

## **REGULAR DRAINAGE MEETING**

**Wednesday, July 29, 2020 9:30 AM**

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

7/29/2020 - Minutes

1. Open Meeting

Hardin County Drainage Chairperson Lance Granzow opened the meeting. Also present were Trustee Renee McClellan; Michael Pearce, Network Specialist; Lee Gallentine of Clapsaddle-Garber Associates; and Denise Smith, Drainage Clerk.

2. Approve Agenda

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

3. Approve Minutes

Motion by McClellan to approve the minutes of Drainage Meeting dated 07-22-2020. Second by Granzow. All ayes. Motion carried.

4. Approve Claims For Payment

Motion by McClellan to approve the claims for payment dated 07-29-2020. Second by Granzow. All ayes. Motion carried.

DD 160 WO 283 - Tile repair, parts, labor, equip. McDowell & Sons Contractors \$4,929.67

5. DD 26 WO 266 - Discuss W Possible Action - Repair Summary

DD 26 This was reported by Sweeney's on main open ditch of DD 26, they had a washout occurring next to existing CMP, the existing CMP had some damage. Repair was made to existing CMP by cutting off the damaged end and cutting a hole in it and repaired with a concrete collar, and we also installed a secondary CMP surface drain next to it, everything looks good to Gallentine who recommended contacting the landowner and make sure that grading, seeding and clean up looks acceptable, Sweeney's run cattle on this ground and they may have different hopes than someone who just has a CRP strip. Gallentine stated we did have a little bit of crop damage and recommends payment of that at 0.14 acres. Granzow stated we should have Smith verify with the landowner that seeding/grading was done, and make them aware of crop damage of 0.14 acres, and bring it back with that as well as the summary, and table this until then.

Motion by McClellan, to table until next week's Drainage Meeting on 8-5-2020. Second by Granzow.

In additional discussion on the motion, Granzow directed the Drainage Clerk verify with the landowner seeding and grading was done, verify if there is a crop damage claim on the 0.14 acres and bring that back on next week's agenda for review.

All ayes. Motion carried.

6. DD 41 WO 299 - Discuss W Possible Action

Chris Blome reports a 3' blowout on the DD 41 Main Tile, in southeast corner of field, can be accessed from the drive on H Ave., follow the grassy waterway west into the field, blowout is in waterway and flagged. Gallentine stated this is a bit disappointing because we had done some spot repairs a couple of years ago with Hands On Excavating, thinking we could gain some time, evidently we didn't spot repair enough or a new problem has developed. Smith stated she had some followup to that previous repair, Blome had asked about a claim for crop damage submitted with previous clerk Schlemme, whose notes stated we would

contact Blome at completion and Blome still needed to submit his yield. Smith was unsure of status as this was tied to several other projects with Hands On, and the claim remains unpaid. The notes state those projects were not completed at time of claim submission. Gallentine stated he spoke with Jacob Handsaker, this was one of several smaller projects lumped together and one of those was Dean Bright's, completion on any of these are on hold until Bright's is completed, Gallentine stated you don't have to wait till completion time to pay any damage claims, you just typically have in the past. Gallentine stated this new blowout is above and beyond this contract, it would be two similar but distinct issues.

Granzow stated it may be smarter that we wait for completion so it is all done together, but it has been 2 years, maybe we should take care of it now if this part is completed. Gallentine stated it is done and has been done awhile, we have just been waiting on the portion of Dean Bright's for completion. Granzow stated can we focus on the other three and wait on Dean Bright's, and get some closure on most of it. Gallentine stated we can start moving in that direction.

Motion by McClellan to send CGA out to investigate on the main tile DD 41 WO 299 and report findings back to the Trustees. Granzow seconded.

In additional discussion on the motion, Granzow asked if CGA would take photos of this blowout, Gallentine stated he would and report back their findings.

All ayes. Motion carried.

#### 7. DD 121 WO 295 - Discuss W Possible Action - Investigation Summary

Gallentine stated this was reported by Tom Gilmore, the hand drawn diagram included in the Summary explains a lot, the original report was of a blowout, but the area around this blowout looks horrendous. There is a wet area upstream of the blowout, that flows down through a grass swale, there is running water, exposed tile and broken tile pieces, there are stumps of trees that were cut out recently, rocks have been pulled out, it is pretty nasty looking and the tile is pretty shallow. CGA recommends they go out and do some potholing and televising to see if we can determine the condition of this thing because Gallentine thinks there is more going on than just one single blowout. It was discussed that perhaps we should hold a landowners meeting first so the landowners are aware of what the Trustees are doing with this. Granzow asked how many feet of tile could we be talking about, Gallentine stated possibly in the hundreds of feet, not less than 100', it may be 1/8 to 1/4 mile. Granzow stated that may be pretty good money, Gallentine stated we don't know, but looking at the tile shards in the field it does not look pretty.

Granzow stated he would rather bring everyone in and explain why we are doing this, they may choose not to investigate and put in a new tile and be done. McClellan asked how many land owners were in this district. Smith will have to check number of landowners and stated if we want to do a landowner meeting that can be set with enough time to get notices out, should we require a hearing then we must publish and require at least 40 days notice to landowners. Gallentine stated he has two maps for this district, with one map showing it in Hardin County consisting of 1300 acres and the secondary map shows it as a joint district with Hardin and Marshall Counties, this may be a joint district. Smith stated she can confer with Gallentine but does not recall it on the joint district list. Granzow stated he was not comfortable having another landowner meeting in the EOC building, that if the district were small enough we could host it in the Large Conference Room at the Courthouse or do a zoom meeting, and see how many people want to attend with location to be determined, especially if we have to involve Marshall County. Gallentine stated the map that shows it as a joint district may not have been adopted, it will take some research. Smith will bring this back on next week's agenda.

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

Smith stated she had asked the Trustees to review the draft of the letter regarding the status of open Drainage Utility Permit Applications. Smith stated the sample letter was to Midland and they have the most open permits right now. Smith stated the letter references Drainage Code, and states we have been made aware of repeated violations of a select few in the utility field, Smith did not name a specific utility or imply this was the applicant this letter is addressed to. Smith stated the letter goes on to state that having

received no notice of intent to commence construction, the Trustees have directed me to request the current status of your company's projects in drainage districts as reflected in the list of outstanding and approved utility permits. Smith has listed all of their permits and to please advise us of the status of all their projects, if they are ongoing or complete, and if work on the projects have been completed to include completion date, a brief description of work completed and contractor or subcontractor utilized, and to continue an open dialogue with our Utility Applicants, their cooperation is appreciated. Smith asked for reply within 14 days of receipt of the certified letter. Smith stated if the Trustees find the language acceptable Smith can get those letters mailed out with the exception of the IRUA and one outstanding/open permit for Radcliffe Telephone that was on hold pending the IRUA outcome. Smith asked for clarification on whether the Trustees would like Mike Richards to send a letter to the IRUA or have Smith send one. Granzow stated if we have authorized you to do it we are fine, but what would we be paying legal for that Smith has not done already. Smith gleaned some of the language from a previous mailing done by legal and combined that with our question, what is the current status of your project. McClellan was comfortable with Smith sending the letter, Granzow agreed and stated if we don't have a response within 14 days, then we can involve legal.

Smith stated she had received a phone call from a woman with the IRUA who asked what does it take to be put on the agenda, they may want to be put on the agenda to discuss their open utility permit applications, Smith let her know that she would need a minimum of 24 hours notice to be put on the agenda for next week or any week. Granzow asked if they are interested in compliance with our permit. Smith stated that has been discussed between our attorney Mike Richards, and their attorney Frank Smith and asked that other than the cease and desist order, what other steps can be taken. Granzow stated the IRUA needs to comply with the permit. McClellan stated that we need to have Mike Richards participate in that meeting as well and check his availability for a meeting. Smith can include that information in an email to Richards. Granzow would prefer to meet with the IRUA other than in a regular drainage meeting, to include the IRUA, Richards and Gallentine, the IRUA agreed to this and should have argued this before signing the permit. Smith asked if there is something the Trustees would like Smith to do to better notify the applicants when a Drainage Utility Permit application is approved. Smith stated she assumes the utility has read and understands the document they are signing and submitted, that they know there are rules they must comply with but if they choose not to, does Smith need to be more stern with her reply when the application is approved, by stating it has been approved and you must comply with all the rules beginning with notifying us of construction. Smith stated if there is something that can be done differently or better to make it a smoother process, let her know.

Granzow stated there are two things we need to approach, that we need an end date on these permits and the bite needs to go to the utility, not the contractor working under them. Smith stated we don't know who their contractor is at this point. Granzow stated if Midland hires different contractors for each permit if they want to but the owner of the application's project is the utility whose responsibility is to get this permit application information to their contractors. Gallentine liked Hoffman's idea from last week's discussion of a cash bond or deposit to be paid by the utility based on the Trustees experiences they had had with that utility. McClellan inquired about other counties utility permit requirements. Gallentine stated a lot of the counties ignore utility crossings on their tile and only deal with it after the fact when there is complaints, Hardin County is on the proactive edge on this. Granzow stated we have received too many complaints and everyone else is catching up, Granzow sits on Boards in other counties, and they wish they had a similar utility permit. McClellan would rather be proactive than reactive as the utilities just get sloppy. Granzow stated in the end this causes more expense to the landowner not the utility that gets the freebies at the landowners expense. Gallentine stated the whole problem is if you don't do this, the margins for these producers on these lands are so slim they can't afford to fix someone else's mistake. Granzow stated it is the Trustees job to make sure the utilities pay for any damages they cause and it is far easier to fix up front than it is behind.

Smith stated we had approved in last week's meeting to add a line of text acknowledging that any utility permit application's work must be completed within 30 days of approval, so that step has already been done, that will be updated on the form this week. McClellan stated that if the work is not complete within 30 days they have to reapply. Granzow directed Smith to bring this back with bonding. Smith will send out the letters to the utilities to include the IRUA. Smith asked if the issue with Radcliffe Telephone Company had been resolved. Gallentine stated that Radcliffe Telephone ran the same route as rural water, so his assumption is that we would treat them the same as however you end up treating rural water, we were just

waiting to see how that worked out, they both serviced the city of Buckeye and took the same route.

## 9. Other Business

DD 41 - In further conversation on DD 41, Gallentine stated the DD's that Handsaker worked on in the group project were DD Big Four, 41, 77, 123, and 143, 128 is the district that is not done. Granzow stated he would like to direct CGA to move the other projects towards completion to include DD 41, Big 4, 77, 121, & 143, and to exclude Hands On work in DD 128, as DD 128 is not complete on Dean Bright's parcel.

Motion by McClellan to direct CGA to move DD's Big Four, 41, 77, 123 and 143 towards completion.  
Second by Granzow.

In further discussion on the motion, Granzow stated there will still be an overall completion but this may help us move some of these crop damage claims along to completion.

All ayes. Motion carried.

DD 3 - Mike Carpenter requested contact information for the Private Trustees of DD 6, Carpenter has a blowout on the open ditch and is washing out the bank of the open ditch. Smith will provide Private Trustee contact info to Carpenter when he calls in.

DD 55-3 - Al Urhammer reports a sinkhole by the intake in the ditch, Urhammer stated the location was very close to recent work order #224, but when Smith references the current location of the sinkhole just west of Dillon Luhman's parcel on the south side of 280th, this is much further west of work order #224's location, and does not correlate to that location, This reported location provided by Urhammer does not lie near district tile and may be an issue for Secondary Roads. Urhammer states this is a washout on the intake and the dirt is sinking away and does not want it to plug the tile and it would be on the west edge of the fourth home site on the south side of the road to the west of G Ave. Gallentine does not remember any project on Lateral 12 in a very long time. Smith stated this may be something Smith needs to notify Secondary Roads of. Gallentine agreed, this would not be district tile and to notify Secondary Roads.

Potential Assessment Project - Smith has been working on the potential assessment project for IRUA invoices and Wind Turbine Ordinance review invoices paid by Rural Services, and a portion of the Drainage Clerk's salary, Smith has gone through all of the districts and Smith realized we do not have classifications entered in Tyler for some districts that have not been assessed in a very, very long time. Smith will have to make a list of districts without classifications in Tyler and review that with Gallentine to see if a classification is on file and can lay hands on them, because if they can't be found in the paper DD file or in the computer, they can't be entered in Tyler. Smith also stated that is a learning curve for he on how to enter the classifications in Tyler as well, to make sure if we are going to assess there is a classification in Tyler to do so with. Smith will bring the list back to the Trustees as an agenda item for Discuss w Possible Action in the next week or so, so Smith can get authorization to talk with Gallentine to get those classifications covered that you want to assess. The Trustees agreed that those classifications will be needed, Granzow asked if Gallentine would review these classifications as well. Granzow stated that if Gallentine can take a short review on these classifications and see if anything looks out of whack to let the Trustees know. Granzow stated that should be addressed as well before it is a problem, McClellan asked for clarification, Granzow stated the city of Radcliffe had 95% of assessments were to the southern part of the district because they added onto the south end, the upper part of the district has only been paying for 5% of repairs, Buckeye had a similar situation where someone drained a pond and they assessed the whole cost to the district, so that any work that continues to be done goes on these people, if we see anything that doesn't look accurate we should address that at this time, we may not need to reclassify but we should flag and note it. Gallentine stated that we can look at this and there may be a little bit of time involved in this. Granzow asked how much time this would entail. Gallentine stated this could easily be 1/2 hour to and hour for each district.

Smith stated for most of the districts we have classifications, it is a small number that we don't have classification for, it might be 20 or 30 that have not been assessed in ages but still show on Smith's list of active districts. McClellan stated this went way back to when she was the Auditor, and the Supervisors

wanted to do a full assessment because we didn't have classifications then for some of these. Smith was concerned that once we have the list compiled and get the classifications in order, it will be a lot of work to get all the districts processed through Tyler in one year, Smith stated a portion of the issue is that she is new, and also this year we assessed three districts in Tyler, and it was a struggle to get notices to print. Granzow was fine with waiting till the second year if needed to get it done right, Smith did not want the Trustees to think the project has lied dormant, but Smith will need some input from Gallentine to get those classifications and some more experience to feel confident it is done right. Granzow stated we have pushed for this for ten years, we can wait a while longer. Smith stated we need to pull the Treasurer in and have her discuss the project, and had raised concerns with Smith the project was not possible or possibly not legal to do it this way, Smith thinks there is experience in other counties that have done it this way that says, yes it can be done. Granzow stated we may be doing it in a more legal way than any other county, Smith stated by following the language in code that allows for additional duties performed by the Auditor's office, covers what we are trying to do. Granzow stated he did not like the way some counties just add a 5% increase over the cost of a project to cover these costs. Smith stated that only covers the districts that have a project. Granzow stated yes, so that the people that are in districts without a project are paying for it too, this whole thing is wrong if we don't do it, other counties do it by a quick, easy method and get sued, because if I paid 5% of a \$2,000,000 project for everyone else I would probably sue also, and we have a lot of landowners who would sue in that case. Smith stated it is a unique situation in the sense that we have had expenses recently, whether that be invoices for our IRUA letters or the Wind Turbine Utility Permit reviews, those affect every district in the county, those decisions that we have reached out to legal advice on, have effects on every district, so Smith understands the basis. Granzow stated the only distinction would be for open ditches versus non open ditches, there are some legal things that only apply to open ditches, but that would just be pulled off the open ditches.

McClellan asked some of the districts that have not been assessed in over 10 years, is there any way to give those districts the option to take that over as private tile rather than district tile, that may have come up before. Gallentine stated there is a process to abandon an entire district, Gallentine would have to check code but thinks that process begins with a petition. Granzow stated in some of the smaller districts that could happen very easily, where there are only 2 or 3 landowners, they may be able to do that through an abstract. Gallentine stated the smaller districts may be fixing it thinking it is their tile or may not want to go to the district due to the expense, this would be the perfect time to clean those up. Smith stated she wondered if some of the landowners in districts that have not been assessed in decades are even aware they are in a drainage district, as they have never received a notice from Smith, clerk Schlemme or clerk Jane Geerdes before her, it is a difficult thing to communicate, there may need to be an advance communication or a good letter with the assessment to explain the process for those districts, although you have not been assessed in recent years, you are still within the boundaries of a drainage district, some language like that in there as well. Granzow stated that we are still the keeper of their records until they abandon, and they still need to be charged. McClellan asked how many districts we have on the list missing classification or having not been assessed in a long while. Smith stated she has not reviewed the list this week and is estimating a ballpark number. Granzow stated the kicker of this is everyone else is paying for it anyway and they will come in once they get an assessment, they have been getting these services for free whether they have utilized the services or not, there is still a bill there. Smith stated at some point we will have to discuss joint drainage districts and this assessment as well, Smith will bring this back as a Discuss w Possible Action agenda item. Granzow stated there is a lot involved in this and would rather do it right the first time, than do something and change it the following year. Smith stated the biggest issue she had was getting the assessment notices to print in Tyler, and Smith had spoken with Jessica Wright in the Treasurer's office and they were struggling to get parcels who had received a waiver and had payments and interest due to get those statements to print this week as well, so Smith is not alone in her issues with Tyler. Smith admits some of the issue is with being new to the Clerk position, but would rather look at the projects we will assess in 2021 and get those under her belt and get those regular constructions projects assessed and Smith will feel more confident in the process.

Granzow stated he is happy to see progress made, and we can tally this money paid through Rural Services to be reimbursed later. McClellan asked how far back do we go with those invoices. Smith stated we can go back and look at the Rural Services code and see which invoices were paid for drainage vendors, Smith stated the last time invoices were paid by Mindy, it was discussed that we can pull a vendor report and look at all those transactions. Smith stated Tyler goes back for two and half years. McClellan stated going back further than Tyler, that information may be unobtainable so we should gather that going as far back as we can. Smith stated it would be invoices from Davis Brown Law, and maybe a couple from CGA.

Granzow stated there may be invoices going back farther with attorney Mike Smith. McClellan stated we can print that off and go forward. Smith stated it can be printed off and going forward we can track any invoices paid after today's date. Granzow pointed out some of these invoices have been paid by the districts tied to specific projects, not a large overall bill. Smith will print it out and keep with the project file.

DD 52 - Smith stated she had received a call from Shaun Piel who was upset with the fact that Tracey Below's claim had been paid out, Piel received the payment for that claim as directed by Below, Smith stated Piel was disappointed the amount was low, and there may have been conversation between Piel and Mr. Meister who bought the parcel, that this would be corrected or reseeded by the district, but Smith thinks the issue may be between the seller Piel, and the buyer Meister. Granzow asked what is left for contractor Seward to clean up. Smith stated Seward removed the trees and brush, there is still stumps remaining. Gallentine stated the trees stumps were left and it is Gallentine's understanding Piel was ok with that, and that the stumps would be treated. Smith did send Piel and Meister photos of the trees removed, the trees were gone, Smith stated the Trustees have gone above and beyond trying to satisfy this claim, and Smith stated she explained to Piel that the project took three years, and part of the delay was in getting Piel's signature on the agreement to remove the trees. Smith sent Piel a copy of the work order details and the DD 52 minutes going back to 2013, so he has all of the details that have been discussed. McClellan stated Piel has not been easy to work with. Smith stated the land has been sold and transferred. Granzow stated he could talk with Meister, but this was a private sale and the district is done, Granzow asked if we left the ground all tore up. Smith stated the pictures looked pretty good, Gallentine stated the area looks fairly well considering the spot that it is considering we did not reseed it, they cut the trees down and left the stumps, but compared to everything else Piel had out there, it was the middle of a dump patch, you can't grub out stumps without dragging out scrap metal and water heaters. Granzow stated that the trees were there to hide that, the district is done and we settled the claim, which was with Below. Smith stated that was correct, Piel asked why he never received a claim, and Smith told him because he had never filed a claim, every landowner has the right to file a claim when work is done in their parcel on district tile, but the landowner has to actually submit that claim, the claim we received was from Tracey Below and that is the claim the Trustees acted on. Granzow pointed out Below's claim was for the same parcel, McClellan asked what Piel could have filed a claim for. Granzow stated he could have possibly filed for the trees that we went farther out in the field for, or possibly seeding. Granzow stated if Piel wants to file a claim he still can but was unsure what he would file a claim on. McClellan stated that will not satisfy the buyer if Piel is paid out on the claim too. Granzow stated Piel sold without filing a claim so he is out of it, Meister does not really have a claim he wasn't part of the repair, this is a private matter outside of district boundaries, Granzow stated the claim was filed within the easement, we also asked for permission to take the trees out, and we got that, and no claim was filed beyond that and Piel sold the parcel. Smith stated it sounds like a legal issue between the two parties. Granzow stated we are beyond the boundaries of our easements, we did a service by removing the trees, otherwise they would have had to pay for all that and now the district will have to pay for it. Granzow stated any of the parties can call him to discuss it. Smith stated she shared the Trustees contact number and email along with the work order details and minutes with Piel in a letter.

DD 143 - Roll had asked if we had a map that showed those locations of trees through Radcliffe, Gallentine looked through the records, and had GPS coordinates, and shared those coordinates with Roll, Roll said he could work with this and didn't need a map.

DD 25 - Near Garden City, they are boring under the railroad track today.

DD 56 - After the recent DD 56 Hearing, Gallentine had sent all the information to the NRCS and they are working on it, Gallentine is working them on where this will have an impact on jurisdictional wetlands and will get some determinations from the NRCS, they will not share the individual wetland determinations but they may say between station 25 and 35 drainage has increased/decreased, so we know where to concentrate our efforts.

DD 55-3 - Smith stated she spoke with contractor Seward who has submitted all of their forms and documents to RailPros and will hopefully get an approval from RailPros and get construction scheduled soon. Gallentine stated he just received an email from Seward during the meeting and is planning on working on the 19th.

10. Adjourn Meeting

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