings, and any mailings associated with the hearings and notices to landowners, if the District was established, then the district would just pay it.

Hammer stated he is on the agenda for the next Union city council meeting a week from Tuesday, Hammer asked if the Drainage Clerk could come to the meeting to explain the process, as he does not want to start a ball rolling that no one wants to push. Hoffman stated that Gallentine would be better suited to explain the process, and be more expert. Granzow stated since Smith is the Drainage Clerk and would be under drainage pay, Granzow asked if Gallentine could attend. Hammer stated it would be July 14, at 6:30 pm in Union. Gallentine stated he is available for the meeting and there would not be a charge for his appearance. Granzow stated Gallentine works as our Engineer, but would not be the engineer of record in this case until a Drainage District is established. Gallentine stated the benefit of being in a drainage district is that if drainage facilities are in need of repair or in a state of disrepair, the downside of that is there is always a bill that comes due with that. Hammer stated that there is a need for this to be repaired, and someone will have to fix it eventually. Hammer thanked the Trustees, Gallentine and the Drainage Clerk for their assistance.

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

County Attorney Darrell Meyer reviewed the proposed changes to the Drainage Utility Permit Application. Meyer stated he had the benefits of reviewing the minutes of previous meetings to draft some changes to the Drainage Utility Permit Application, Meyer stated that instead of trying to insert things into the existing permit language, Meyer called the existing language Section I and inserted the new language in Section II Wind Turbine Requirements that applies only to wind turbines, paragraph 20 states: This Section shall apply to commercial wind turbine applicants as defined in Hardin County Ordinance 29, Article XXIII. Meyer stated so whatever definition is used under Ordinance 29 for wind turbines, that would be who would have to use this permit form. In paragraph 21, Section I will still apply but to the extent that Section II is not compatible, Section II will override Section I, so they still have to comply with Section I of all your existing requirements, Section II is in addition to that and if there is any conflict between Section I and Section II, Section II would apply to wind turbines. Meyer stated he was trying to find some language for the idea that he had about this conditional approval, looking at the tile condition ahead of time and having an opportunity to work out the dollar and cents ahead of time after getting an idea of the condition the existing tile is in that way both parties can say it is not worth it, or before getting the final permit they get the conditional approval to scope it and there would have to be an agreement that would be entered at that point before they get the permit. The deal points would include that the applicant has to televise the district tile at the applicants expense, at the districts direction and under the conditions set by the district and how far and how much tile needs to be scoped is at the discretion of the district, depending on the location. Meyer did not want to put in a hard and fast measure of how many feet to be scoped, because every district is different, and this would have to be done on a case by case basis in which you could create a template, but that would have to be a condition that you create, but just be up front that the wind turbine will scope whatever you want them to scope.

Meyer stated then they would have to enter an agreement that states what percentage of fault they would have to deal with, this tile is damaged, what percent of fault will be allocated to the developer, this would be something you have to work out. Meyer stated that the next point deals with what damages would be paid at replacement cost, rather than replacing to the 100 year old tile standards, this would replace at modern cost, similar to an insurance policy that would replace at replacement value rather than market value, and how much of that are you going to require them to place up front as a deposit and then any legal fees the district incurs in negotiating and drafting the agreement and enforcing the agreement, the wind turbines would be agreeing to pay those costs. Meyer stated at least this way the district agrees to issue a permit, the people who are going to bear the costs know what is at stake and know what the risk is for approving any given wind turbine site, and so the landowners know if something goes wrong they will not be on the hook for this percent, and they can decide how much it will cost them, and as Trustees you can make a very clear decision whether to issue the permit or not. Meyer stated that was the idea behind paragraph 22. In paragraph 23, Meyer stated, if you have reached an agreement with the developer and you decide to issue this permit, the permit would include these additional terms, gathered from previous meeting minutes. Meyer tried to capture the specifics of what the Trustees had discussed at one point or another.

The Trustees discussed the \$50,000 fund for drainage repairs to be held in escrow by the CWECs. Meyer stated that would be covered in the pre-approval option, that could be driven by individual districts and each one could be a different amount. Granzow stated that could be in the agreement, we could establish each price per district. Meyer stated that some sites could vary by the space between tile lines, and each district may vary. Hoffman stated some of the costs in a district that has dual wall polypropylene may not be as at

risk as a district that has 100 year old clay tile. McClellan stated has the cost of repair been addressed by this deposit, but if we hire CGA to work with all of these districts on repairs, who will pay that cost. Meyer stated the CWEC would pay for this, and any attorney fees, Meyers states it is in both the conditional use permit and the Drainage Utility Permit, after the use of the permit, but paragraph 22 is designed to make all the unknowns known, so there is no misunderstandings. Meyer stated if something fails in this tile that could be affected, the engineer will help make those repair costs known, so now you have the dollar value and then you negotiate their percent of fault. If the tile is pristine and it breaks, the fault would be 100% on the CWEC, if it has slight existing damage you may negotiate a different percent of fault if it were to break, but if you are not prepared to pass that percentage of known replacement costs onto your landowners then you go no further because you can't come to agreement. McClellan stated that the old tile may last another ten years or it could fail tomorrow and they are driving on it and it breaks, that cost should all be on the CWEC. Hoffman stated if we get into a repair and have the situation we had a couple of weeks ago, when they go to repair a section of the tile and hook on and the next section collapses, and that goes on for 500', when it was just supposed to be a spot repair. Granzow stated some things are better left untouched. Granzow stated he would estimate 50% of the tile may have issues. Meyer stated the Trustees would have to decide if the landowners are willing to bear that risk of replacing 50% of however many miles of tile, and if they aren't willing to do that then this site is not going to get approved.

McClellan stated that is another reason we need the locations of these turbines be made public, because not everyone in a district is willing to pay, it may not be the landowner that is having the turbine on his property, if there is a cost to be passed on to landowners, it will be passed on to all in the district, not just the ones that have it on their property, that includes those that want the turbines and those that don't want the turbines. Meyer stated that the percentages across a district are assessed differently based on percent of benefit, maybe you need to assess this differently. Hoffman asked if there was a way you can assess the people that have easements. Granzow stated not really, because the classification is based on acres, proximity and other factors, are we supposed to change our concept of classification. McClellan stated for how long would that classification change, just during installation or for the life of the turbine, if we just look at installation that does not take into account the vibration in the ground. Gallentine stated the wind turbines should pay the bill with an allocated percentage because the landowners were not aware of the fact that they may get assessed for drainage when they signed those easements, and will follow the Trustees decisions.

Hoffman has a friend who works on turbines at Next Era Energy and would be a disinterested party, he said we could call him as he has done projects all over the midwest. Hoffman stated this person would have no financial interest in this whatsoever, and the friend told Hoffman average permitting fees are \$5,000 per turbine. Hoffman stated this would be someone that does not work for a lobby or association, this would benefit him not at all, he would like to hear from someone who is an expert but has no financial interest in this at all. Granzow stated if a Board Member such as Hoffman, could meet with this person along with Darrell Meyer, and Jessica Sheridan, if they met in a boardroom setting this would be fine with him, Granzow asked if Meyer or Gallentine would be interested. Hoffman stated some of this crosses over from drainage to the ordinance but having someone who may be pro-wind but would tell us some of the things to take into account. Hoffman stated when he told him a year ago we were looking at a project, we could ask for \$20,000 per site for a permitting fee and that is not unreasonable. Granzow stated the ordinance looks good and the Drainage Utility Permit draft looks good. Hoffman asked for clarification on the televising portion to make sure that we are looking at local county contractors. Meyer stated in Paragraph 22 subparagraph 1: at applicants expense and at District's discretion and conditions, applicant shall televise the District Tile that may be impacted as determined by the District, so the Trustees decide how much tile is scoped and who is doing it. Gallentine stated paragraph 23 subparagraph F talked about local contractors and really liked Section II being added on to the current permit.

Hoffman asked if we can pass this in one reading as Trustees. McClellan stated she would like to get Hoffman's friends perspective before approving the draft, and asked if that could be recorded so we could watch it later. Hoffman stated he could record the phone call. Granzow stated if he reviews it and doesn't see any changes, we could approve it. Hoffman stated his contact is an Iowa State graduate, who is from the area and understands the drainage and natural resources we have here, and that is important and if we get a lobbying group that would say this is too stringent, and finding someone disinterested who values what we have here in Hardin County is key. Meyer stated his idea here was to avoid litigation and spell everything out up front, then you are not in litigation for 10 years while they still go on doing what you don't

like them doing. Meyer stated the wording may be loose but with the agreements you can go in and both sides can know their percent and what their replacement costs will likely be, that way when it does fail we already have the formula in place so the CWEC can determine what their cost will be and you can decide what kind of deposit you will require based on probabilities that the engineers will be able to know of what the odds are of the tile failing, and that will help determine the deposit. McClellan states that makes more sense than charging a flat deposit, as the costs may be different if the district has an open ditch or a large tile. Hoffman stated he did not want to argue replacement values, if one person has to spend 6 years of their easement payments from the CWEC on damages, then so be it, Hoffman does not want the person who gets no benefit from the wind turbines to be on the hook for the cost. Sheridan asked if the \$50,000 noted in the Ordinance would need to be changed. Granzow stated that only applied to County drainage, not drainage districts.

Hoffman stated he would contact his friend and record the conversation so we have a recording to listen to. Meyer noted paragraph 21 should state "incompatible with" rather than "incompatible to", Smith noted that paragraph 23 subparagraph B should read "gross weight of 8,000 lbs. or greater" rather than just "gross weight of 8,000 lbs.". Granzow asked if the others were ok if he shared this with other counties for review. Hoffman had no problems with that, Granzow stated we are far ahead of what other counties are doing, Hoffman stated he has heard just do what other counties do. McClellan stated we should send it to other counties that have drainage districts, so we may learn from other mistakes. Granzow noted Kossuth County has had issues, and Franklin County has had a few. Gallentine stated he thought it looked pretty inclusive and is curious to see what BJ's contact has to say. Hoffman stated he would record the conversation with his contact with Gallentine as well. The Trustees expressed thanks to Meyer for his work on the draft. Granzow stated we should bring it back on next week's agenda.

#### 7. DD 120 - Discuss W Possible Action - Landowner Request For Engineer Study

Smith stated that Kent Picht had submitted in writing an investigation study request after last week's drainage meeting. Granzow stated he received a phone call from Kevin Vierkandt after the meeting and Kevin was still concerned about Picht's pipe discharging into Vierkandt's field, and Vierkandt had reached out to legal to determine if Picht can or can not do that, and Vierkandt wants to know what the Trustees are going to do about this, Vierkandt feels it should be capped, and Granzow believes he has a legal team that says that, that being said, Granzow feels we should ask legal that same question. Granzow is still fine with the request for an investigation summary and Vierkandt was fine with that as well, at this point do we want to involve legal or do we want to wait until legal comes to us, Granzow would like to be proactive. Hoffman asked how active Vierkandt is on this as he does not want to call attorney Richards with a what might happen and get charged for an hour or two of fees just letting him know this is coming. McClellan would like to hear Gallentine's perspective and agrees that if Gallentine thinks that pipe should be removed a letter be sent stating this is what we are recommending at this time, if he disagrees let him go to his attorney, and we do a response rather than us starting the legal process. Granzow stated from his standpoint it is hard to go to Picht because Granzow thinks Picht is entitled to hook up tile, whether it is a standpipe or not, but if the drainage district believes it is discharging instead of taking water in, Granzow thinks it should be the district's expense to go in and cap it rather than Picht's, with the statement that Vierkandt made was that Picht put the standpipe in to discharge onto Vierkandt's property and not Picht's. Granzow continued that with the statement being made it is to save Picht's property and to put even more surface water on top of Vierkandt's property, the other thing that Vierkandt pointed out to Granzow was that when Picht put the standpipe in the fenceline, Picht removed the natural berm from the fenceline so now the water is flowing into Vierkandt's instead of being restricted back onto Picht's property and that is impeding he neighbor's property and is changing the flow of water. Granzow stated he needs CGA to go out and look at it and report back. Gallentine stated Picht is entitled to install an intake on his property, and he also thinks you can not take subsurface water and turn it into surface water and put it on your neighbors property, they are both somewhat right is the issue. Gallentine will go out and look it over before the next meeting.

Motion by Hoffman to have CGA investigate and report back to the Trustees. Second by McClellan.

In additional discussion on the motion, Hoffman noted that Gallentine was going to put the investigation into CGA's work que, but we were waiting for the official request before we moved forward so it is on our notes now that the reason for sending them out is because we have received an official request from a landowner.

All ayes. Motion carried.

The landowners request for an engineer's study was discussed. Hoffman stated he felt we should wait for the investigation to come back because the engineer's report will be more intensive than just going out and having a look. Gallentine stated the written engineers report will have all the calculations and costs spelled out in it. Granzow stated we can do both, we can have the investigation and the study back to us or does Gallentine think it is worth waiting to do the study until we have the investigation back to us, Hoffman stated if there is potential imminent litigation, we may want to wait until we are almost forced to do it, as we are dealing with a tenant and not an owner. Granzow stated he can deal with a tenant on water damages, but in the case of a request for a study that must come from a landowner, Granzow is ok with waiting a week until Gallentine gets back to us, it will not slow the process overly by waiting a week. Gallentine stated CGA will look it over, and noted the request did come from landowner Picht. Hoffman stated in regards to the legal matters, he would rather they come to us with some type of legal complaint, Hoffman likes being proactive, but does not want to receive a bill stating that yes, they will send something to us. Granzow liked both answers and asked would it be cheaper to get involved up front versus getting them involved on the backside. Hoffman asked what would we give legal at this point, Granzow stated Gallentine will provide the investigation which will tell us what is really happening, so we will have to wait for that before we go to legal. Hoffman stated that works for him.

Motion by Hoffman to table the landowner request for an engineer study until CGA gets back to us on the investigation. Second by McClellan. All ayes. Motion carried.

#### 8. Other Business

DD 25 - The tile through Torgeson's ground that we added with a change order, McDowell has this almost completely installed, and they are up to the old deeper tile on Alvin Clark's land, they attempted to televise that yesterday to determine the condition per the contract. The contractor stated they could not televise the tile because it is between 30% to 90% plugged with mud. The way the contract was set up, we would replace that tile because it is also cracked, not collapsed but cracked in every place they have dug it up. Gallentine stated the piece of the contract that was optional for this section of tile will have to be executed or that section of tile will just not flow. Gallentine had hoped there would just be a couple inches of mud in there and it would flow but it is not looking that way. Hoffman asked the diameter of the pipe. Gallentine replied that the pipe is at the south end is 12" and at the north end is 10", the south end which is downstream is plugged 90%, upstream is plugged 30%. Gallentine stated he wanted to bring the Trustees up to speed before we go down that path. Granzow asked if this was just a short jog. Gallentine stated east of the tracks, this would be about 500'. Granzow asked if this would flush out, Gallentine stated not at 90% plugged, the other option is we could try to jet clean it, but there is no guarantee if we jet clean that the tile will survive or that it isn't collapsed already somewhere in it's length. Gallentine wanted to note it because that project has really changed from the original engineer's report.

#### 9. Adjourn Meeting

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