

DANE COUNTY DRAINAGE BOARD HEARING
October 29, 2020

Location: Video Conference via ZOOM

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

Others Present: John Mitby (Board Attorney), Elizabeth Spencer (Board Attorney), Jeremy Balousek (Dane Co. Land and Water Resources Department), Matthew Diebel (Dane Co. Land and Water Resources Department), Laura Hicklin (Dane Co. Land and Water Resources Department), and Adam Gallagher (Dane County Treasurer).

District Members or Representatives present:

District No. 19: Wayne Rounds Jr., Eileen Brownlee, Marty Van Haren, Luke Fuszard, Jim Wills, Shawn Stauske, Mike Torresani, Deborah Muresan, Richard Wells, Mike Watts, Alice Watts, Bill Kahl. *Approximately 34 district members and interested persons attended the hearing via Zoom. Many called in by phone and names were not provided.*

This hearing was recorded. These minutes are not a transcript of the hearing.

Meeting called to order at 6:32 p.m. by Chairman Scott Ringelstetter.

Brief summary of information/data of hearing on July 9, 2020

- S. Ringelstetter reviews events of last hearing on July 9, 2020. Bill Ringelstetter, L. Massie, and P. Maly have all spoken and worked with district members.

Information provided and investigation results since July 9, 2020

- L. Massie notes that he and B. Ringelstetter met with Wayne Rounds to discuss his property and his proposed changes to the assessment for his property.

New example of assessment of benefits with changes

- L. Massie explains the determination of what is appropriate for assessment for non-agricultural lands. He notes that assessed benefits are not equal.
- J. Mitby explains the sample assessment provided on the district website covers the need for funds for engineering plans and DATCP approval.
- S. Ringelstetter notes that today the Board was served a Petition for Dissolution filed by OW Holdings, LLC in Dane County Circuit Court. The court will hold a hearing about this and notice will be sent out to district members. J. Mitby has had little time to review the petition yet, as it was only served this afternoon. L. Massie requests that J. Mitby examine how it was filed and whether a petition of a district member for dissolution can be filed.

Dane County Land and Water Presentation

- M. Diebel presents results from a study on Hidden Oaks that is still ongoing. Groundwater is being measured for up to one year. The County wishes to understand the neighborhood water concerns, to understand controls on groundwater levels and to be able to recommend management actions to reduce water intrusion into basements, improve habitat in the Black Earth Creek Natural Resource Area, and protect Black Earth Creek. *Slides presented by Dane County Land and Water are posted on the Drainage Board Website. District members may contact Matt Diebel at diebel.matthew@countyofdane.com, (608) 516-0518.*
- J. Balousek states that they are gathering information as part of the study and trying to understand why the groundwater in Hidden Oaks is so much higher than that on the County owned property in the district.
- L. Hicklin notes that the County is committed to participating and helping all landowners, but it seems premature for the Board to proceed right now. The Black Earth Creek must be looked at carefully. Laura requests that the Board not take action at this time, so the work/study can continue and deletions can be proposed.
- J. Mitby reminds all of the petition to dissolve that would eliminate the Board's role here.

Read into record any written testimony on assessment of benefits

- Written testimony by Attorney Richard Procter representing OW Holdings, LLC is read into the record. OW Holdings opposes the Board moving forward with any assessment and today filed a petition with Dane County Circuit Court to dissolve the district.

Receive testimony from interested persons regarding new example of assessment of benefits

- Deborah Muresan representing the Homeowner's Association of Hidden Oaks states that there are 91 homes of the HOA in the District and about 10% have been severely impacted by the water. The retention areas remain high. She disagrees with the allegations in Attorney Procter's written testimony that the HOA opposes the Board doing work; they have taken no position. She supports the County initiative. They want the district to be active should it be needed.
- Eileen Brownlee, Attorney for the Town of Middleton is here to inform the Board that on Tuesday, October 27, the Town Board voted 5-0 to approve a motion to inform the Drainage Board that it opposes reactivation of the District, levying an assessment, and wants to work with Dane County on the water issues.
- Mark Torresani representing Black Hawk Ski Club appreciates the presentation tonight and the study being conducted. He is concerned that there may be more spent on permits than actual work being done, and that the changes will only be short term. He opposes the assessment and moving forward.
- Shaun Stauske, while an employee of Middleton, is not here representing the City Common Council or their thoughts. He has a list of questions to which he will need to have responses, as a result of community member inquiries. He asks:
 - What maps of the district drains exist?

- L. Massie provides that the maps for the district drains are in the possession of W. Rounds and are on plywood. There is also an original profile.
 - How was the figure per residential property calculated?
 - L. Massie states that the Board chose the number. The Board would like to know what district members think is reasonable.
 - Why is there a disparity between some agricultural properties?
 - L. Massie states that some properties may have been missed or were not updated and thus there may be disparities. The Board requests this information.
 - What are the landowners getting from the assessment?
 - L. Massie provides that the goal of the assessment is to pay for the engineering study. Their fees have recently increased. The Board would also like to pay some legal fees and pay for fees to submit the plans to the State Drainage Engineer for approval. There may be leftover funds which will not be touched. The engineering study will provide recommendations of what work to perform.
 - What is the methodology or the reason for picking the fees?
 - J. Mitby notes that the Board views other district formulas throughout the state, and has consulted with the engineer over this. The statutes do not provide much guidance on this matter. The Board could spend additional money for the engineers to come up with a formula. S. Ringelstetter explains the zoning code and how that influences the assigned fees.
- Jim Wills states the District is obsolete. There are many contributing who are not within the District boundaries. The map used is obsolete. The County is already spending money on these matters. His family has been involved with these matters since the start and does not know what the money here will solve or if it will end. The culprit is the culverts. The various commercial properties within the District cannot all be treated the same.
- Bill Kahl provided the Board a spreadsheet with his own estimates of escalating an assessment to a higher amount, which was passed along to the Board for review. He states that his contributions via assessments are not worth the benefit he will get back. He is concerned about future additional assessments. He is happy with the County efforts and echoes Shaun Stauske's comments.
- Richard Watts owns 40 acres in the District. His assessed benefits and percentage are higher than that of most agricultural properties in the District, and his house is being assessed separately. At least 25 acres of his property are wetlands. He notes that when work in the district stopped, it was because nobody wanted to move forward or be on the Board.
- Alice Watts expresses that her biggest concerns is that the benefits are not what they seem. She notes that they have not been able to crop portions of the land for almost 30 years.

- Mike Watts notes that P. Maly did visit the property but they disagree over their evaluation of the wetlands.
- Marty Van Haren's property is located north of HWY 14, and while the assessment won't kill them, he has many questions. He first notes that he believes the petition was filed today due to Wis. Stat. 88.81(1)(bm). He notes that it is difficult to keep all the stakeholders in the matter straight, as there are so many. He cannot disagree with the comments made by the Watts. He has walked the area where there is flowing water and the water cannot leave his area, for it has nowhere to go. He imagines the only resolution is extensive dredging. If the District is dissolved, he wonders what representation will there be regarding the ditch, and what his rights as a landowner will be to deal with drainage matters.
- Luke Fuszard notes that he was the district member who first engaged the Board 2 years ago, when they could not find any other authority that wanted to act. He is thankful to the Board for keeping this matter alive, as he thinks it helped bring the County, Town and City to act. However, the Town continues to abdicate responsibility. He wants the Board to delay any assessment until the County study is completed, and wants to keep the district alive. It may be the time to bring this to an end since all parties have been brought to the table.
- Wayne Rounds owns Twin Valley Farms. He has numerous questions and comments. He asks the Board for an explanation regarding the assessments of managed forest land. L. Massie responds that the Board is not seeking to punish him, but managing for timber is different. W. Rounds reads excerpts from the Court Record from 1915 through 1930 describing the difficulty with drainage, the expense of drainage, and the difficulty of keeping the main ditch open and to grade. He has farmed every acre that he is able to at his land. He has specific objections to the assessments of the following parcel numbers: 0708-181-8500-1, 0708-181-8000-6, and 0708-093-8500-8. These parcels include USDA determined wetland which cannot be farmed, areas under FML contracts, and water features that cannot be farmed. He further notes that he will lose his ability to participate in USDA programs, get federal loans, and participate with his other farms if the USDA wetland areas are modified. Many areas were never originally drained due to the costs of the original district formation, and the farms ultimately went bankrupt. He thanks L. Massie and B. Ringelstetter for the time they spent with him and for the return of his records. Unfortunately, he was unable to use his drainage records tonight. He also requests that the Board respond to B. Kahl's spreadsheet. He has never received any benefits from the district and requests the benefits assessment be put on hold. The District must work for all.
- M. Van Haren follows up with a few matters regarding dissolution. J. Mitby responds that if the district is dissolved, it becomes the issue of the property owners. L. Hicklin notes that the County does not have a plan and there needs to be a larger discussion on the goals and vision, but the County is committed to being a good neighbor. J. Balousek notes that the County is diligent with regard to maintenance, and that Ch. 88 does comment on private drains.

- M. Torresani makes an additional note that the Black Hawk Ski Club is a non-profit and tax-exempt organization, and asks how this plays into the assessment. Also, there are many ponds on the property. L. Massie notes that the assessment is not a tax, but he would have to look into the issue further.
- W. Rounds notes that the County has been cooperative with beaver dam removal, and neighbors have worked together over the years. Some issues can be resolved without the boards.
- J. Mitby notes that the Board is committed to work with the County if the District remains in existence. He notes that there have been no fees assessed to the district over the past two years, but at this point, for the Board to go forward, the engineer plans and an assessment are needed.

Order to confirm assessment of benefits

- L. Massie notes that the Board must further look into the issues raised by various owners tonight regarding the benefited lands. J. Mitby recommends postponing the assessment of benefits and costs.
- S. Ringelstetter is concerned about the petition and the number of landowners needed to file it. He also notes that the choices made regarding the district decades ago were the personal choices of those landowners. It is also a personal choice to violate the swamp buster act.
- L. Massie notes that the Board should reexamine the assessment of benefits, lock in the numbers, find out legal and engineering fees, and handle the petitioner. J. Mitby notes that we cannot predict the speed at which the petition will be handled due to COVID-19.
- **L. Massie moves to adjourn to square away the assessment benefits within the next 60 days. P. Maly seconds. MC 3-0. Meeting adjourned at 9:30 p.m.**

Additional public comments

- W. Rounds asks who he should contact with questions?
 - He can contact any Board member or the attorneys.
- The Board will be firming up the District 28 bid documents and will have an annual meeting in December.