

DANE COUNTY DRAINAGE BOARD HEARING

October 28, 2020

Location: Hearing held virtually via ZOOM

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

District Members present:

Jerry Bradley, Charles Bollig, Carlie Rademacher, Alan Rademacher, Joe Seltzner, Heidi Meier, Kay Weisensel

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

Approximately 25 district members and interested parties attended the hearing via Zoom. Many called in by phone and names were not provided.

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

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

Discussion of investigations by the Board as result of the last meeting including the various Duschack properties.

- S. Ringelstetter reports that the Duschack properties West of HWY N are not in the district and never were in the district. The information presented at the last meeting was inaccurate.
- Kay Weisensel requests additional information regarding the history of the district and who was included and not included when the district was formed.
 - L. Massie explains that the formation occurred over 100 years ago. J. Mitby notes that there are not specific records.
- K. Weisensel request additional information about District 23.
 - L. Massie notes that the landowners that were in that district when it was un-suspended have always been within the boundaries of that district since the time of formation. Those who were not in at the time of formation were not brought in more recently. This district is not related to the issues of Districts 8 and 9, which are being discussed this evening and are in a different situation than 8/9. Formation is fundamentally different from annexation.
- L. Massie explains that the Board can annex land, but first a petition must be filed with the Board, or the Board must investigate and find the actual benefits received.

Discussion of findings by Board members regarding non-District properties raised by Charles Bollig and Matt Fluegge.

- C. Bollig again questions the Board regarding the fairness of properties that are almost completely surrounded by the district and newer housing developments that remain outside the district. He also asks how his property is different.
 - L. Massie explains that the properties within and outside of the district are dependent on the original boundaries. The Board needs sound reasoning and any action needs to

be properly supported. He investigated the properties noted at the last meeting. The particular housing development is not within the boundaries. The Board does not know why some properties were not originally included in the district.

- S. Ringelstetter notes that this matter has been discussed at numerous meetings.
- C. Bollig explains that two different petitions have been filed with the Board. He is fine if his property remains in the district, if there is a zero-sum assessment. His property is assessed but he says it is not receiving a benefit.
 - L. Massie explains that the Board has visited with C. Bollig on this matter. If they stopped assessing Bollig, they would have to do it for everyone.

Final Order on Petitions for Permanent Zero-Sum Assessment requests from Charles and Linda Bollig, Matt Fluegge, and Doug and Jane Case in District 8.

- **L. Massie moves to deny the Petitions for Permanent Zero-Sum Assessments. P. Maly seconds. MC 3-0.**

Final Order on Petitions for Withdrawal requests from Charles and Linda Bollig, Matt Fluegge, and Doug and Jane Case in District 8.

- **L. Massie moves that the Petitions for Withdrawal from the district be denied. P. Maly seconds. MC 3-0.**
- S. Ringelstetter states that the explanation is the same as for the other petition.
- C. Bollig requests a written notice and letter of explanation. S. Ringelstetter states that the board can provide this. L. Massie states that the Board can provide minutes, audio and video. E. Spencer states that while minutes can be provided, a full transcript cannot.

Discussion of Petition by Josh Miller and various landowners regarding tree removal.

- J. Mitby states that the petition has been reviewed and states it is not sufficient to take action on.
- S. Ringelstetter states that the Board understands where the petitioners are coming from.
- C. Rademacher expresses concern over the tree removal by R.G. Huston. She believes every landowner should be responsible and pay for their own tree removal on their own land.
 - J. Mitby explains the bid process and that there is no intent to remove extra trees that are not causing issues. He also addresses the unity of the district.
 - L. Massie explains that the 100-ft. corridor is due to the spoil banks, and allows the machine to perform cleanout in the ditch. He understands that the current bid includes tree removal, too, and even if some landowners removed their own trees, the Board would still need to pay the contractor. While there is no current contract, if a landowner wished to pay the costs of tree removal, it could be written into the contract, but there would need to be a specific time frame so that trees were cleared out before Huston began work.
 - P. Maly explains that this is similar to the school taxes in the area. Everyone pays. The district must move forward.
 - J. Mitby states that the Board will take it under consideration as there is no contract yet. Those who wish to remove their own trees should provide their information along with the location of the trees to J. Mitby.
 - S. Ringelstetter states that this won't work. There may be those who choose to hire a third party to take down the trees. This would create a district problem for establishing the proper conditions to move forward. J. Mitby notes this may also create an issue with

the splitting of the fees with Sun Prairie. L. Massie notes that Sun Prairie approved the original bid documents that included the tree removal. P. Maly also notes that the district doesn't need more subcontractors in this matter.

Read into the record any written testimony.

- None. Josh Miller mentioned he may email written testimony but did not.

Hear testimony regarding petition.

- None.

Order regarding petition.

- **L. Massie moves to table the petition and pick it up at a later date. P. Maly seconds. MC 3-0.**

Discussion of the financial status of District 8 and 9 in relation to cleanout of districts.

- S. Ringelstetter gives a brief summary of the project being undertaken as it is described in the bid documents. L. Massie adds that the project will bring the districts back to the approved plan standards. REA will be monitoring the contractor during cleanout, so as to prevent deviation from the plans.
- S. Ringelstetter explains that in the sample assessment, the Board figured in an additional \$60,000 for District 8 and an additional \$69,000 for District 9. L. Massie notes that additional lateral work will still need to be done after the main project, and they will be able to use these funds for that. J. Mitby notes that legal fees and engineering fees have also not been included, just the costs of the work.
- S. Ringelstetter explains that to seek the loan, they must first order the assessment for costs. He believes that owners will have the opportunity to pay in full or over time.
- A. Gallagher clarifies the assessment procedure. On an annual basis, the county settles the general taxes. If someone does not pay, it goes on the special and delinquent rolls and gets paid to the specific jurisdiction one month after collection. L. Massie ask whether there can be a payment schedule, as he is concerned about owners having to spend large sums. A. Gallagher notes that this would be similar to when the city installs gutters or sidewalks and the payment is split out over several years, but the taxpayer does not get charged except for 1/5 of the portion each year, assuming the payment is spread out over five years. There must be a separate assessment for the five years.

Discussion regarding borrowing funds from the Board of Commissioners of Public Lands.

- S. Ringelstetter explains that the Board has requested a loan application from the Board of Commissioners of Public Lands for a 5-year loan. The Board has not yet received the application. They have followed up the BCPL contact. The current interest rate is 2.5%. There has been no indication that the drainage assessment process would pose any issue in obtaining the loan.
- L. Massie asks if payment would be once a year. S. Ringelstetter states that the payments would be in the summer. There would be time for assessment and collection for those that would pay in full. J. Mitby confirms that this is all legal but there may be a timing issue with paying the contractor; we must build in time for how people would like to pay. A. Gallagher adds additional information regarding how it may be better to split the assessment over multiple years or assess all at once.

Issue Order for Assessment for Costs.

- S. Ringelstetter provides a recitation of the following table:

Drainage District 08	Expense	Sun Prairie Portion	District Portion
Houston Construction Cost	\$ 429,371.50	\$ 193,217.18	\$ 236,154.33
Hurly Burish	\$ 7,500.00	\$ 3,375.00	\$ 4,125.00
Engineering	\$ 15,811.31	\$ 7,115.09	\$ 8,696.22
Administrative Delq Pymnts	\$ 35,423.15	\$ -	\$ 35,423.15
Totals	\$ 488,105.96	\$ 203,707.26	\$ 284,398.70
Interest	\$ 37,184.79	\$ -	\$ 37,184.79
Totals	\$ 525,290.75	\$ 203,707.26	\$ 321,583.49

Drainage District 09	Expense	Sun Prairie Portion	District Portion
Houston Construction Cost	\$ 264,065.00	\$ 118,829.25	\$ 145,235.75
Hurly Burish	\$ 7,500.00	\$ 3,375.00	\$ 4,125.00
Engineering	\$ 8,111.70	\$ 3,650.27	\$ 4,461.44
Administrative Delq Pymnts	\$ 21,785.37	\$ -	\$ 21,785.37
District Balance	\$ (50,000.00)	\$ -	\$ (50,000.00)
Totals	\$ 251,462.07	\$ 125,854.52	\$ 125,607.56
Interest	\$ 19,144.40	\$ -	\$ 19,144.40
Totals	\$ 270,606.47	\$ 125,854.52	\$ 144,751.96

- S. Ringelstetter notes that there may be some subsidy for the interest in the presented amounts.
- J. Mitby has spoken with Sun Prairie and they are willing to pay in phases, but had not commented on the time frame.
- L. Massie’s sense is that the Board cannot collect money from the assessment before the contract is done, so the loan is necessary.
- J. Mitby notes that the Board should assess 55% of the costs. It cannot assess the 45% that Sun Prairie will owe. S. Ringelstetter asks for clarification on why the Board cannot borrow the amount that Sun Prairie owes. J. Mitby states that this is because the Board must make the assessment for the amount that is borrowed. L. Massie notes that the Board could borrow Sun Prairie’s share so that they can ensure payment of all bills on time. J. Mitby again notes that the Board cannot do the assessment for what Sun Prairie will owe. He recommends doing the assessment tonight subject to approval of the loan application and Sun Prairie’s agreement to pay the appropriate amounts.
- J. Mitby finally notes that the amount from Sun Prairie cannot pay for the work to obtain the loan or the interest of the loan.
- L. Massie believes that S. Ringelstetter., J Mitby , the contractor, Sun Prairie, and the BCPL need to all get on the same page regarding the assessment loan amount.
- S. Ringelstetter would like to move forward and assess the entire amount, because the district will be on the hook to pay the contract. L. Massie recommends that the assessment of cost be the 55% plus operating costs. A. Gallagher notes that the assessment should be what the property owners will owe. J. Mitby again states that the Board cannot assess Sun Prairie’s portion as it has no authority to tax Sun Prairie.
- S. Ringelstetter suggests making an assessment of \$330,000 for District 8 and \$324 for District 9.

- B. Fedner asks what the bid amount was and how was it calculated.
 - S. Ringelstetter states that the contractor made the bid based on construction costs. There are engineering and legal fees to consider. There may also be interest issues.
- **L. Massie moves for an assessment for cost of \$330,00 for District 8 and an assessment for costs of \$324,000 for District 9. P. Maly seconds. MC 3-0.**
- **L. Massie moves for legal counsel to proceed to investigate borrowing the funds necessary cover the assessment, and bring back the interest and terms of the loan for Board approval. P. M seconds. MC 3-0.**
- **P. Maly moves that the Board and legal counsel proceed to confer with Sun Prairie to firm up payment of the 45% of the cost of the project outlined by S. Ringelstetter tonight, subject to the MOU and period payments. The Board shall provide the numbers discussed tonight to Sun Prairie. L. Massie seconds. MC 3-0.**
- **L. Massie moves that after the funds have been secured, subject to approval by Sun Prairie, the Board shall enter a contract to have the work done by the low bid in Districts 8 and 9. P. Maly seconds. MC 3-0.**

Discuss next steps/Additional public comments.

- S. Ringelstetter explains that the assessment of costs contains a cushion due to the possibility of late payments by landowners. Landowners further question whether the amount assessed is correct, as it seems to be approximately \$100,000 more. S. Ringelstetter explains the split between the districts and Sun Prairie. P. Maly notes that additional projects still need to be completed, aside from this one, as it does not cover all the laterals. Landowners request that they pay it back to the landowners, and do not let it sit and be lost.
- K. Weisensel circles back to the topics of annexation and the watershed. K. Weisensel requests that the Board investigate bringing others into the district. This fight is truly about the overall wellness of the districts. C. Bollig shares the same concerns and has made these points over the past two years.
- J. Seltzner notes that stormwater assessment occurs in the city, and the city does not seem to be facing the litigation that the Board fears.
 - L. Massie explains the relationship between stormwater management districts and the drainage districts.
- C. Bollig raises issues from May and June 2018 regarding the withdrawal of the Stangl property from the district.
 - L. Massie reviews the minutes he has from June 25, 2018 that involved a parcel not in the district. C. Bollig notes that there was a parcel in the district that was withdrawn. J. Mitby states that the Board will examine the issue and get back to C. Bollig.

L. Massie moves to adjourn at 9:17 p.m. P. Maly seconds. MC 3-0.