

DANE COUNTY DRAINAGE BOARD MEETING
October 24, 2019

Location: Bristol Town Hall, 7747 County Road N, Sun Prairie, WI

Drainage Board Members Present: Scott Ringelstetter, Leonard Massie, Paul Maly.

Others Present: John C. Mitby, (Board Attorney) Elizabeth Spencer (Board Attorney), and Adam Gallagher (Dane County Treasurer).

District Members present:

District No.4: Dennis Laufenberg, Annie Tremaine, Grant Gullickson, Doug Tjugum, Al Rogers.

District No. 8: Alden Bosben and Charles Bollig.

District No. 9: Josh Miller and Joe Seltzner.

District No. 16: Jarrod Wileman.

District No. 21: John Damm

District No. 25: Dennis Haug.

Meeting called to order at 7:00 PM by Chairman Scott Ringelstetter.

Review and Approve Minutes for August 21, 2019 Meeting

- Need to correct spelling of Hinrich
- L. Massie moves to approve minutes. P. Maly seconds. MC 3-0.

Review and Approve Minutes for August 22, 2019 Meeting

- L. Massie moves to approve minutes. P. Maly seconds. MC 3-0.

Review and Approve Minutes for October 7, 2019 Meeting

- P. Maly moves to approve minutes. S. Ringelstetter seconds. MC 3-0.

Review and Approve Minutes for October 17, 2019 Meeting

- L. Massie discusses current state and history of District 19.
- L. Massie moves to approve minutes. P. Maly seconds. MC 3-0.

Review and Approve Minutes for October 22, 2019 Hearing

- S. Ringelstetter summarizes contents of petition by DeForest to assume jurisdiction of district lands within the municipality.
- L. Massie notes that there were no statements in support of the DeForest at the meeting and that there is a history of difficulties of working with DeForest.
- L. Massie moves to approve minutes. P. Maly seconds. MC 3-0.

Annual Inspection Reports

- District 2
 - \$2.62 in account as of 8/31.
- District 4
 - \$38.14 in account as of 8/31.
 - L. Massie notes that the recommendation of the engineering study was not accepted by the landowners. REA is owed \$11,000 for the study and Hurley Burish is owed \$8,922 in attorney's fees.
- District 7
 - \$20,676.95 in account as of 8/31.
 - Culvert on Ziegler farm still needs to be replaced.
- District 8
 - \$26,800 in the account as of 8/31.
 - District owes REA \$8,000 and Hurley Burish \$12,400.
 - MOU with Sun Prairie has been signed by the Board but still needs to be executed by Sun Prairie. Sun Prairie will be paying 45% of District 8 and 9 assessments.
- District 9
 - \$130,186 in account as of 8/31.
 - District owes \$20,000 to Hurley Burish and \$1,500 to REA.
- District 10
 - \$3,438 in account as of 8/31.
 - Paid \$597 in bills in September.
 - The tile has not yet been fixed.
- District 11
 - \$6,674 in account as of 8/31.
 - District owes \$705 to Hurley Burish.
- District 12
 - \$1 in account as of 8/31.
 - L. Massie will be meeting with the State Drainage Engineer to get copies of photos and maps of all of the reactivated districts.
- District 16
 - \$5,926 in account as of 8/31.
 - District owes \$2,919 to Hurley Burish.

- There are two ongoing projects: one to provide access and another to replace tile lateral.
- District 21
 - \$7,565 in account as of 8/31.
 - District owes \$625.74 to Hurley Burish.
- District 22
 - \$3,841 in account as of 8/31.
 - District borrowed \$9,023 from District 9 to clean the ditch and needs to repay.
- District 23
 - \$6.67 in account as of 8/31.
 - The Board has attempted to inspect this District. There is no road to get into it. It was created in 1955 and by 1965 they were moving to suspend it.
- District 25
 - \$6,359 in account as of 8/31
 - District owes \$2,372 to Hurley Burish.
- District 27
 - \$2,369 in account as of 8/31.
 - There is currently an issue with contamination.
- District 28
 - \$102,183 in account as of 8/31.
 - There is a lot of work that is planned to be done.
- District 29
 - \$4,745 in account as of 8/31.
 - District owes \$492 in bills.
- Public Comments
 - A. Bosben has noticed that work in Section 29 of District 8 has occurred and that the water is now moving but this will still need to be maintained. Also, he would like to know what the distance between the edge of the ditch and crops should be.
 - L. Massie states that the corridor is 20 ft. as provided under the 2018 changes. There is the possibility of granting an exemption and allowing planting closer to the ditch. L. Massie has requested from the State Engineer to be allowed to increase the corridor to 100ft.
 - J. Miller asks if the REA report which notes where the corridor should be increased would suffice for the State Drainage Engineer. L. Massie confirms that it will suffice and that he will be meeting with the State Engineer.
 - J. Miller asks when the scope of work and proposal for District 8 will be available.
 - L. Massie states that the MOU is ready to be signed. REA will first need to meet with Sun Prairie and then bids can go out.

- S. Ringelstetter notes that given the March 1 notice requirement it will go out by then.
 - J. Mitby notes that the notice requirements, which were not changed by the 2018 legislation, are a part of high costs in fees to Hurley Burish as Hurley Burish does the administrative work here.
 - L. Massie moves to approve the annual reports. P. Maly seconds. MC 3-0.

Badfish Creek Drainage District and Badfish Creek Drainage District - Addition #1 – Assign district numbers 32 and 33 respectively.

- L. Massie moves that Badfish Creek become Dane County Drainage District No. 32. P. Maly seconds. MC 3-0.
- L. Massie moves that Badfish Creek Drainage District- Addition #1 become Dane County Drainage District No. 33. P. Maly seconds. MC 3-0.
- L. Massie provides update on status of districts. The ditch is now running with good velocity. The Village lacks a storm water management district and some ditches still need to be cleaned.

Resolution on Board member signatures.

- The Board has executed the Sun Prairie/District 8/District 9 MOU.

Resolution on Open Records rules.

- J. Mitby is recommending that the Board adopt Dane County Ordinance Ch. 16.41-16.43 regarding fees for open records requests. S. Ringelstetter read the ordinances.
- A. Tremaine asks about the costs in relation to the Board's administrative costs with Hurley Burish. J. Mitby explains that Hurley Burish receives numerous open records requests a year, the allocation of general fees relating to the Board, and the effect of additional districts sharing the costs as districts have been reactivated.
- A. Tremaine asks if the information requested via open records alternatively be posted to the website to avoid the open records procedure and related costs. J. Mitby notes that with the website more information about the Board and districts are being added. Some information will be limited by attorney client privilege and will not be posted.
- D. Laufenberg asks what the last assessment for District 4 was?
 - S. Ringelstetter provides that it was approximately \$25,000.
 - J. Mitby will provide the assessments for District 4 to Laufenberg.
 - L. Massie notes that that the assessment for costs has not been received from Bill Ringelstetter yet due to a glitch in the program.
- L. Massie moves to adopt the open record fee schedule of Dane County. P. Maly seconds. MC 3-0.

Assessments: 1) Discussion on how assessments are calculated (Spreadsheet); 2) Review and reallocation of general expenses to include Districts 2, 12 and 23.

- S. Ringelstetter notes that benefits assessments will need to run for the districts recently added or activated. The Land Use Filter/Base Factor Table Assessments will be added to the website.
- L. Massie explains the history of how the model was created for determining how benefits are assessed. He would like to go back and examine the scaler to treated commercial and industrial land in the districts in a way that more accurately reflects their contributions. A hearing would be needed to do this. ATCP 48 details the process for assessments.
- A. Bosben asks what the effect is if a land is put in a federal wetland preserve. L. Massie notes that the benefits to that land would be 0 and the share of costs for the other lands would increase. If the main or a lateral runs through the wetland, the ditch and corridor may still exist.
- C. Bollig asks will the Board be reassessing individual parcels. L. Massie states that the Board needs to reevaluate the scaler. And that he thinks there needs to be a change for commercial and residential lots.
- C. Bollig asks why are some lots assessed and others not. There essentially appears to be holes in the districts. J. Mitby provides that he cannot answer why the districts are that way. L. Massie states he will examine the maps along with the land use factors but if a party wants to be part of the district they need to let the Board know.
 - J. Miller is willing to have his land added to a district. E. Spencer informs him that there is a petition process under Ch. 88 for that to happen. J. Miller notes that owners desires to add in land has been discussed before. A. Tremaine states that it has not been reflected in the record previously.
 - C. Bollig does not desire to be in the district if others with property located around his are not required to. S. Ringelstetter asks if C. Bollig can show that his property is receiving no direct benefit. The boundaries of the district were made long ago as water drains from one parcel to another.
 - J. Mitby recommends that those unhappy with the procedures provided contact their state legislature.
 - L. Massie requests a list of properties that others feel should be part of the districts. Then the Board can see if they receive benefits. Adding any land would be a fight that would likely result in more administrative and legal fees.
 - J. Miller notes that the boundaries of the districts are insane as once land is out of the district there is nothing that can be done.
- D. Laufenberg notes that there is a housing development adjacent to his property and he experiences the additional water runoff that occurs. It appears that nothing is done to fix this issue.

- L. Massie states that they know the detention ponds are being built according to code but that the code does not seem to reflect the reality of the water experienced.
- A. Tremaine requests that the Board take the issue of the developments to the Town Board.
- J. Miller notes that the Towns know that the ponds are built to code and thus they don't have to do anything.
- J. Mitby asks owners to provide info on the developments that are of issue so the Board can pass it on. The Town Chairman has stated he is aware of the issues and is supposed to meet to work on legislation.
- A. Tremaine notes that there is a second issue here. Once the development is completed and control of the determine ponds goes to an HOA or individual owner, it is not logical to litigate the issue as those individuals are judgment-proof and the developer has already moved along.
- A. Tremaine asks if the Board is contacted about new developments and refers to ATCP 48.40 and 48.30(6). L. Massie states that the lack of a proper state drainage engineer means that there has been a lack of advocacy on behalf of drainage boards to towns.

Change fiscal year from September 1-August 31 to calendar year.

- L. Massie moves to change the fiscal year from September 1 to August 31 to a calendar year from January 1 to December 31. P. Maly seconds. MC 3-0.

District policies: 1) standard for culvert placement for field road; and 2) standard for brush/tree removal in corridors

- L. Massie proposes that policies be written so that every owner knows their responsibility and the responsibility of the Board. These policies would help to minimize the brush and waste in the ditches.
- J. Miller asks is there already a set of standards in existence?
 - L. Massie states that there is not. A policy is also needed in regards to reimbursing individuals for cleaning out of ditches, as more and more are taking the initiative to do clean outs without Board knowledge.
- J. Seltzner states he believes if the people are not getting multiple bids and that at a certain amount they need to and the Board needs to sign off on it.
 - L. Massie notes that Ch. 88 is unique and the limit requiring multiple bids is higher. J. Mitby explains how this has gone on at this point. If the project is close to \$25,000 they will bid it out and there can be no piggy backing with multiple small projects occurring to avoid the bidding procedure. L. Massie notes that the Board enters into written agreements when this occurs.

- D. Tjugum has previously cleaned out brush from his ditch in District 21 and does not expect reimbursement. However, he doesn't want to pay for others who refuse to properly maintain their ditches.
 - L. Massie notes that owners are to maintain the ditches free from brush.
- J. Miller recommends that the policy includes that those who do not maintain their ditches should be billed individually instead of having the district billed as a whole. D. Tjugum notes that if a person has bought an overgrown property they must clean it up and maintain it.
- L. Massie notes that obviously a policy is needed. If anyone is planning to do clean out please contact the Board in advance. A draft of the policy will be posted to the website. A meeting will need to be held to approve the new policy.

District 4: Review outstanding invoices (REA and Hurley Burish)

- J. Mitby responded to open records request regarding assessments and invoices.
- S. Ringelstetter notes that the assessments went out recently.

Districts 8/9: Rademacher request for credit for cost of tree/brush removal; and execution of MOU.

- S. Ringelstetter reviews the Rademacher bill of \$14,437. Rademacher is requesting reimbursement. Trees and brush were removed from the ditch. S. Ringelstetter observed the removal and examined the ditch after. He notes that Jerry Bradley did work around the same time and did not request reimbursement.
- L. Massie notes that given S. Ringelstetter presence during clean out it should be reimbursed. He recommends that Rademacher be reimbursed minus his share percentage wise of the assessment of costs.
- J. Miller asks how reimbursements now work with the proposed policy. The Board is opening a door to allow more issues by reimbursing him now.
 - L. Massie notes that the policy will only apply to things in the future.
 - D. Tjugum recommends that the Board not authorize anymore work until the policy is set.
 - J. Seltzner requests that someone meet him at his farm next week so he can do work. He also asks about the removal of dirt. This will have to wait until there is approval for a larger corridor. L. Massie notes that a written request is needed and a description of the condition so that it is part of the record. Please provide a written request to S. Ringelstetter so that it can be shared at the next meeting.
- L. Massie notes that this work occurred in 2018.
- S. Ringelstetter moves to reimburse Rademacher for the invoiced amount less his assessment of costs and less the administrative costs. P. Maly seconds. MC 3-0.

District 10: Still trying to get tile repaired – main near south manhole

- P. Maly states that the Board is experiencing difficulty getting a contractor due to the rain.
- S. Ringelstetter states that contractors are unresponsive or uninterested.
- J. Miller volunteers to take a look at the ditch.
 - P. Maly will discuss with J. Miller the location of the problem area. L. Massie will go along with J. Miller to take a look.

District 21: Payment for new culvert

- This is S. Ringelstetter' property. He will recuse himself from voting on the matter.
- S. Ringelstetter installed a new culvert and is seeking reimbursement. The project was previously approved. S. Ringelstetter explains that it was a 60 in, 40 ft. double walled plastic with cement end walls. It cost \$8,825.38.
- D. Tjugum asks if there was an increase in the diameter is the Board or district responsible for the costs of the increase.
 - L. Massie notes that the Board has no record of when the original was installed.
 - D. Tjugum counters that in any event it was still an increase.
- S. Ringelstetter desires that he whole invoice be reimbursed but, understands the issue raised by D. Tjugum.
- J. Miller recommends that with the policy this type of issue be addressed.
- P. Maly moves to reimburse S. Ringelstetter for 50% of the total costs of the bill.
- P. Maly rescinds and amends his initial motion and now moves to reimburse S. Ringelstetter \$5,000 for the project. L. Massie seconds. S. Ringelstetter abstains. MC 2-0.

District 25: 1) Portion of district south of CTH V – petition for board jurisdiction; 2) Getting bids for brush removal at two railroad bridges north and south of CTH V.

- P. Maly notes that as of today, the removal of the blockages is complete.
- L. Massie relates history of being blown off by the Village of DeForest.
- P. Maly notes that they have received bids for the brush removal at two railroad bridges north and south of CTH V.

District 29: 1) Culvert issue; and 2) Don Midthun conflict of interest.

- D. Midthun explains that the issue is a continuation of the previous issue at HWY V. The Town of Vienna is sending additional water from Madison Sand and Gravel pit. Previously, they had been compensated for the additional water. However, at this time they are not being compensated. Everything is being dumped into the quarry and District 29 is taking everything that is being dumped.
- L. Massie notes that previously there was an agreement that a 1 ft. diameter tube would let water out of the quarry. The town never followed up and instead put a 3 ft. culvert along with a two 1 ft. diameter tubes. The real issue here is that water goes into the main

ditch at District 29 and that amount of the additional flow is unknown and erosion is a concern.

- D. Midthun asks if the new assessment covers erosion.
 - L. Massie says no. Given the new issues we cannot pursue anything as we don't know the total damages.
- D. Midthun notes that this cannot wait until spring.
 - L. Massie notes that the previous agreement was to anticipate the flow. And the later action was taken without Board knowledge. The Board does not want to act until there is a clear understanding of the total damages.
 - L. Massie recommends that owners contact DATCP regarding concerns of manure contamination.
 - L. Massie will raise these concerns with the state drainage engineer and report back.
- J. Mitby notes that he and Hurley Burish will be recusing themselves from this matter as there is a conflict of interest. However, he refers the Board to Mark Hazelbaker.
 - D. Midthun notes that Town Board members may also have conflicts in this matter.

Public comments

- J. Wileman of District 16 asks if there is still a plan to get the line in next spring. He has a bid for \$15,000 to \$20,000.
 - L. Massie notes that as soon as they have the money they can move ahead.
 - S. Ringelstetter spoke to a contractor this morning and figures the high would be \$13,000 to \$15,000. The plan is to install the lateral when the money from the assessments comes in. Notice will be given to the Wilemans and the Andersons.
 - L. Massie notes that the previous assessment was \$30,000 to help cover this.
 - J. Wileman would just like the work done in the near future.

L. Massie moves to adjourn meeting at 9:45 p.m. P. Maly seconds. MC 3-0.