

DD 55-3 Lat 9 DRAINAGE MEETING
WEDNESDAY, JANUARY 27, 2021 11:00 AM

This meeting was held electronically and in-person due to Covid-19 concerns.

1/27/2021 - Minutes

1. Open Meeting

Hardin County Drainage Chairperson BJ Hoffman opened the meeting. Also present were Trustee Renee McClellan; Trustee Lance Granzow; Taylor Roll, County Engineer; Landowner Scott Thompson; Lee Gallentine of Clapsaddle-Garber Associates (CGA); Mike Richards, The Davis Brown Law Group; Michael Pearce, Network Specialist; and Denise Smith, Drainage Clerk.

2. Approve Agenda

Motion by McClellan to approve the agenda. Second by Granzow. All ayes. Motion carried.

3. Introductions/Attendance

Introductions were made and attendance verified.

4. Enter Closed Session With Attorney To Discuss Work Order 251 / Pond Issues

Motion by McClellan to enter into Closed Session With Attorney To Discuss Work Order 251 / Pond Issues As allowed under Code of Iowa Section 21.5(1)(C). Second by Granzow.

Roll Call Vote: McClellan: Aye, Granzow: Aye, Hoffman: Aye

All ayes. Motion carried.

Present for the closed session portion of the meeting were: Trustee Hoffman; Trustee McClellan; Trustee Granzow; Taylor Roll; Lee Gallentine; Michael Richards; Michael Pearce; Denise Smith. Meeting entered Closed Session at 11:02 AM.

5. Exit Closed Session

Motion by Granzow to come out of closed session. Second by McClellan. All ayes. Motion carried. Return to open session at 11:18 AM.

6. Comments/Discussion

Scott Thompson joined the meeting and introductions were made. Hoffman asked if Thompson was aware that he was here because of Work Order 251 and the pond that was built. The Drainage District Trustees were concerned because when we talked about this before, we acknowledged that it needed to be an engineered project, Hoffman asked if Thompson understood that at the time. Thompson stated he has not done any work with the pond, that was what we discussed before with the new tile project, so much water was coming through that there is already an existing basin there. Thompson did not know if the Trustees were aware of that, it was covered by trees, with the increased water flow coming out of the new tile project it was eroding the hell out of it, so Thompson had bowled that out a little bit and impeded no water, we actually increased the holding and flow because before when we got a heavy rain it would back it up across the road, because it couldn't handle it, now we don't have that problem. Thompson stated the pond that he was talking about would be back further and Thompson has not had time to go much further on that, as his business is exploding and spends every minute doing that instead of at his home.

Hoffman asked what kind of work Thompson did on the pond area we do see on the screen. Thompson stated we did a bowling out, basically what we did the sides were straight up and down or undercut, we took it back, we tried doing a 3 to 1 but on the north side it ended up being a 2 to 1 just because the grade of land, it is not as big as what it looks there. Thompson stated the basin before was as wide as from me to the wall and it was deep enough that it was chest high on Thompson swimming in there, it wasn't just a

trickle creek going through there, what Thompson calls a creek, you call an open ditch, we caught bluegill and sunfish in there, it held fish year round except for 2012 when it was a big drought year when it dried up pretty much just like this year. Thompson stated that is what we did, bowl that out and made it a little deeper, we did not, get into the road ditch or the fore-slope of that road, Thompson did call the Engineer's office to have someone come out and look at it, Thompson believed we discussed that in one of our meetings once, that we need to get Secondary Roads to see how far we could go and they sent out Karns, and he said you can't go past this point, because that would interfere with roads, and we did exactly that and didn't go any further. Thompson stated he has pictures to show that the ditch as it flows in is intact, all of the work that we did was on what we will call the back-slope of the ditch where the back-slope would be, but there is no real back-slope there.

Hoffman asked if the work of the bowling out was done utilizing Thompson's own equipment. Thompson stated yes, we had a rainy day and we had an excavator free, this was after Thompson met with Karns, at least 6 months before that, it was just one of those things, yes we can do that and we took out some trees, that were going to fall in anyway, they would have fallen in this year for sure. Hoffman asked if the other project that we previously discussed, no dirt has been turned, if we zoom out on the screen, is not that area. Thompson stated what our tentative plan was that this is just basically a sediment basin, so we get a ton of runoff from Bunte's land, this spring it filled back up with dirt from Bunte's before we made an attempt to restore the weed/grassway there, and we dug that back out but we did plan on having this and a little part of the open ditch and part of a pond that is eggplant shaped. Thompson has measurements, elevations and stuff we sent into CBA in Ames, but Thompson has not had time to even think about doing that because we have been running so hard. Thompson stated he can ere on the side of making money than spending money, that is what I do, Thompson has a whole lifetime to do that if it ever gets approved.

Hoffman asked if Thompson received the other letters that Davis Brown Law had sent. Thompson stated he received this one, dated December 2nd, talking about unlawful obstruction of the flow. Thompson stated he was confused by this because he has obstructed zero flow, he has actually helped it and when it is silted in, Thompson actually dug that out and helped that. Thompson stated he knew there were concerns with the drop off of the road into that basin, and there is markers there. Thompson stated he never touched anything on the fore-slope, that is all original grade, there are markers there, there always has been, the snowplow keeps breaking them off. Thompson stated there are about 6 of them sitting in the middle of that basin, they have the big yellow and black striped ones, about 50' apart, the snowplow has snapped them all off and they are down in there, and there is one left of the new ones they put up. Thompson can grab a picture of that, the grader usually takes them out every other year when he is blading, Thompson can understand why he does that. Thompson stated he thought when he did the basin, but could be wrong on this, Thompson remembers you guys talking about that basin, if Secondary Roads can sign off on it to where it is not going to interfere with their road and it is just that little basin increasing the holding, then that is not a big deal. Thompson stated he called the Engineer's Office, and a lady called him back two hours later, and said this is Mr. Karns' phone number, get a hold of him, he will be the one that comes out, and he is coincidentally Thompson's neighbor to the north. Karns told Thompson not to go past this point and we staked it, and we didn't go past that point, and you can tell, Thompson has a couple pictures but it is hard to tell with the snow, you can tell original grade and then there is what we did.

Hoffman asked on Thompson's proposed project, who did you send your elevations to. Thompson stated he believed it was CBA in Ames, Thompson worked with a girl named Heather down there, that was like maybe last spring, because Thompson's surveyor came out and just shot elevations, the existing grades so Heather could develop a plan, and Thompson has not followed up at all, she could have it done, she could not, Thompson hasn't paid them any money and they haven't sent him a bill. Thompson stated as far as he is concerned he will not be doing anything with that pond at least for the next two years because he will be expanding his business in eastern Iowa and will basically live over there for the next two years, so he has no time to fight with that, and you will be disappointed you won't get to see me for two years. Thompson stated the pond thing is on the back burner, if it happens when Thompson is seventy years old, cool, if it doesn't happen, Thompson will be fine with that, and will work things out, if he has free time in the winter and has a backhoe free he will do some clearing and grubbing, but next winter he will strip black, but finding a home for that much spoils is going to be difficult.

Hoffman stated let's go back to the little pond by the side of the road, how much material do you think you removed when you were doing your contouring. Thompson said it is hard to say, it is still sitting there,

probably somewhere between 150 to 200 yards, probably 200 yards, it wasn't a whole lot. Hoffman asked if McClellan had any comments, she did not think so. Granzow stated if any obstruction happens there would you be willing to take care of it. Thompson stated yes, and knows from a previous meetings that Thompson is not allowed to obstruct anything, when we dug that basin, there is no damming, we dug down and out, another rain event or two a couple of the big maples would have gone in, they were barely holding on as it was. Hoffman asked if Gallentine had a comment, Gallentine stated he recommends checking the meeting minutes, what Gallentine remembers being said was you are not allowed to obstruct or modify the district facility and would defer to the meeting minutes.

Richards asked if Thompson had photographs of what he did, Granzow asked if Thompson had before and after photos. Thompson stated he would have to find his before photos, all he has with him is after photos of he what he took today, Thompson's excavation guy has some and he couldn't get them to Thompson in time for today but Thompson has video of that basin from a couple springs ago, when it was flowing through there pretty good, it is pretty impressive when the snow melt comes down that waterway, it sounds like a waterfall. Thompson stated he could get photos, he should brought Al Urhammer with him, as he drives by it every day and can tell you exactly what it has been for how long. Roll stated if you go to the 2016 imagery you can see the overhead view of it. Thompson stated it doesn't show the original basin real well, it is as wide as this room, when we were fishing, you had to give the pole a little flip, it wasn't just dangling out there, it is deep enough in the original one that is it chest deep on Thompson.

Hoffman stated he thinks one of the most imperative things is if we need to return anything back to the original condition after looking at those things, Hoffman asked would Thompson be agreeable to pay for those associated costs if deemed necessary. Thompson stated he would be open for discussion, in his view Thompson thinks he actually helped it, he knows he helped it because he lives there and sees it every day, any time you can increase water capacity you are doing some good. Thompson stated he did not narrow it, or put in any bends or stop logs, there is a tremendous amount of water that comes out of that new tile project, it drains it fast and hard. Hoffman stated his other suggestion would be to involve a landowners meeting and let the other people that are responsible for the classification's assessment and engage them as well, that might be a critical thing. Thompson stated he spoke with some of his neighbor's and Bunte owns the field to the west, or may be tenant, he is the only one that Thompson has not spoken with about what her is doing, all of his other neighbors are fine with it and are for it. Granzow asked when Thompson refers to neighbors, is he talking about neighbors of the district or just the surrounding area, the district belongs to many acres as neighbors. Thompson stated he has talked to 80% of the landowners in that lateral, Thompson doesn't talk with Bunte much, and has not spoken with Mark Brinkmeyer who owns a large chunk. Thompson stated he believes he has spoken with the bulk of the rest of them, and may have spoken with Randy Dubberke last year, in general they are in favor of what Thompson wants to do, and if it will cost them money then of course no one is in favor of what he wants to do.

Thompson stated he did not do this maliciously and distinctly remembers us talking about that basin, and saying if you can get Secondary Roads to say if it will not affect the road how we did it, or how we planned on doing it that will be just fine. Thompson stated that is why he called Secondary roads and they sent out a representative, if Thompson wanted to do something sneaky, he would not have called half the County and alerted them.

Hoffman asked if Thompson's business was on the Drainage Clerk's list of in-county contractors. Smith stated no it was not. Hoffman stated another remedy is if you do want to do these things, and we have had other people in other areas say we would be more than willing to pay it rather than spread it out over the district's classification, going forward, getting on our contractor list so you could be a responsible contractor, that is a legal term, that requires insurance and some other things. Thompson stated he had insurance, which should be sufficient. Granzow stated we have a lot of people that have the equipment but don't carry the insurance, and we can't allow them to work on district facilities. Hoffman stated if they do it is on their own property. Thompson stated we do a lot of industrial and large commercial work, but those bond prices and insurance are getting way up there in costs. Thompson's world view is that he would never ask his neighbors to pay for anything on his property that he messed up, if Thompson messed it up, his world view is that he is the one paying for it, he would not expect anyone to foot that bill but himself. Hoffman stated we have even had cases of late, where landowners have instructed contractors to do things that have ended up being an impedance or hinderance to the rest, and one gentleman just submitted a \$3,035 check for taking responsibility, so Hoffman appreciates someone with Thompson's moral turpitude

to take responsibility, and 8% of society wouldn't do that today. Thompson stated the Trustees do not know him very well, Thompson is a boy scout leader and youth sports coach and what model would this set for his kids if he sets an example for other but does not follow it himself, that is not how Thompson does things. Thompson stated it is his land, if it messes something up, Thompson is responsible for it, as an example it would be no different than if he ruined a road doing something, it would be Thompson's responsibility if he did that. Thompson's view on that basin from his perspective and how he has seen that ditch operate, that is a major plus for what is happening there.

McClellan asked, looking at this image, it looks like the ravine is in the ditch/road right of way, and asked if that was how Roll viewed it. Roll stated those pictures are never perfect and it may be in the angle, McClellan stated in the 2020 image, is the way it is now. Thompson stated that image is probably in the high water, it does flow good and in the spring time it will back it up into the other field, this snowfall we are having will back it up into the other field, it won't be long, maybe like 12 hours and it will be gone, it fluctuates a lot. Thompson does not know if any of the Trustees have been out there, but it is not that far off that gravel shoulder that that culvert stops, and it is kind of an open vee where it empties out. McClellan stated she was out there a year or two ago, and looked at the waterway at Bunte's that Gehrke did the work, Granzow stated it would have been a year ago, McClellan stated they drove her around out there and she did notice how deep that ravine was, but did not pay much attention to this side. Thompson stated last spring we dug probably 50 yards out of that basin this last spring when that whole waterway washed down into that basin. McClellan stated it wasn't seeded there for a while, Thompson stated they didn't put matting down, they just threw some seed down and it is all foxtail.

Gallentine asked after Thompson did this flattening of the basin as you call it or widening out, did Thompson seed that at all, because when CGA was out there, there was no seed down at all, it was just bare raw banks. Thompson stated we threw down some native and it didn't stick, Thompson's end goal was to armor that with some kind of revetment or concrete chunks, because that north wall is a 2 to 1 grade, so that is not going to hold seed worth a crap. Gallentine stated that was our concern when viewing it, and understands Thompson may have gotten some silt from Bunte but if something is not done with that raw excavation that Thompson has done, and the dirt that is piled up and is just sitting there, it is just going to wash into the open ditch too. Thompson stated yes there is a grass buffer in between the stock piles, that whole open ditch is eroding pretty good anyway, all the banks are undercut and flopping in there, it is Thompson's intention to stabilize it. Gallentine asked okay we were out there in spring of 2019, Gallentine understands that Thompson has been busy and we have had Covid-19 and all of that, but it has been a year and a half, is it has not been stabilized yet when will it be stabilized. Thompson stated it has been pretty stable this spring, it had a lot of weed growth on it, which Thompson knows is not a permanent cover, Thompson is hoping to hydroseed some native or brome in there this spring, because it is so wet you are not going to get equipment down in there, and get something established then, Thompson's whole business is based on turf and erosion control so it is not a good look for him to have bunch of erosion control on his property that we did.

Gallentine stated he is not trying to be personal, but as an engineer when he sees something that has sat for a year and half with no real progress on it, you can understand my skepticism on it that it is going to be done. Thompson stated he understood Gallentine's skepticism on it, he had some leftover big blue stem we threw down in there and Thompson just thinks it all washed out. Gallentine stated as far as the open channel, if that is sloughing in Thompson is welcome to talk to the Trustees or the Clerk who are all here today if you want the district to come in and do something about that since it is a district facility. Thompson stated if he could just get the ok for him to do it himself and pull those banks back a little bit, with his septic being back in there, Thompson likes to be very selective what goes back in there. Gallentine understands that and asked Thompson to be aware that the district facility was there long before Thompson's septic was there. Thompson understands and thinks the first mapping of that open ditch was from 1947, Gallentine stated no it was probably 1909 or 1915, somewhere in there. Thompson stated he didn't see it on any of the maps, it started showing up in the maps in the mid-40's was what Thompson's research showed, but the district may have better maps than what Thompson found. Gallentine stated he was going off the original district map, Thompson stated it has been there for a very long time and is not arguing that. Thompson has every intention of stabilizing that and his intention is to put in some native seed, but it might just be brome because of the water flow. Granzow stated would it be fair to ask that you give us a timeline on that, he knows what Thompson hopes to do, but we need to know what you will actually do. Thompson stated as soon as it gets thawed to where Thompson can hydroseed it, he can just

spray it from the road. Granzow asked if that can be done by June. Thompson stated it could be March, Granzow stated he is ok with giving June because we can't know what the weather will do. Hoffman stated if we could ask you to make sure you have it done by June. Thompson stated he can hydroseed it from the road and go from there, the past two years, Thompson had a lot of things planned to do at his place and it did not work out that way.

Hoffman asked if Gallentine had any other comments. Gallentine stated his biggest concern was siltation downstream and with those banks being that steep and not stabilized, it will happen more and more, the only other thing Gallentine would add is that it needs to be pretty clear today whether landowners are allowed to modify district facilities without permission or not. Gallentine stated just to be clear the County Engineer is not the Drainage Engineer. Granzow stated we should go back to the minutes to see what was said there, Granzow recalls something about talking to the County Engineer when it came to the roads but Granzow does not recall this part of saying it okay to do all that as long as the County Engineer says it is fine, let's go back to the minutes and see what they say. Granzow is concerned about the siltation because that is what we are watching for, and if it is going to create a siltation problem down there, maybe there is something we can do to stabilize that to make sure it doesn't happen and Granzow thinks that is what Thompson's intent would be as well. Thompson stated he wants to keep it shaped and not harm anything downstream, Thompson wants to get it back to where it was pre-construction project status and we were catching bluegills and sunfish in there, that would be nice to get it back in there someday. Granzow stated what he was asking that anytime something like this happens is to make sure you have approval from the Trustees, whether we are the Trustees or it is another Trustees, you thought you did. Thompson stated one thing he learned from this is he does this in business but not his personal life, Thompson should have gotten it in writing stating it, and that is a flaw on his end, but he did not think it was any big deal, Thompson was modifying it technically yes but Thompson wasn't narrowing it.

Gallentine interjected the big problem is your definition of an improvement may be different than your neighbor's and it may be different than the Board of Supervisors, it may be different than your future neighbor, that is why it is great to get that stuff ahead of time, consensus and agreement, then everyone is covered. Thompson understands Gallentine's point fully. McClellan states we have a process we have always worked with as far as someone coming in and asking if something can be done, whatever work needs to be done, the landowners come to us, we have the drainage engineer go out and look at it and we have our list of contractors that we know are insured people, it isn't landowners that we rely on to do their own work, we want it to be a licensed and insured contractor. Thompson stated part of his problem is when there is talk of the drainage districts, a lot of it addresses tile, but not an open ditch, Thompson sees that as not a residential setting but it is his residence, he sees that as not different than planting a garden down there, for himself as an acreage owner that is how he viewed it, and Thompson has read more drainage law these past months than he ever wants to read again, hundreds of pages, basically he knows he is in a bad position because he has to take whatever water is uphill and keep it flowing through his property, until he buys all the land surrounding him. Gallentine stated he knows it is your residence, but think of it this way, the drainage district has a right to be there, they have acquired that right over a hundred years ago, it is no different than if Black Hills Energy had a cross country pipeline that went through your building site, there are certain restrictions, you couldn't build a house over that pipeline, because that right was given away by somebody prior to you, this is the same thing, one of those rights was gone when you bought it. Thompson stated that is another thing, he and his fellow acreage owners always get confused on why when we buy these acreages, not just Thompson's but everyone around him, it is not disclosed we are in a drainage district. McClellan stated we the Trustees agree with you. Thompson stated he and his neighbors were like we didn't even know, what is an assessment. Hoffman stated you may not even know until you receive your first assessment. Gallentine stated that lies with the title companies and the attorneys. McClellan provided an example of someone who bought a farm by Garden City, after buying it he found that there was an open ditch planned to cut through his farm, so Thompson is right we agree. Granzow stated the realtor did not disclose it when it was known. Smith stated Iowa law does not require the realtor or the landowner to disclose that a property lies with a drainage district.

Thompson stated that that is not the Trustees issue, that is just how this law was written a hundred years ago, and wishes that would change because it is not a deceitful thing but as an acreage owner no one has any idea that they are in a drainage district, Thompson did not know. Granzow stated none of that is disclosed, and even family farms that have held land forever over a hundred years, and now the bills have come up they have no idea they were in a drainage district, because their Grandfather never talked about it.

Thompson stated the neighbor's grand-daughter manages the farms to the south of Thompson, and had no idea they were in a drainage district and she grew up there, he was 97 when he died and his Dad lived to be 100, no one ever said anything, they either just took care of it or whatever. Thompson stated nothing he did, he did out of malice, he thought doing that basin he had full permission to do that. Thompson stated he will get it stabilized and go from there. Granzow stated we will go back through the minutes and see what was said there, Granzow stated that is fair to Thompson and to the Trustees. Thompson did not go back that far in the minutes, Thompson went back to June of last year, Granzow stated it would have been farther back than that, Thompson stated more like two years ago. Smith stated that predates her time as Clerk and would have to review the minutes. McClellan stated something that was mentioned that needs to be addressed now is how to move forward is if the banks will be falling in along the district ditch, that isn't something that we can have you go out and do yourself. Thompson stated he would get permission, probably have someone from Gallentine's office and show them, Thompson would never send a bill like that to his neighbors for something like that. Gallentine stated what McClellan is getting at is if it is doing it on your property it is probably doing it on your neighbor's properties downstream and it may be a bigger issue. Smith stated if that is the case perhaps a landowner meeting should happen so that all the other landowners are aware as well. McClellan stated that would probably need to happen if this is a larger issue. Granzow stated we would need to investigate the depth of the open ditch, whether it needs to be cleaned out, if trees need to be removed, and that takes any request from any landowner in the district. Thompson stated that is a step he cringes on because Granzow's connect onto his and his whole thing is wooded and is nice for wildlife. Granzow stated but that is the responsibility of the drainage district. Hoffman that if Thompson wanted to take and do work within your property for the district and send us a bill for zero dollars, having the insurance and everything would be something we could talk about next week, we could allow you to present your insurance and put you on our approved contractor list, if that is something that you and your friends and neighbors in the district want to do us a solid and bill us for nothing and you have insurance. Granzow stated he has done that already, done work for us. Thompson stated it wasn't official work, that was just trying to find a county tile. Smith stated she would need a current copy of Thompson's Certificate of insurance and a list of Thompson's rates for time, labor and equipment.

Gallentine stated he would add that this system works based on work orders that are reported to the Drainage Clerk, it is not a matter of "oh I want to fix this" and went out and fixed it, and send in a bill for nothing, it is not that kind of system. Hoffman stated the process is that in some of this districts that people may not be aware of, they don't know if this is the first time any work has been done in this district for 100 years, so they involve starting the process by calling the Drainage Clerk and saying I think I have a problem, the Clerk will inform the Trustees and create a work order and we delegate our Drainage Engineer to investigate and there is some GPS involved and some records that create a new paper trail, so it is important for the Clerk, our Drainage Engineer and the three Trustees, as we create a new history going forward. Thompson stated he understands all that. McClellan stated if there is a landowner above you or below you that is having an issue because of something you have done, that is why it needs to go through us first so we know if something needs to be done. Smith stated that record keeping portion is so important, you touched on the history of the district, without a history of repair we can't look at what other problems have occurred within the district and decide on a larger scale repair or larger scope of work without those records.

Hoffman asked if Richards had anything to add before we wrap up. Richards stated he had a question after reviewing his notes, Thompson indicated he had submitted some plans to CBA in Ames at some point in time, is that right. Thompson stated yes he sent them, Heather was the girl he was working with and would have to review his notes for her email, what Thompson sent her was elevations so she could start making a plan, we shot the whole bottom and whole lay, we basically shot the whole topography basically of where we are thinking about working and sent them off to her so she could develop something. Thompson has not heard anything from her since he sent that off, but he has also not done any follow up. Richards asked that Thompson was in agreement here today that you are not going to do anything more to the land than what it currently is without making sure that all parties involved are informed as to what is going to go forward. Thompson stated yes. Richards does not have any other questions. Hoffman thanked Richards. Hoffman asked if Granzow had anything else. Granzow stated he would just bring up that like the Radcliffe pond, we have had complaints on that one and it didn't even touch the tile, there are people that are concerned with their districts. Thompson stated the thing about this chunk of land is our water table is so high that he does not need a tile to fill that thing up, you dig down two feet and you are hitting water.

Hoffman's suggestion would be adding this to next week's agenda, he thinks we can send Thompson findings and a plan for remediation in a timely manner and keep moving forward. Hoffman asked Roll if he had anything to add, Roll stated if Thompson needed any concrete to let him know, we have plenty right there in Hubbard. Thompson stated he has his own big pile, Hoffman asked if Thompson needed concrete, Thompson stated he has some, but knows the pile at their shed is quite large. Roll stated that goes for Gallentine also that if he should need any concrete to let Roll know. Thompson stated he might take Roll up on that if his vegetation doesn't stick, we will do a hard armament of the banks and call it good. Hoffman asked if McClellan had anything to add. McClellan did not. Hoffman asked the same of Gallentine. Gallentine stated he would add that he caught most of the motion there, but to just let CGA know what else they need to do on this project. Smith asked if Thompson could provide her with his contact information to communicate the agenda to him. Thompson would provide that to Smith.

Hoffman asked if Richards had anything else, Richards stated he did not. Hoffman stated at this point he would ask for adjournment.

7. Possible Action

8. Other Business

9. Adjourn Meeting

Motion by Granzow to adjourn. Second by McClellan. All ayes. Motion carried.