

## **REGULAR DRAINAGE MEETING**

**Wednesday, July 22, 2020 9:30 AM**

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

7/22/2020 - Minutes

1. Open Meeting

Hardin County Chairperson Lance Granzow opened the meeting. Also present were Trustee BJ Hoffman; Trustee Renee McClellan; Taylor Roll, Hardin County Engineer and Mayor of Radcliffe; April Eller, Radcliffe City Clerk; Chuck Raska, City of Radcliffe; Landowners Roger Handsaker, Paul Handsaker; Lee Gallentine of Clapsaddle-Garber Associates; Darrell Meyer, County Attorney; and Denise Smith, Drainage Clerk.

2. Approve Agenda

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

3. Approve Minutes

Motion by Hoffman to approve the minutes of Drainage Meeting dated 07-15-2020. Second by McClellan. All ayes. Motion carried.

4. DD 143 - Discuss W Possible Action - Tree Removal Options

Granzow stated the Trustees would like to discuss tree removal options, and as Trustees can go in and remove trees in the right of way, but it gets expensive, we have options to go in and remove the trees and do an improvement. Granzow stated it would be nice if we could have the City go in and somehow they communicate through their public or through themselves to take the trees down and hopefully stop the growth of the trees that have to come down, the roots are continuing to grow in the tile, water is flowing but it will get completely plugged at some point. Granzow was unsure if the City of Radcliffe would like to do anything to remove trees, or if the City would like the Trustees to handle the tree removal.

Roll asked if the Trustees were just talking about the trees in the right of way. Granzow stated yes. Roll stated he is not opposed to it and asked Raska what his thoughts were. Raska stated it would be nice to know which trees were at issue and categorize them and do them in segments rather than take them all. Gallentine stated the tree inventory was in the report, and the species at issue were highlighted. Roll asked if some of the trees were out of the right of way. Gallentine stated it is within 50' of the main tile is what CGA recommends removing, and the species doesn't matter if they are out of the right of way. Granzow stated we are trying to do this in the most efficient way. Roll stated he thought they could do some of the tree removal and revisit it. Raska stated there are probably 8 to 10 trees along that route that are dead anyway and need to come down. If they are diseased or dead, they become the city's responsibility, over the landowner's anyway. Raska stated when they are in town and it is a choice if they want it removed it is landowners choice, even if it is in the right of way. Raska stated this is a different thing than we have, we don't have anything written for tile in town, so we go off the districts, and if they have to be removed, Raska is not sure if the City wants the financial responsibility of taking all the trees down either. Hoffman stated that everyone should understand if the City takes them down, the costs will be passed along to the citizens through their taxes, if the drainage district takes them down the expenses will be passed along to the citizens in assessments, so either way the taxpayers will pay for them or the landowners will pay for them. Hoffman stated if it is a big project, we may have to go out for bid on the tree removal, and the City may have to do the same. Granzow stated they may do them locally. Hoffman stated if it is over \$50,000 then it has to be sent out for bid.

Paul Handsaker stated we were tagged big time compared to a lot of people in town with our ground base in that district and we did not plant the trees, it is not our responsibility, if I were to build a new shop and tore up county tile, I could not simply say you can go fix it and pay for it. Handsaker stated we did not cause the majority of the trouble and we are going to pay all the cost. Gallentine stated he agrees but drainage code states the district shall be responsible for tree removal. Handsaker stated this is a weird situation with the tile going through town, and there may need to be exceptions made, but understand you have the code to go by, this is hard on us as landowners and this is not a great economic climate right now. Hoffman

stated if Chuck had the inventory list and worked with the City Clerk, if they could send out formal notice to anyone with trees, that you can take them down yourself, otherwise, we are going to have to do a mass tree removal and it would cost much more, but someone may have connections with a friend or family member that does tree removal, it might be able to be done a lot cheaper, and save a whole lot of cost. Handsaker stated if we could identify the worst case scenario and take them a few at a time, may be the best scenario. Granzow stated he believes there should be an exception, and that exception is we are talking to the city, and if they agree to take all or some down, any progress is better than no progress, but if we come in for tree removal it is coming in at one shot. Granzow stated the exception is that by talking with the City so that we don't come in as one shot and hopefully we can save the current tile that is in there, but we have to show some progress, if we are not showing progress we are going to have to do something. Handsaker has still not heard if this is Hiland's problem or if the problem is somewhere closer to his field that is his own problem, but if the tree roots are there we should probably pull them out. Granzow stated the problem has been addressed, no matter whose problem it is, it has been restricted, it is still a problem for the whole district, Granzow did not know if this would solve Hiland's problem, but this situation can't help it, it will become a larger problem if the trees continue to grow.

Raska, stated some of the trees we are talking about are well older than the tile, when we say that the people who planted them caused the problem, some of them have been planted, but the ones Raska saw in the area when they were televised are large, old trees. Gallentine agreed, some may predate the tile, but there is no way the maple trees are 100 years old. Raska stated that is true, some of them are not that old, but they need to go. Gallentine stated the oak and walnut trees may possibly be that old, but he is not worried about those, it is the quick growing trees, like the maple, ash, box elder and mulberry trees. Roll asked if the right of way was 66', Gallentine stated that was what the engineer's report determined, was that it was the same as the City's right of way at 66', the district does have the authority to go out of the right of way to remove trees. Granzow stated if we do have to do that, we are going to have to buy that tree, Gallentine stated there is a damage process. Granzow stated if we can get the trees cut back and improve flow that way, it may give us another 10 to 20 years out of the tile, without making it look as one person stated "a tornado going through town". Hoffman stated if we can chip away it, even if it is one tree every couple months, to show some progress, so that people can't say we are not doing our duty as well. Granzow stated no one wants to pay for it. Raska stated if we did 8 to 10 trees a year, and that would satisfy everybody, that may be possible. Roll suggested he and Raska measure which ones are in the right of way and see if any of those are on the list for the worst trees in the tile, and target those trees right away. Gallentine stated if you took down 8-10 trees a year, you would be done in a couple of years, and some may be out of the right of way, so it should not take too long. Raska stated that may alleviate the district of any liability if it shows progress. Roll stated he thought that was reasonable. Raska stated that was doable, they still have other trimming to do within their budget, but that may be the best route to go, even if we did 6, some years we may be able to do more, some years less, just depends on the year. Granzow asked if we could get a letter sent to those landowners, that this is preventive maintenance for your entire community. Hoffman stated it would be good for the municipal sewer lines as well. Granzow stated he did not want this to turn into another golf course project. Raska asked if the Trustees were still planning on lining the tile. Granzow stated let's try this tree removal and see if things improve, Hoffman agreed.

McClellan asked if it was worth taking down the trees that were dead, although they have too, but would that improve the root situation as those trees are no longer growing. Raska stated they are old and starting to lose limbs, and they are a safety hazard, we have to start there and work our way to the smaller ones, then we can pick out the ones most likely to cause problems. Hoffman stated if the City could present to the Trustees a prioritization list with a time line for removal, whether that needs to be revised to us every 6 months or every year, to document progress and that they are doing something. Raska stated for us that would have to go by safety, then the aggressive trees, then the other trees. Roll asked if CGA had a better breakdown of where the aggressive trees are located within the area, Gallentine would look, Smith can provide Roll with a copy of the report. Granzow asked if it was fair to have the City ask the Trustees to help support some of the financing of the tree removal. Raska asked if the Trustees can legally pay them for the removal. Gallentine stated it may be helpful to discuss that with the drainage attorney if it would be viewed as splitting up the project. Handsaker stated maybe it is enough to let the landowners in the district know trees will be removed and some people can help to get the job done quicker and cheaper. Hoffman suggested that a 28E agreement with the County to bring some equipment in may be an option. Raska stated hauling the tree debris is part of the costs of removal. McClellan stated perhaps some farmers in the area with tractors or trailers could assist with hauling. Roll stated we will make a map and an inventory,

Raska stated we can get a priority list together and bring it back to the Trustees and Gallentine. Gallentine stated he would check and see if there is a better map available. Granzow thanked all the participants for their time.

5. DD 25 - WO 1 - Discuss W Possible Action - Change Order No. 5

Smith stated we received a change order from Contractor McDowell. Gallentine stated that Contractor McDowell is requesting another month long extension on the completion date as he has been delayed, his boring subcontractor was delayed a week or two on another project, and we are finally through with the railroad paperwork. Gallentine stated contractor is requesting extension to August 31, 2020 for completion.

Motion by McClellan to approve Change Order 5 and extension of completion time frame to August 31, 2020. Second by Hoffman. All ayes. Motion carried.

6. DD 25 - WO 1 - Discuss W Possible Action - Update

Gallentine stated he spoke with landowner Alvin Clark late last week about this project, Clark questioned why we are removing the old tile, instead of leaving it in place, Gallentine explained if we don't remove the old tile it is really hard to find the private tile connections that we need to reconnect, Clark stated he only has 2 tile in the field and has given McDowell a copy of the map of where the tile are at. Gallentine stated Clark was not worried about that, and doesn't think the mess is worth going through, so Clark has requested we leave the old tile in the field.

Hoffman motioned to leave the existing tile in place on Clark's ground in DD 25, WO 1. Second by McClellan.

Granzow stated that this would now become private tile, Gallentine agreed it is non-functioning tile because it disconnected on the railroad side and on Clark's south side it is disconnected. Granzow stated he did not want problems later with digging this tile up and assuming it is ours, Granzow requested it was noted in the minutes that the district tile left in the ground in Clark's parcel is now private tile, and no future repairs will be done on it by the District.

All ayes. Motion carried.

7. Discuss W Possible Action - IA Falls Industrial Park Site Re-Certification

Smith stated we had a request for a letter on behalf of the Iowa Falls / Hardin County Industrial Rail Park site re-certification, it had been discussed in the past that the site may require relocation of DD 86 tile at owner's expense and this letter states the Trustees would be willing to work with them on this should the need arise. This site would require 250 contiguous acres of land for development be available, and this would require moving the DD 86 tile at owner's expense, this letter provides this endorsement for an additional 5 years.

Motion by Hoffman to approve the industrial site re-certification letter as previously drafted. Second by McClellan. All ayes. Motion carried.

8. Discuss W Possible Action - Drainage Utility Permit Repair Process

Smith stated we had discussed drainage utility permits last week and Smith had a conversation with Gallentine on what actually happens to those permits once they are approved. Smith put together a spreadsheet in Tyler with all of the drainage utility permits that have been issued since we started with that system, and shared the spreadsheet with Gallentine, who added notes as well. Smith stated there were a total of 31 drainage utility permits issued on this list, 23 remain open, 7 are marked complete, and one was a voided permit that was entered incorrectly. Smith stated we still have quite a few of these permits open and was unsure if there is a good mechanism for follow through to make sure once we have issued the

permit, and authorized the utility to do the work, that they do what they are required to do in the permit and notify us or CGA that they are actually working near DD tile.

Granzow stated we should add in the permit a time line that states it is void in 60 days or 30 days, they may have done the work and are gone, we may need to look at doing cease and desist on some of these companies that haven't done anything. Granzow continued it is not the contractor that we need to do the cease and desist on, it is the utility company, because the contractor may not ever work in our county again, or it may be both. Gallentine stated it is entirely an honor system on the utility's part to contact us when they are doing their work, and typically whoever gets the permit does not bother giving the contractor all these details, Gallentine finds that when he contacts the contractors they state they did not know they needed to contact you, whether that is true or not or an excuse Gallentine isn't sure. Gallentine stated that Aureon last year took a permit out for at least a dozen districts and only contacted CGA for two of them, it is unclear if they did their install on those other districts or not, CGA invoiced Aureon and they have still not paid CGA's invoices yet, same with IRUA, and there are some things CGA has not billed for yet. Gallentine continued that the IRUA has given the Trustees a check and said here you can use this to pay CGA.

Hoffman stated we have a drainage utility permit process, but what is the penalty if you don't follow the process. Granzow stated a cease and desist is all we can do. Hoffman asked what is the penalty if you get the permit and you don't call CGA, cease and desist. Granzow stated cease and desist, but perhaps we should require a bond or a deposit. Hoffman stated at this point if there are twelve Aureon projects in districts, if they only contacted CGA for two, that leaves 10 that they could have caused damage without us knowing, and who knows what the damages are. Hoffman stated his next question is do we send CGA out to look at those other ten sites to see what has been done, if something has been done, do we have Aureon and their contractor come back out and expose things at their cost, and CGA's expenses to verify would be at their cost, to see what they did or didn't do. Granzow asked if CGA could go onsite and how would they follow up. Hoffman asked if they could tell if there was fresh dirt turned. Roll asked if Heart of Iowa was part of this discussion or just Aureon. Gallentine stated we have had no problems with Heart of Iowa and they have been great to work with. Gallentine stated if the utility did directional boring, it would be hard to tell if they have done any work, the most you may see is a pedestal somewhere, but we would not know if that is an old pedestal or a new one. Hoffman asked if this is a matter of sending out a letter to verify that the utility has completed all these projects, and if the utility says yes we completed these projects, then we say that since you did not have CGA on site for ten of the twelve, now we are going to require you to go back out and expose them and we want to see what work was done. Granzow stated if they have not, then they need to resubmit for a new application. McClellan stated we have had some bad instances with utilities recently that don't follow through. Hoffman stated it really does not require a much damage to cost people in that district production or livelihood, Hoffman is not ok with that. Gallentine stated as we heard from people in DD 143 that times are not easy and they don't want to spend money, and all of these districts are that way, they don't want to have to repair something they didn't cause.

Hoffman asked if we should have Smith contact Aureon if the remaining ten have been done or not and bring that back to the Trustees, and then say that these ten have had nothing done or they should be closed out, then we can come back in a week or two and get CGA involved with Aureon formally saying. Smith stated there are 23 open, some are from Aureon and some are from the IRUA.

Motion by Hoffman to have Drainage Clerk contact all businesses with outstanding utility permits to verify completion of the project and report back to the Trustees. Second by McClellan.

In additional discussion on the motion, Granzow asked if we would like to give a termination date along with the letter so that they can reapply in case they may state they will not get to the work this year. Hoffman stated the verbiage in the letter should be 14 days in which to reply and then we can move from there, and maybe on the utility process moving forward, we go from 30 days of the date of issuance to complete the project. Smith asked for clarification if the Trustees would like this letter sent only to Aureon or all of the outstanding utility permit holders. Hoffman stated all outstanding permit holders should get a letter. Gallentine stated that Aureon had 17 districts listed in open permits and CGA was only contacted on two. Smith stated many of the permits had multiple districts listed in the wording on a single permit application. Hoffman asked if this should be sent certified mail. Granzow stated it should be sent certified mail. Smith stated we have the contact information of the original requestor on the permit and that is who Smith will direct the letter to. Hoffman stated that Aureon will receive notice for all 15 districts on one letter, Smith

stated that would be correct.

All ayes. Motion carried.

Granzow stated Smith also had a question on the Drainage Utility Permit Application also. Smith stated that when we approved the new language in the Drainage Utility Permit Application, Smith updated the website with the new form. Smith directed the Trustees attention to how that application form appears when viewed on the website. Smith stated when we passed the changes she understood that this would be applicable for all utilities on one document and we look at the title of the document as it appears on the website, the title is slightly misleading. If you were to click on the page and look at the application, the title reads "Hardin County Wind Turbine (CWEC) Drainage District Utility Permit Application". Smith stated if I were a natural gas, electric, or fiber optic utility provider, I may look at this and think that does not apply to me, I don't need to do this. Smith asked if we need to change the title of the document so it is a little more clear. Although the document is broken down into Section 1 for regular utilities and Section II for CWECs, perhaps we should retitle the document so it is more clear that it is applicable to all utilities. McClellan asked if we could revise the title to be more inclusive. Hoffman stated it could be revised to read all utilities, such as electric, natural gas, telephone, water, communication etc. Granzow stated yes we would like to change this and asked if we need to put a time restraint on this.

Motion by Hoffman to add a line of acknowledgement to have any approved utility permit application that work be completed within 30 days. Second by McClellan.

In additional discussion on the motion, Hoffman stated guessing for a CWEC project, they will have multiple ones, they will want more than 30 days, and have a time frame included in the development agreement. Hoffman stated he is aware that some projects may need a bigger window just because of the scale of the project. Granzow asked if it should be 30 or 60 days. Smith asked if should read work completed within 30 days unless otherwise specified and approved. Granzow stated he was fine with that, Hoffman agreed. Roll asked if the Trustees would like to combine the regular Utility Permit with the Drainage Utility permit for a joint permit. Smith stated that was up to the Trustees, Section I deals with all utilities, Section II deals with CWECs exclusively, as we look at that form anything in Section I would be trumped by Section II if you are a CWEC, and the language of the form itself covers everyone, it far simpler for Drainage to keep all utilities on one form, Roll stated perhaps his road permit requires him to look at drainage structures as well, but it could be easily done if the Drainage permit is not applicable, that could be a check box, Roll was asking they would like to keep them separate and have people fill out to permits. Granzow asked if this means having people fill out just one total form and we would both have to sign off on it. Gallentine stated the utilities do a good job of ignoring the second form now and if we combine them they will just think it is the road permit only. Roll asked if they would rather have a separate drainage permit form. The Trustees agreed they would like to keep them separate. Hoffman would like to have the process be a one stop shopping but it is also good to have another set of eyes on it. Granzow stated if Roll would sign off on it then have the Trustees sign off on it if it is in a drainage district, Roll agreed but would also have to have the situation if they are not in a drainage district. Granzow stated let's just keep them separate.

All ayes. Motion carried.

Hoffman asked along with the permitting is there any thing else we can look at, because he does not want this to be a penalty based culture, but at some point there has to be something besides cease and desist, can we require them to to have a bond up front so we can send out our own contractor and CGA if they are not willing to go back out and look, because of the 15 from Aureon, Hoffman thinks their work will all already be done. Hoffman continued we can't wait for them to say to us wait for our contractor to get back from Arkansas to dig this up, Hoffman would rather have one of our lottery contractors to go right out and do it. Granzow asked what kind of dollar amount we would set for each crossing, \$5,000 for each crossing. Gallentine stated \$5,000 for each crossing depending on what they install, it could easily take that much, Gallentine did not think it would be more than that per crossing. Granzow stated if we spend the \$5,000, we can make them resubmit that if they did the install incorrectly. Hoffman would rather circumvent the excuses from some large corporation, it is not like calling Heart of Iowa or Radcliffe Telephone Cooperative where you get to talk to someone twelve miles away. Granzow stated in our permitting we should state with a bond required by the Trustees. Hoffman does not want this to burden the good utility operators, but if we find the utility permit has not been utilized properly, that is when the bond should come into play. Meyer

stated would the penalty be then that they forfeit, in addition to any other relief, and you could seek the injunction, cease and desist and all that, but they are forfeiting that bond. Gallentine stated the whole problem, with the cease and desist is they can do what rural water does, and say fine we won't put any more lines in but the lines we already have, we are still running water through and making money off of them, so it is not really a cease and desist of the operation, just a cease and desist of future construction. Hoffman stated that only hurts people that need a new water line, which paints us as the bad guys because these guys won't let you have clean water.

Meyer asked if the Trustees would be requiring a development agreement in addition to the permit. Granzow stated the development agreement would only apply to the CWECs, this would just be for regular crossings, they are just not abiding by our permit. Hoffman stated if there are 17 outstanding districts pulled by one company and they have only had CGA come out and observe on two of the Districts, some of those permits are very old and Hoffman is guessing they went out and did the work without any observation, and felt like they could get a hand slap later for it. Granzow stated a bond up front may prevent that. Smith asked if they want the bond per district or per permit, as the utility can list multiple districts they may cross within their project on one permit. Granzow stated bond can be set by Trustees on application. Hoffman stated if a permit for Heart of Iowa comes across their desk they can say no problem, no bond required until you show us you can't be a reputable contractor, there is no need for this. Meyer stated you would have to clearly define what a default is, so if they do work without observation or whatever situation you are trying to fix, and then the default would trigger the forfeit of the bond and any other relief. Granzow stated we would have to pay CGA or someone else to verify the work they were supposed to verify. Hoffman stated if damages have been incurred, who bears the cost of this, because we can't have our lottery people move a fiber optic or a water line. Meyer stated you could have as a consequence of the default that the utility would have to pay legal fees and litigation costs. Granzow stated we are to that point.

McClellan asked if we should have Smith work with Meyer to bring those terms and conditions back to us. Hoffman stated this may pay off significant dividends by making sure facilities are not damaged and they are being well taken care of. McClellan stated Mike Richards may have an idea if other counties have similar language. Hoffman does not want to hand this off to Meyer as this is something we as Trustees can't direct Meyer to do this.

Motion by Hoffman to have Smith reach out to attorney Mike Richards to complete a disclaimer and additional terms and conditions for the Drainage Utility Permit. Second by McClellan.

In additional discussion on the motion, Granzow stated it would be great if Meyer has any additional feedback for Smith that would be great but Meyer is not obligated.

All ayes. Motion carried.

## 9. Other Business

DD H-F 2 WO 286. Smith received an investigation summary from CGA for this work order, which was discussed at the last joint Franklin-Hardin County meeting that without a landowner request, no improvement or upsizing would be considered, Smith has not received an actual landowner request on this work order. Smith asked if the Trustees would like Smith to reach out to Franklin County Drainage Clerk to discuss a joint Franklin County Meeting. Smith can reach out in an email to Franklin County for their input. Hoffman stated Smith can let Franklin know what we have received and move forward if new information is brought forward.

DD 4-53 WO 153 - This would be an investigation summary done in the joint county district on a Franklin County work order, it was found to be private tile, and the summary noted a collapsed intake in the road ditch on the Hardin County side that Secondary Roads would need to be notified of to repair. Smith stated she would provide location information to Roll as he was in attendance at today's meeting.

DD 25 - Gallentine updated the Trustees that McDowell is planning on doing the jack and bore under the railroad tracks on next Tuesday.

10. Adjourn Meeting

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