

FILED
09-19-2022
CIRCUIT COURT
DANE COUNTY, WI
2020CV002263

DATE SIGNED: September 19, 2022

Electronically signed by Rhonda L. Lanford
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

OW HOLDINGS, LLC,

Petitioner,

Case No.2020-CV-2263

and

TOWN OF MIDDLETON,

Intervening Petitioner,

v.

DANE COUNTY DRAINAGE DISTRICT NO. 19

Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

This matter came on for hearing on August 31, 2022, at 9:00 a.m. before the Honorable Rhonda Lanford, Circuit Court Judge. The Petitioner appeared by its attorneys, Axley Brynelson, LLP, by Attorney Robert C. Procter, and the Intervening Petitioner appeared by its Attorneys, Boardman & Clark LLP, by Attorney Eileen A. Brownlee. The Respondent appeared by its attorneys, Trost LLC, by Attorney Kevin D. Trost.

The Court, having reviewed the Stipulation of the parties, and having heard the testimony and received into evidence exhibits offered by the parties and upon all the records, files and proceedings in this matter, the Court makes the following:

FINDINGS OF FACT

1. Petitioner OW Holdings, LLC (“OW Holdings”) is an owner of land in Drainage District No. 19 (“District No. 19”).
2. Petitioner has filed its petition under Wis. Stat. sec. 88.82(1)(bm).

3. Both the Petitioner and the Respondent have caused the notices and publications required under Wis. Stat. sec. 88.05 to be made and have filed with the Court proofs of publication and affidavits of mailing as required by Wis. Stat. sec. 88.05(7).

4. The drainage district was legally established in 1913 and the drainage system was constructed in 1917.

5. No work has been performed on the drainage district since 1960.

6. Since its inception, the drainage district has not created farmland or provided any benefit to agricultural operations.

7. Respondent Dane County Drainage Board (“Respondent”) took over District #19 approximately three years ago in that it was formerly a drainage district under Wis. Stat. Chapter 89, a prior version of the current statute.

8. The latest assessment for costs for Drainage District No. 19 was more than 20 years prior to the filing of the Petition.

9. Respondent is responsible for District No. 19 pursuant to Chapter 88 of the Wisconsin Statutes and Wis. Admin. Code ch. ATCP 48.

10. Respondent’s Board Members are Paul Maly, Leonard Massie and Bill Ringelstetter, who were duly appointed by the Chief Circuit Court Judge of Dane County pursuant to the procedure of appointment under Wis. Stat. 88.

11. The Respondent previously withdrew its opposition to the petition and was permitted to withdraw by order of the Court dated August 18, 2022.

12. Respondent incurred costs on behalf of District No. 19 in the amount of \$7,080.97.

13. For the Respondent to do any work, establish a plan or make an assessment, the Respondent would need to engage an engineering firm to complete a profile of the district as required by Wis. Admin. Code ch. ATCP 48.

14. There is significant opposition from a number of landowners located in Drainage District No. 19 that do not want the Respondent to incur costs to complete a profile, prepare engineering plans, and perform any work and who submitted a petition, received as Exhibit 2, supporting dissolution of Drainage District No. 19.

15. Drainage or dredging of lands, particularly lands owned by Dane County, would be contrary to the public benefit and intended purpose of maintaining the lands for wetland preservation, habitat restoration and recreation.

16. Draining or dredging of lands would adversely impact Black Earth Creek and its watershed.

CONCLUSION OF LAW

Based on the foregoing findings of fact, the Court concludes that the public welfare will be promoted by dissolution of District No. 19.

THEREFORE, IT IS HEREBY ORDERED:

1. Dane County Drainage District #19 shall be and hereby is dissolved effective as of the date of this order.

2. The parties are advised that Wis. Stat. § 88.82(6) governs any drains which have been constructed by Drainage District No. 19, which provides:

Any drains which have been constructed by a drainage district dissolved under this section or under prior law shall remain common waterways for the use of all landowners in the dissolved district. Any such landowner may make repairs thereto at the landowner's own expense. Any person who in any manner obstructs or injures any such drain is liable for all damages caused to any person thereby and in addition may be fined not more than \$100.

3. The Respondent and its Board Members (or future Board Members) shall no longer have any responsibility for District #19 under Wis. Stat. ch. 88 or Wis. Admin. Code ch. ATCP 48.

4. The Court's prior order requiring the Petitioner to pay the sum of \$7,080.97 to the Respondent on or before September 16, 2022, is modified to permit the Petitioner to pay said sum to the Dane County Treasurer within seven (7) days of the date of the Court signing this order.

This is a final order for purposes of appeal.