

Dane County Drainage District

In re: March 30, 2022 Hearing and all related investigations:

Recommendation or Decisions of the Dane County Drainage District Board #19

Following the Dane County Drainage District Zoom Hearing on March 30, 2022 the Board concluded that the District was created under the old drainage district law which meant it would now require assessments to prepare a district profile to bring it into compliance with Wis. Stat. 88 and ATCP 48; and make some assessments for statutory drainage district profile by drainage engineer approved by the state and for maintenance work that should be done. The Board recognizes this District #19 is a complicated drainage ditch since it has become what now is now known as a trout stream with various landowners, some of which are no longer farming but need drainage. Likewise, the trout stream has special issues so as to maintain it as a trout habitat and not just a drainage district for the draining of wet soils. Additionally, there may not be any drainage benefit for landowners outside the boundaries of the Drainage District.

Although numerous speakers and petitions were opposed to assessments and activating the district under Wis. Stat. 88 the Board was of the opinion that it was in the public welfare interest to make an assessment and activate the District and do some maintenance work to improve the flow district (which is also a famous black earth trout stream) but that the Board would agree to dissolving the district if the property owners under Chapter 88.82 (6) may make repairs to the District at landowners expense and pay the debts of the District.

Such District costs include an extensive investigation and inspection by the Board, numerous meeting and publication posting and mailings and Atty fees (pro bono). The total District costs to be paid as per this e-mail are set forth below.

- Nevertheless, the drainage board (based upon the opposition to assessments or work or lack of landowners need for a Drainage District from the testimony of landowners produced at the hearing) would withdraw its opposition to the dissolution of Dane County Drainage District #19. The hearing on dissolution would go forward on stipulation but the Drainage District Board would not oppose dissolution or participate. It has no funds without assessments and the property owners wish to maintain the District as provided by law.
- The reasonable Drainage District #19 costs incurred for the notices, etc., reimbursed to the Drainage District based upon numerous expenditures such as below in the amount of \$6,500 for meeting, publications, mailings, preparing list of landowners and assessment roll and at least 5 public meeting plus numerous board physical inspections of the property, over 150 e-mails, review of old maps and petitions or letters and review of documents. The Atty fees for legal work starting in 2019 exceeds \$25,000 which provided on pro bono basis given the meetings, complexity of the issues, the lack of attention to the district under the old district law and the current litigation. Plus, numerous pro bono hours spent by the Board and former Board Chair (recently deceased).

But under the law the costs of the costs expended of \$6,500 shall have to be paid to the Dane County Treasurer office in advance of any order to dissolve the District. Such amount will be used to reimburse the district for part of its expenditure. In lieu of payment District #19 will assess such costs, including the costs to make such assessments.

Given the status and results of the hearing and if there is compliance with the above the Dane County Drainage District #19 will not oppose the dissolution of Dane County Drainage District #19, subject to both above and the items below:

- The District Board in lieu of a hearing or the Board would not participate in the hearing to oppose dissolution) would allow the court to enter an order dissolving Dane County Drainage District #19 by a stipulation of the parties to the lawsuit and stating:
- Nothing in the order impairs the rights of any property owner to petition the drainage board for the establishment of a new Drainage District #19 under Chapter 88
- The names of the property owners would be provided that are current members of District #19 to the Dane County Treasurer office. If there is cost involved in doing so the same shall be paid by the petitioners who wish the district to be dissolved. District #19 will assist by providing a tax roll (which it already has done)
- Drainage becomes the responsibility of property owners under Chapter 88.82
- The lawsuit is dismissed w/o prejudice or further costs.

The parties shall enter into a stipulation for dismissal of the suit w/o prejudice or further costs (other than as identified in this e-mail); however, the order shall provide that District #19 is dissolved and no longer governed by Wis. Stat. 88 or ATCP 48 except as provided as to landowners under Wis. Stats. 88.82. Further that both the County Treasurer and State Drainage Engineer shall be so notified along with the property owners currently within the boundaries of District #19 that they are no longer in Dane County District #19 and are to comply with Wis. Stats. 88.82

As the Atty for Dane County Drainage District #19. I will work on the stipulation details with parties that appeared in the lawsuit, the District Board and County Treas. will need to provide final approval. The state drainage engineer is prepared to agree assuming it receives a copy of the court's order dissolving the district.

The foregoing was the recommendation or decision of the Dane County Drainage District Board #19 based upon the March 30, 2022 Zoom hearing/meeting and all the investigation it has done.

The foregoing is subject to any District court approved court filed documents and of course the court's decision.

By the Atty below for Dane County Drainage District #19,

Attorney John C. Mitby
Hurley Burish, S.C.
33 East Main Street, Suite 400
Madison, WI 53703
Phone: 608-310-5556
Cell: 608-575-4077
Email: jmitby@hurleyburish.com