

REGULAR DRAINAGE MEETING
November 27, 2019 11:00 AM

11/27/2019 - Minutes

1. Open Meeting

Hardin County Board of Trustees Chairperson, Renee McClellan opened the meeting. Also present were Trustee Lance Granzow, Trustee BJ Hoffman; via conference call - Lee Gallentine with Clappsaddle-Garber Associates (CGA); Contractor Adam Seward; Landowners Curt Groen and Jean Groen; and Drainage Clerk, Denise Smith.

2. Approve Agenda

Hoffman moved, Granzow seconded to approve the agenda as presented. All ayes. Motion carried.

3. Approve Minutes

Hoffman moved, Granzow seconded to approve the minutes for Regular Drainage Meeting dated 11/20/2019. All ayes. Motion carried.

4. DD 150 - Approve Drainage Utility Permit Application 2019-3 With Midland Power Cooperative

DD 150 - Midland Power Cooperative submitted a Drainage Utility Permit Application to cross through DD 150, and they have proposed a simple crossing that runs over 1 tile at the road crossing on County Hwy D41, where the tile goes under the highway. The power lines will run along the highway, and only cross over the one single tile line. Granzow stated that Midland will need to follow and understand the permit process. Lee Gallentine stated where Midland is doing overhead work, all they have to do is go out and locate the tile and make sure they don't put a power pole through it. Once Midland located the tile, CGA will go out and shoot photos to verify tile location in relation to poles, once Midland sets the poles, CGA will shoot additional photos, and it should be a pretty simple process.

Granzow moved to approve the Midland Power Cooperative Drainage Utility Permit Application 2019-3. Hoffman seconded. All ayes. Motion carried.

5. DD 124 - WO #225 Discuss, W/ Possible Action, Contractor Update

DD 124 -WO #225 - Smith stated Adam Seward was present today to give an update on WO #225. Seward was directed to go out and locate 2 tiles, run his locator up the tiles, and report his findings back to the Trustees. Seward reports the dead tile is located to the south and it is broken in so many places that he could only run the locator up about 50' to 75' before hitting dirt or cement that the tile is crushed in with. Seward pulled off the tile, not knowing if the Trustees wanted him to take equipment up there and actually dig it up and locate it all the way, which he didn't feel was worth the money to do because the tile has no water running through it and he thinks it has been tiled over, and either crushed or abandoned.

Gallentine asked if that tile is dead, where does the second tile go then. Seward stated it goes up approximately 300' then crosses the highway, but in order to continue to follow that tile, he would have to dig and put the probe in again. Seward was not ready to do that until he had clearance from the highway or CGA and there is still crops in where he would have to dig, so he is waiting for Nick Patton to harvest. Gallentine asked if both tile are the same size, and were they both the larger 24" tiles. Seward said yes roughly, he thought it may get reduced back as it goes back in the farm field, but this would all be cement or clay tile. Gallentine asked if the tile that was still active had water flowing through it. Seward replied yes it did have water flowing through it at about 75%, he recommends to leave it alone until it has a problem. Seward said his understanding was that there were suck holes reported on the old tile, he states the tile is just giving way and it is caved in and not a suck hole. The other problem is that the tile is right next to a Heart of Iowa line, which made locating difficult as they both use a copper line, Seward's locator is copper and the HOI line is copper as well, it could be a bit odd.

Seward's recommendation is to kill the tile, fill it in with dirt and proceed that way. Gallentine asked where the other active tile is. Seward stated it runs along the highway, along ditch bottom, almost on the field side bank, even further south of the old tile. Gallentine asked if it is south of the power lines. Seward stated yes, it is approximately 3' south of the power lines. Gallentine said ok it is south of the power lines, and he is asking because we had a utility permit with Midland when they built a house and we thought they were going to cross our tile, and Midland dug up the old clay one that's right on the toe or shoulder of the road, but it sounds like that is the dead tile so that didn't matter. Seward says correct, and thinks we should just leave well enough alone and maintain the small holes we do have now and he does not foresee the new tile having any issue whatsoever. Gallentine stated to be sure to put that in writing so they can call you up when it does, and his only concerns were the suck holes on the side of the road. Gallentine stated if those suck holes are on the dead tile then the only district tile out there is the active tile and not the dead tile. Seward says correct, and there is no reason for him to go any further, Gallentine said if it is not an active tile there is no reason to go any further. Seward stated that the holes should still be filled in, Gallentine agreed and said now the issue is whether that is a district problem or a secondary roads issue.

Seward stated since it was our old tile, it is probably our responsibility but that was up to the Supervisors to decide. Gallentine stated that if it is abandoned it may not necessarily be our responsibility, but it is the district's call on what they want to do. Seward stated if they decide to make a work order, he will go extract the old tile and fill in ditch and grade it, and if not he will move on to the next work order. Gallentine stated please note this in the district history so that if there are any other issues in the future, this is noted that it is a dead tile. Smith will put that info in the work order notes and District's file. Granzow stated that the District wanted to keep this at a minimal a cost as possible, which would mean leave it for Secondary roads. McClellan says then we leave it for Secondary Roads. Granzow stated that they can fill it in, and asked if there was any water flowing through the old tile. Seward replied, no water is flowing through the dead tile. McClellan directed Smith to notify Secondary Roads that this is their issue now and to make notes in the District files.

6. Discuss W/ Possible Action - Contractor Availability

Smith stated that at the last meeting the Trustees had asked Smith to reach out to out of county contractors, she reached out to 25 out of county contractors. Of the 25, only 4 replied that they were interested in doing work in Hardin County. Those 4 contractors include A&B Trenching who has worked with Gallentine on projects in Franklin County, he said he would send an updated Certificate of Insurance. Casey Crawford Trenching of State Center said they were interested in spring work but they were booked out through this fall. Hatch Grading and Contracting out of Dysart said they are interested, and they have a tile crew that will be wrapping up their current projects soon, Hatch has returned to Smith a list of his rates, services and equipment available, Certificate of Insurance which includes workman's comp coverage, so he is ready to go. Ricken Tiling from Melbourne said yes, they were interested in work in Hardin County, and Smith sent them an email, no reply as of yet. Smith did get four "maybe" replies from contractors, Hall Backhoe & Trenching out of Roland, Hayes Brothers Drainage out of Grundy Center, Schoppe's out of State Center and Weidemann's out of Dows, and Smith sent them all an email with our policy and the required information they would need to return to us to be considered. Smith has not heard back from them but will follow up with them after the Thanksgiving holiday. McClellan asked if Smith had heard back from Justin Ross, Smith stated that she understood either Gallentine or the Trustees were reaching out to Ross. Gallentine stated he has not had a chance to reach out to Ross yet on that single work order, that the landowner wanted an update on.

Smith stated she has passed on all of Hatch's information to Gallentine, so if there is something the Trustees would like to do to direct Hatch or to decide which work orders he might be suited for, Smith will leave that up to the Trustees. Granzow wanted to remind everyone that we are still looking at in county contractors first, Smith agreed. Gallentine stated that now that Seward has the WO #225 done, that will free him up. Gallentine asked Seward what his availability was. Seward stated he is ready for the next work order. Gallentine stated that Seward is the logical choice for the next ones on the list, and asked how many work orders does he think he can handle a week. Seward stated that it will depend on size of the job. Gallentine stated the next 4 weeks will be critical as to whether or not we can get them done or not. Seward stated that he can start working on them, weather permitting. Gallentine stated it would not get any drier between now and the end of the year. Seward said as long as the landowner is ok with us tracking across the field and potentially making ruts, or does not get froze out he is ready, Seward did purchase an

ice pick for his excavator which should allow him to get through frozen ground better now. Gallentine stated, be sure to contact the landowner ahead of time, and if they say no we have to wait and the landowners need to understand that by the time it dries out we may no longer have a contractor available immediately. Gallentine asked how many work orders Seward thought he could handle, because if he can only handle one a week it is obvious we should get someone else on the line right now as we have at least 6 to 8 open work orders waiting on contractors. Seward said as long as Gallentine has an idea how long it should take that he could meet their standards, Gallentine asked if Seward had full time availability, 5 days a week for drainage work. Seward stated yes he does. Gallentine stated then lets see how many we can get through next week and go from there if the Trustees are ok with that. All Trustees, replied yes they are fine with that. Gallentine will email Seward some work orders, and Seward can start contacting landowners. All agreed it was a good solution and they would like to stay in county with contractors whenever possible.

7. Other Business

DD 22 - Smith had reached out on DD 22 to the Forterra Rep to see if they would attend our landowners meeting on December 16th at 9:00 am. Jim Sweeney responded and said a rep from Forterra will attend the Landowners Meeting on December 16th, so someone from Forterra will be here to address issue of tile quality on this project.

Wind Turbine - Smith asked if we need to have a conversation about windmills and drainage. County Attorney, Darrell Meier had recently visited with Smith regarding windmills and drainage and it raised a few questions which Smith may not be experienced enough yet to answer. Some of those questions include do our Joint Drainage Districts with other counties and our private Trustee Districts need to approve Drainage Utility Permits as well, Smith is aware that the Supervisors acting as Trustees, would review/approve Permit applications for DD's in which they act as Trustees, but was unsure if private Trustee Districts or Joint Districts would have to meet to review/approve Drainage Utility Permits. Granzow stated that if we are the controlling county in a Joint District and the permit is in our county, then the Supervisors acting as Trustees would review/approve those applications. Gallentine stated that is how it has been done in the past, and if the windmill is in Hardin County, the utility will still have to submit the permit to Hardin County whether we are the controlling district or not. Smith stated in her discussion, Meier was researching whether we need to be more restrictive, less restrictive or similar to what other counties do in regards to windmill permitting, simply due to the sheer size and weight of the windmills and the equipment that would be crossing over our district facility tile in the process of assembling those windmills.

Smith stated that it appeared to her, that the areas where there are newly proposed windmill sites, are heavily drained areas of the county and Smith is looking for feedback from the Trustees as to their thoughts. Smith asked if this was a conversation that we need to facilitate with Gallentine who has the engineering experience and include Attorney Meier who has the legal experience to decide what that policy looks like or to decide how that policy will be affected, Smith stated we of course have the Drainage Utility Permit in place that a windmill utility must submit to the Trustees. Hoffman asked does any decision the Supervisors make supercede what the Drainage Districts can or can't do, the Supervisors directed County Attorney Meier to research how the county as whole should deal with wind turbine development. Hoffman asked if we want to wait until we get the legal opinion from Attorney Meier before we make these decisions. Hoffman queried should we have Smith invite Attorney Meier to attend our next regular meeting to discuss this topic with them, thinking as Drainage Trustees, rather than as County Supervisors. Granzow agreed. Gallentine stated we could forward on the copy of the wind turbine agreement that Franklin County uses to Meier as a framework for reference. Smith replied she has already provided Meier with that form and has provided Meier with a copy of Hardin County's utility Permit as well.

Open Ditch Spraying - Granzow asked if we needed to bid open ditch spraying, it was discussed in previous meetings that open ditch spraying was not required to be bid as the costs were billed to each district and would not exceed \$50,000 in costs per district. Granzow asked if we could discuss this with Seward at next week's meeting. Seward replied yes, and that he had submitted an estimate this morning. Smith will add it to next week's agenda. Seward submitted an estimate but the 2020 chemical price lists are not out yet, but he will update that as soon as new prices are available. Hoffman asked if Seward would gather expert info on best chemicals/practices. Seward said yes he would.

Potential Assessment for Legal Fees & Administrative Costs - Smith had been working on the potential

assessment project to cover legal fees and a portion of the Drainage Clerk's salary that the Trustees had tasked her with several weeks ago and had questions for the Trustees. Smith has been working on the classifications for each district, and has done 92 districts so far out of the 270 on her list. Smith reached out for feedback from another county on how they do this process. Smith spoke with Wright County to gather some feedback on how they do this process, as this is the first time she has done it. Granzow stated we are trying to do what no other counties want to do, the Clerk is currently full time drainage only, and is paid from rural services and the general fund, the Drainage Clerk should be 100% paid by Drainage. Hoffman stated someone in Radcliffe doesn't contribute anything to drainage but are currently paying a portion of the clerk's salary. Hoffman stated when we put together drainage minutes, agendas, or when we get legal opinions, that should be paid by Drainage. Granzow stated that other counties add 3% over the costs of active drainage projects or a flat administrative fee on top of the projects. Granzow stated that if a DD has a \$10,000 project or a \$1,000,000 project, that 3% is vastly different on each project, then only your active districts are paying all the costs but all the districts can access the Clerk or legal opinions that may affect all DD's, so the busy districts bear the burden but all gain the benefits. Granzow stated that no one wants to do the work that Smith is doing because it is tedious and time consuming, so other counties just charge the percentage instead. Hoffman stated once the work is done, the next time this would be assessed it would be an easier process if the spreadsheets are all done and just need updating, Smith agreed. Granzow said if a district chooses not to pay into this, you can decommission your district and would then not be part of this assessment.

Smith stated that Wright County had come up with a budget estimate of the costs they would like to cover which included a minimum legal cost estimate, salary costs, and costs for a summer intern that helped with Drainage and then created a spreadsheet to hit their target amount. Smith stated that in previous discussion, the Trustees had mentioned a base estimate for Hardin County was \$45,000, just to say this would be a base place for us to begin on what this potential assessment might look like. Smith created a spreadsheet which reflected if we were to do a \$500, \$1,000 or \$2,000 assessment per district to see what those numbers would look like. With 92 districts figured so far, at a \$500 potential assessment per district that would generate \$65,000, at \$1,000 potential assessment per district it would generate \$107,000, at \$2,000 potential assessment per district it would generate \$194,000. Smith is at the point now where these numbers are more than we anticipated. Smith explained what Wright County did was to do either a one cent, one and a half cent, two cent or two and half cent assessment to each unit per district which would generate more of the \$5 minimum assessments which we had discussed, which may reduce these potential assessment amounts. If you have larger acres of benefit you may be paying more than the \$5 minimum assessment and if you have fewer acres of benefit, you may just be paying a \$5 minimum assessment. Smith stated that Wright County used to do this assessment every 3 years and that if generation of funds was at \$45,000 per year, they would then assess every 3 years to generate 3x the \$45,000 goal. Wright County found this to be burdensome to go through the preparation to do this so they then went to doing this assessment every 5 years, they still found it was a difficult task to go through and do all the work to prepare the assessment, Wright Co did end up switching to just doing the 3% over their current project costs. They would use that fund and move into a drainage administration account and have a very in depth spreadsheet that looks at the total amount needed to collect to meet their estimated budget needs then adds that into the total amount assessed which tells them how much to move into their administrative fund annually.

That being said, Smith would like feedback from the Trustees as to if she should move forward with the assessment amounts we are attempting to look at now, and does this generate numbers in the ballpark that they are interested in or does she need to look at this in a different way or look at a lower assessment amount less than \$500. Smith stated that this is new to her, she needs to understand what the Trustees would like to see. Granzow stated we should continue at the \$500 level and look at doing the assessment every 3 years if it would be enough to last 3 years and not doing it annually would save on postage. Granzow stated that he didn't think the 3% option was legal, as that money should stay with that district, and didn't think it could be dumped into an administrative fund. Smith stated when we talk about all the DD's should share the legal costs how would that look on the Clerk's end in structuring this, there is a section in code that is 468.154 that allows for additional help for the auditor for the expense of a drainage clerk so there is a place in code that allows us to do that, Smith said she checked that out in code because she was unsure if it was possible as well. It looks like it is doable, and as we look at these IRUA invoices for example, that are waiting to be paid because we were trying to figure out how do we make this account code to pay these invoices from, that would be spread over all the districts. Smith stated she needs direction.

Hoffman stated we have a group of people in Hardin County that are very litigious, and there is a Supreme Court ruling that is going to come out about if Iowa Citizens for Community Improvement can sue the State of Iowa. Hoffman is concerned that this group will not give up, and at some point we will have another Des Moines Waterworks type lawsuit, and finding the money to hire quality legal counsel to protect the life and livelihood of our farmers. Hoffman stated we want good representation when it comes to that, and not having any money in the pot to pay good legal counsel could cost a lot of Hardin County landowners their lives and livelihood. If we say Curt, we know that was your manure that ended up down in Des Moines, I am afraid that that's what it will come down to, you can't help but think they are looking for a paycheck and to politicize how horrible our farmers are. Granzow said we don't budget in our regular County budget for these legal fees. Hoffman stated we would be out there fighting with other counties to find the best legal counsel, Hoffman wants to preserve his property for future generations and if that means having some extra money on hand is probably the best bet going forward. Granzow said if the money would be available it would be used eventually down the line.

McClellan stated she would like to see it get assessed only every 5 years as it is such a process to go through to set it up. Granzow stated he was fine with that. Hoffman said he would like to see it sunset at some point, and maybe that \$1,000 potential assessment level might be good to build a nest egg up front, and the next time we assess we can see how much is left and don't tax next time or change the frequency. Hoffman stated he looks at how expensive it is to just post our legal notices and attorney Mike Richards does a great job, and Hoffman wants to make sure we have the best representation for our people and if Mike Richards or an attorney asks if we have the cash to retain them, and if another county has the money, they will get the better representation.

Granzow stated he is not trying to tax anyone more if they are in a district but this is a district we are maintaining because the code of Iowa tells us we must. McClellan said we would also include any districts that have private Trustees because they would be included in any legal opinions we receive. Granzow asked how many we many districts are on the clerk's list, Smith stated we have 270 on the list, which includes, private trustee districts, inactive districts, laterals and joint districts, which would be pared down to ensure districts are not charged twice. Granzow stated that the Big Four includes many districts for example, and to sure they are only on the list once. Hoffman stated that if we are going to do it, that we want to be respective of the Clerk's time and of the work it takes to compile it, and will make it equitable later. Smith stated she does not mind the work, and will make it as accurate as possible, Smith said once the spreadsheets are set up, it will be only need updated if the classification percentages should change or the amount of the potential assessment would change.

Granzow stated this is the hard way to get there, but thinks it is the correct way to do it, he does not like the way the other counties tag onto projects. Gallentine asked if other counties were based off percentage of acres. Smith stated that Wright County said they are based on the number of units, which was 5,546,485 units, Smith needed clarification if Wright County's units were parcels or acres. Gallentine stated it is probably a unit of benefit, just to make sure we use the existing classifications, and not to base it solely on acres. Smith stated she is using the percentage of benefits based off the classification reports that Tyler generates for that drainage district. Gallentine said that would be on the right track. Granzow asked Gallentine if we were separating open ditches, and we had some questions specific to open ditches. Gallentine said the thought process may have been that open ditches have spraying/maintenance cost that closed tile do not, and have clean outs more often than tiles do. Perhaps the thought process was that open ditches have maintenance more often that may take more of the clerk's time. Granzow said, let's not worry about that then.

Hoffman directed Smith to work through this at her own pace and report back to the Trustees with the current potential assessment levels in the spread sheet.

8. Adjourn Meeting

Granzow moved. Hoffman seconded. All ayes. Motion carried.