

REGULAR DRAINAGE MEETING

Tuesday, November 10, 2020 9:30 AM

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

11/10/2020 - Minutes

1. Open Meeting

Hardin County Drainage Chairperson Lance Granzow opened the meeting. Also present were Trustee BJ Hoffman; Trustee Renee McClellan, Lee Gallentine of Clapsaddle-Garber Associates (CGA); Michael Pearce, Network Specialist; 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 McClellan to approve the minutes of Drainage Meeting dated 10-28-2020. Second by Hoffman. All ayes. Motion carried.

4. Approve Claims For Payment

Motion by Hoffman to approve the claims for payment with a pay date of Friday, November 13, 2020. Second by McClellan. All ayes. Motion carried.

DD 102 - WO 176	Eng Svcs After 9/26/20 to 10/24/2020	Clapsaddle-Garber Assoc	\$381.60
DD 9 - WO 229	Eng Svcs After 9/25/20 - 10/30/20	Clapsaddle-Garber Assoc	\$9,863.80
DD 14 - WO 290	Eng Svcs After 8/28/20 - 10/30/20	Clapsaddle-Garber Assoc	\$408.60
DD25 - WO 1	Eng Svcs After 9/25/20 - 10/30/20	Clapsaddle-Garber Assoc	\$1,988.30
DD 55-3 - WO 201	Eng Svcs 9/25/20 to 10/30/20	Clapsaddle-Garber Assoc	\$2,199.80
DD 82 - WO 301	Eng Svcs to 10/30/20	Sinkhole Investigation Clapsaddle-Garber Assoc	\$1,066.15
DD 102 - WO 265	Eng Svcs After 8/28/20 - 10/30/20	Clapsaddle-Garber Assoc	\$389.80

5. Discuss W Possible Action - Drainage Utility Permit Process

Century Link had been invited to join our discussion today, Smith stated she had reached out to Century Link three times by mail regarding their one open drainage permit, #2018-11. Smith stated she received no response directly from Century Link, Smith did have contact with Nick Killion of Killion Communications, who told Smith that they had done the install for Century Link, their work was complete and they did not impact any drainage district tile but actually getting any confirmation of this from Century Link was difficult. Smith stated that Century link has not provided us with any as-builts or other information, Smith does not know if century Link crossed over or under our drainage tile. Smith had hoped that Robinson DePenning would be online with us today, Smith received no written reply from Century Link until she emailed Robinson DePenning and Sean Hostetter of Century Link, Hostetter was the original contact listed on the application, Smith provided Hostetter and DePenning the zoom link to join the meeting today, but unfortunately they have not joined us today. Granzow asked if Century Link received a cease and desist on this. Smith stated she had sent them a cease and desist letter. Granzow stated then we need to involve attorney Mike Richards to move forward on this.

Motion by Hoffman to enlist the assistance of attorney Mike Richards regarding Century Link and cease and desist and identify any further action that needs to be taken. Second by McClellan. All ayes. Motion carried.

6. Discuss W Possible Action - Drainage Utility Permit Process / Language

Smith stated we had received a draft of the Drainage Utility Permit application back from attorney Mike Richards, and Richard's draft included the addition of language regarding an application fee. Section 1,

paragraph 2 is shown in red, these are the changes Richards has drafted for the Trustees to review regarding an application fee. Granzow asked if they do not spend all of the application fees is the unused portion returned to the applicant. Smith stated yes, Richard's draft provides that any unused fee monies would be returned to the applicant. Gallentine asked if there was an ability to waive the fees, if the Trustees would want to waive the fee if the applicant is someone like Heart of Iowa who has a really good track record and who we have never had any issues with. Granzow stated he did not have any issue in adding that language, they have worked well with us, let's work with them. McClellan agreed, why penalize them for something this utility is not doing. Granzow stated if we were going to include this, we would need to explain what the conditions are for waiving the fee, so that we would not set a precedent and a utility could say you charged us a fee but not the other utility, and we would find ourselves being sued. McClellan stated the utility would have to prove themselves through a review of their past history, but maybe leave that up to Richards, but agrees there needs to be a reason stated for it. Granzow stated we could just not cash the check, but perhaps it is best not to waive it to avoid the complications and not be sued, Granzow likes the idea of not doing it but thinks it is best practice not to, just because whether it is us or another Board up here, they could be swayed for reasons we don't remember. McClellan stated that is true, Gallentine stated you would have to be pretty specific, that they had proper performance on the last 20 crossings or some specific measures.

Granzow stated let's not put it in writing, let's just give them the option, that if they put it to us in writing for consideration, it does not have to be in the permit itself. Smith asked if that could be part of the review process when reviewing the application in a meeting before approval. Granzow stated that would be correct. McClellan stated we could leave it the way it is and review it on a case by case basis per application based on past history.

Motion by Hoffman to pass the Drainage Utility Permit Application amendment dated 10-28-2020. Second by McClellan. All ayes. Motion carried.

7. DD 38 WO 231 - Discuss W Possible Action - Update

The Trustees had asked Smith to reach out to Justin Huebner, who had originally filed this work order. It had been quite a while since this work order was filed and there was some previous discussion on whether or not the investigation costs would belong to Huebner if it was found to be private tile. Huebner had been asked to dig in his field to investigate the cause of the wet spots in his field, the District asked Huebner to notify Gallentine while it was uncovered so that CGA could be onsite to determine if it was district tile or not, and determine if there were any needed repairs and CGA could report this back to the Trustees. If district tile was found to be the cause the DD will pay for the investigation, if it is not district tile, Huebner would pay for the cost of the investigation. Smith reached out to Huebner on September 4th, and September 17th and again on October 29th, all both by email and by phone message, and Smith has received no response from Huebner on this, and Smith asked the Trustees if they would like to move forward and close the work order or have Smith send another letter. Smith stated this work order was on our list of work orders for review. Granzow stated he would send an email that states with no response back we we will close the work order.

Motion by McClellan to send an email to Justin Huebner stating if no response is received from him, Work Order 231 will be closed. Second by Hoffman.

In additional discussion, Smith stated she will send the email, and asked about the final expenses on the work order, will those be charged to the district or to the landowner. Granzow asked what we found out, and how much are we talking about. Smith stated the work order detail notes there were some costs for investigation, and some silt clean out, total costs are \$21,857, but if we look at just engineering costs or investigation costs we are looking at \$2,000 to \$3,000. Gallentine stated we would have to look at the dates on those invoices as some of those were for legitimate repairs that were done, especially the last invoice and maybe the invoice before that were for investigating Huebner's issue that was separate from the repair that was done. Granzow asked why that \$2,000 was in question.

Gallentine stated the field that was downstream of Huebner's fed a big sinkhole and Huebner was getting restricted drainage, when in the field we found there was a sand pocket and the tile collapsed and sucked in a bunch of sand. Williams Excavation went out and jetted the sand out of the tile, and then repaired the tile,

so that was all done in early spring of 2019, in the March through May time range. After that was all done, Huebner still reported problems, so CGA went out and investigated again, and the land that was upstream of Huebner was dry, so CGA stated they did not think it was district tile but something that may have been private tile, so the invoice from 2/14/2020 was for doing investigation on this, and maybe the invoice from 6/19/2020 were for investigation for Huebner, and all previous costs were for the legitimate project that was downstream of Huebner. Granzow asked if we just did investigation and never went out with any equipment and did any digging or excavation for Huebner. Gallentine stated that was correct, not for Huebner's portion, Gallentine stated he may be phrasing this incorrectly, when he says legitimate expenses he means ones that have been verified and we know are district, the ones that would have been questionable would be the last two invoices. Granzow stated from his take on this, this is not the first time we have done this for any district, they felt there was a problem and we went out and investigated, we didn't dig up a private tile and find out it was private tile, we just found out that there is nothing there. Gallentine stated we went out and said the guy downstream of you is dry, the guy upstream of you is dry where we know that is district tile, and yes you are wet in the middle but we don't think that is where the district tile is, we did not do any excavation. McClellan stated so we are talking about the 2/20 bill for \$153 and the 6/20 bill for \$308.70. Gallentine stated yes, those two invoices for a total of about \$500 or less. Granzow stated we do this with numerous districts, and does not think it should be the landowners expense on that question, and if Huebner wants us to go out and do more digging and research if we do not think it is district tile, and it may be at his expense if we do find it is not district tile, but we haven't gone that far yet. Granzow thinks it is a district expense at this point. McClellan agreed. Hoffman stated it is going to be one of those problems that come up over and over, Granzow stated it is but we have done investigation in other instances that have not turned out to be district tile, and ended up spending some money in the process. McClellan agrees that we discussed this a week ago and we may want to look at a policy similar to what Franklin County has, but we do not have that policy in place now, so McClellan feels this is a district expense we pay now and look at some kind of policy so that we can charge some of these expenses back to the landowners when it is found to be private tile. Granzow asked if Franklin County's policy could be brought back on next week's agenda as McClellan has brought this up several times, Hoffman stated as review with possible action and adoption. Smith stated she can add this to the next agenda.

Motion by McClellan to charge all Work Order 231 expenses to the District. Second by Hoffman. All ayes. Motion carried.

Granzow stated it is tough, are they supposed to go out and hire a private contractor to verify the tile is district tile, or is the district supposed to hire a contractor to verify it is private tile. McClellan asked if this would cause farmers to go out and start digging on their own to save the cost of a contractor. Granzow stated then we run into the deal where the private tiles were almost touching within the district tile. McClellan stated that is why we utilize a drainage engineer.

8. DD 136 - Discuss W Possible Action - Drainage Utility Permit Application #2020-16 - Heart Of Iowa

Heart of Iowa has submitted a drainage Utility Permit application to bore in fiber optics in the town of Cleves.

Motion by McClellan to approve the 2020-16 Heart of Iowa Drainage Utility Permit application.

In additional discussion on the motion, Granzow does not believe this application should fall under the new Drainage Utility Permit application fee. Gallentine stated he spoke with Jay Duncan of Heart of Iowa and they did not expect to get this far on this project, but the weather has been fine, so they thought they would just go ahead and get to it yet this year. Granzow stated he is fine with that, and believes the permit's new \$2,000 fee was not in effect when they filed the application and that is why they are not being asked to pay that as they knew nothing about it.

All ayes. Motion carried.

9. Other Business

Smith stated she received a phone call from Dee Kielsmeier on DD 20 Work Order 302, who wanted an

update on when repairs might occur, Smith stated she spoke with Kielsmeier and let her know that the work order had been approved and CGA was authorized to investigate and send out to lottery system for repair if it was not too large. Smith stated Kielsmeier did call back on Monday and left a message and was upset that it had not been repaired yet, and if Gallentine had an update she would provide that to Kielsmeier. Gallentine stated that we have no contractors working on drainage repairs right now and is trying to reach out to contractors to see who is available, and there are at least 2 to 3 work orders ahead of this one in the queue, and Kielsmeier was requesting this be repaired yet this fall. Gallentine had emailed Honey Creek Land Improvement to see if they are done with storm cleanup and are available to work on drainage tile again, he has emailed Seward and has not heard back yet. Smith stated she could let Kielsmeier know that, and the voicemail stated that the Clerk had not been very helpful, Smith stated she could not move the work order up the line, just relay the information on. Gallentine stated when we did go out there to look at it, the sinkhole on the existing old original tile, other than that we won't know until we get it up. Granzow stated so basically she is third in line, Smith will relay that information.

Smith received dates of availability from attorney Mike Richards for a closed session meeting regarding CWEC's / Drainage Utility Permits, Richards is available November 25th, December 2nd, December 9th and December 23rd. Hoffman is unavailable November 25th, Granzow stated November 25th was not good, and asked if the calendar was free on December 2nd, Smith stated there were no conflicts on December 2, 2020 other than regular Board meeting and Regular Drainage. Granzow stated 11:00 am on December 2, 2020 would work for the Trustees, Smith will add the date to the calendar and notify Mike Richards.

DD 9 - Gehrke's work on the project by the Robert's property is done, other than small punch list items, the conditions were favorable and should be wrapped up soon. Gallentine stated when they connected up last week it was dry, and hopefully today it is draining.

Gallentine stated Heart of Iowa has been great to work with on their utility permits they currently have open.

10. Adjourn Meeting

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