

**DRAINAGE DISTRICT 9 UPPER MAIN TILE DIVERSION COMPLETION HEARING
WEDNESDAY, JUNE 2, 2021 10:00 AM**

This meeting was held electronically and in-person.

6/2/2021 - Minutes

1. Open Meeting

Hardin County Drainage Chairperson BJ Hoffman opened the meeting. Also present were Trustee Renee McClellan; Trustee Lance Granzow; Lee Gallentine and Zeb Stanbrough, Clapsaddle-Garber Associates (CGA); landowners Tom Roberts, Westhenry Ioerger; Michael Pearce, Network Specialist; and Denise Smith, Drainage Clerk.

2. Approve Agenda

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

3. Introductions/Attendance

Introductions were made and attendance verified.

4. Open Public Hearing

Drainage Chairperson BJ Hoffman opened the Public Hearing.

5. Verify Publication

Smith verified publication of Public Notice of Hearing on May 19, 2021 in the Times-Citizen newspaper.

6. Explanation Of Project

Hoffman gave the floor to Gallentine and Stanbrough to explain the project. Gallentine stated he would go through the report briefly, he will not hit every single thing but will go through the highlights of it, and Smith has copies if people need them. Gallentine stated page 2 of the report is a timeline, the Trustees approved CGA to prepare a report detailing repairs or improvements to the Main Tile of Drainage District 9. CGA drew up a report, the original report was dated April 30, 2019, talking about those possible repairs and improvements. We had a hearing concerning that report, on May 22, 2019, and there was great discussion at that hearing and as a result, someone had suggested can we put in a second outlet and essentially sever this district and cut it in half, so we created a supplemental report detailing that option and that report was dated June 3, 2019. We had a second hearing on June 19, 2019, and as a result that was the option the Trustees decided to go with, so everything west of the tracks in the upper end would have it's own outlet and everything east of the tracks would use the old outlet. Gallentine stated we went and did plans and had a bid letting date of March 25, 2020, we received four different bids and the Trustees identified the concrete pipe option as the option we would move forward with and Gehrke of Eldora was awarded the bid, he was the low bidder on that, \$122,180 was his bid, the contract was signed April 15, 2020 and they started construction on October 20, 2020, after the growing season was done so that was nice, weather and working conditions were really well, we didn't have really any issues, just a few small ones. Gehrke completed substantially the project by November 11, 2020 which was about 7 weeks before the contract completion date. Gallentine stated that is just a little bit of the history, moving on to page 3, Gallentine will cover the project deviations.

Gallentine stated there were three deviations, instead of using the rock style, more municipal style of

bedding, the contractor opted to use a spoon in style with the concrete pipe where the soil conditions allowed, which was the vast majority of the project, the Trustees agreed with that, so that resulted in a decrease of \$5,000 to the project overall. Also during construction, the main tiles and the lateral tiles, the original maps show those junction together west of the railroad tracks, outside of the railroad right of way, once we got out there we discovered that they do junction together inside the railroad right of way, so we had to relay some of those laterals, to keep everything outside of the railroad right of way, that did result in an increase of \$3,500.00, it didn't change the completion time at all, as always, small quantities, of what you install doesn't quite match up with what you install, it is just the way the bid process works, those were private tile connections, riprap, intakes, exploratory excavation, things like that. Overall that resulted in a decrease of \$3,111.50. Gallentine stated those were the deviations, when you start tallying that up for final project costs, we are estimating the final project's cost, which will be from the time of the hearing when everyone said ok, go forward with the project and do the plans, till now, for just this project, this doesn't include reclassification, crop damages, interest, or any of that, we are just talking construction and engineering for the project, we are estimating \$154,568.40. That is approximately \$33,230.00 less than the project costs we talked about at the hearing so that is a good thing. McClellan stated that does not happen every often, Gallentine stated that is not the total assessed costs because there are other costs, there is reclassification, publication, and all that other jazz, but for this portion that is a pretty good thing.

Gallentine stated one other thing he would also add, if you remember correctly there were two other crossings on this, there was an upper crossing on the railroad tracks and a lower crossing on the railroad tracks. The upper crossing was the one we eliminated, because that was the one that was most severely plugged if not totally plugged, the lower crossing appeared to have some tree roots and some trees growing inside the right of way, that still is at play, nothing was done with that as part of this project because we didn't want to slow down getting that 50+ acres on the west side drained while having to worry about railroad pertinence, so just to make it clear, that also is still out there, we are below the cost but we haven't quite done everything we had talked about at the original hearing. Gallentine asked if there were any questions on the costs, we are running through this pretty quick but Gallentine thinks that everyone here is pretty in tune with the project. Hoffman asked if Roberts had any questions, comments or concerns as he was viewing via zoom. Roberts stated not at this time. Hoffman asked W. loerger if he had any questions. W. loerger stated not at this time.

Gallentine stated he was moving on to page 4 of the report and would take about damages briefly. Gallentine stated this was done after the growing season, so crop damages were not really a concern, the only damages CGA was aware of was there were fences removed at one location by the contractor, they didn't repair those because they indicated the tenant didn't want those repaired, essentially where those are is between Ron Sailer and Roberts Trust, and it would be 25' each, fences are a tough thing, because some people still think they are going to run livestock and some people do still run livestock, and some don't really care, we took the contractor's word for it that, if there is an issue with that, you can have the contractor fix that or have someone else fix that. Smith stated we received no other claims. Gallentine stated if you do receive any other claims, we recommend that those be evaluated individually. Hoffman asked if W. loerger had anything to add to the damage claims. W. loerger stated no not to that part.

Gallentine stated pending items: as of the writing of this report, the project is complete according to authorized plans and specs, lien waivers for supplies have been submitted and we have those in the report, we have the as-built drawings in the final appendices. So as of the final Completion Hearing, the final payment of \$16,346.84, which is essentially retainage, needs to be authorized by the Trustees, needs to be paid to the contractor and then we recommend the project be accepted. Gallentine stated we also recommend the project be walked, just prior to the expiration of the warranty, you can have landowners do that or CGA do that, if you want, it doesn't matter, usually landowners are cooperative because they are paying the costs, we just always recommend one final check it would be a two year warranty. Gallentine stated the lower portion still has one issues going on there with that lower crossing by the railroad tracks, CGA recommends that tile be jet cleaned if the railroad will allow that, and then televised to verify it's condition, we also recommend all the trees inside the railroad right of way be removed. Gallentine stated you would have to double check, but knows the Trustees authorized Adam Seward to remove those trees, and he may have already removed them. McClellan stated she thought he already did, Granzow stated Roberts would be a good one to ask. Granzow asked Roberts if he could tell us if Seward had completed all of the tree removal. Roberts stated he did what he could, it is not completely done, because there are still some trees there, so Roberts does not know what to say. McClellan asked if those were in the railroad right

of way that aren't removed. Roberts stated there are still some there, they are the large ones, with that machine he had, he acquired a year or two ago, he just did the smaller ones. Smith stated her last update from the contractor was that he had attempted to kill those trees, whether that has happened Smith does not know, but being in the railroad right of way, the contractor had concerns about taking those out without working with the railroad on that, they were quite large he said. Granzow asked if Roberts had heard all of that, Roberts stated only somewhat. Granzow stated the contractor had concerns about working in the railroad right of way without their permission, he got what he could, but there were some large trees that he left because they were in the railroad right of way. Roberts state okay, he understands that, Granzow stated if it is something you want us to go back out after, let us know. Granzow stated it probably needs to be done, but that is your choice, that is Granzow's feelings, we would have to work with the railroad right of way. Roberts stated we worked in the railroad right of way for a day and a half, so he does not know what his concern is now. Granzow stated he thinks the bigger trees scared him a little more. Roberts stated maybe. Gallentine stated he did not know how big their trees are, this lower tile crossing, he just went out and tried to wipe up what he could. Gallentine stated when we had our original investigation, the upper tile crossing wasn't flowing at all, the lower tile crossing was flowing somewhat, it appeared to be restricted though, there was a difference there, but Gallentine stated he knows the way those trees grow, it won't be long till something needs to be done.

Granzow asked if Roberts had brought up something about how the trees were piled up. Roberts stated not that he recalled. Granzow asked if a mess was left behind, or maybe he is thinking of a different district. Roberts stated he never said that, Granzow stated he was thinking of a different district. Roberts stated he had talked to Granzow some time ago about the bill Seward presented to the County for \$10,000, and Seward told Roberts it was going to be \$2,000, and Granzow was going to ask Seward about that, Roberts wondered if Granzow had asked that. Granzow stated he has not asked that, the bad part is he has seen him several times, it is just in a public setting outside of work. Granzow asked Gallentine if he knew anything about that. Gallentine stated no, that is one where the contractor's work was not observed, he was just told to pull those trees. Granzow stated he would write that down so he could ask. McClellan stated we can check with him on the rest of the trees, and if he needs a permit he can start applying for those permits. Gallentine stated he thinks there is something you can drill in and inject. Granzow stated so we talked about some of those trees, and he will call and check on that, maybe he did inject those trees, see if he did anything with those larger trees as well. Gallentine stated he does not care, trees are gone, root growth is what he is concerned about. McClellan stated she would think the railroad would want them gone too so they are not falling over on the tracks, Gallentine stated they have their own point of view.

Hoffman asked if W. loerger had any other comments or concerns, loerger asked a question he would like to raise to the Trustees about splitting the district, since they both flow their separate ways no, to make two separate districts out of this instead of the one, so that people on each side of the tracks are not paying to have something they don't get any benefit out of anymore. Hoffman stated he thought that was the intention. Gallentine stated we started on the Reclassification report, so it will split it into West Main and East Main and then you will have all those separate laterals, we pretty much have our end of it done, and is hoping to meet with the other Commissioners next week. W. loerger asked if it would be two separate districts then. Gallentine stated he did not know if they were going Gallentine stated he did not know if they were going to give it a separate number, but it would at least be two separate classifications, everything done on the West Main is paid for by the West Main and anything done on the East Main is paid for by the East Main. Hoffman asked if that seemed amicable as long as it is broken down that way. W.loerger stated that makes sense as long as people on one side aren't paying for something they don't get any benefit from. Gallentine stated he did not know if it was worth the gyrations to establish a whole separate district or just have it split out into 9 East and 9 West. W. loerger stated if it doesn't affect how people pay. Gallentine stated it shouldn't, once the Reclassification Report is done, they will send out notice and we will have another Hearing like this and we can go over it.

Smith asked will this project be billed under the current Classification or the Reclassification, when Smith reviewed the minutes for clarity on that, there was some discussion but there was no clear picture on what that choice was at that time. Granzow asked if the Trustees recalled. Smith asked or is that a discussion for the next hearing. Gallentine stated there had been discussion. McClellan asked if there was work done on both sides. Gallentine stated no it was all done on one side. Granzow asked if Roberts recalled any discussions that we have had regarding how we were going to pay for this. Roberts stated only that you were going to try to reclassify it to get some more land over on the Sailer side, but Roberts doesn't have the

final answer to that. Granzow stated it was open discussion we were going to order the reclassification to split the two but we were just curious did we as part of that discussion, did we indicate one way or the other as to charge it on this one after the classification or before, Granzow did not know if Roberts could recall any of that conversation, sometimes when you say something it strikes Granzow's memory. Roberts stated that just it was going to be reclassified before the work was done, Gallentine stated that is the tough part, we deal with so many of these, the Trustees have a more detailed memory of it. Granzow asked W. loerger if he remembered. W. loerger stated he did not. McClellan asked if it benefits both districts or one side more than the other. Gallentine it benefits the east side in that they don't have to pay for a drainage crossing, but the real drainage benefits the west side, because that was plugged up and not draining.

Smith stated she did not know if we could access that document from here on the smartboard, but we will try. Gallentine asked if we knew what date that was. Smith stated there were multiple time it was discussed, and Smith stated she pulled up the running minutes document and typed in the word reclassification and it highlighted the word every time it was mentioned, so Smith could find all of those places in the discussion but there was no clear cut picture. Gallentine stated if there was a date we could go on the website and search through those documents. Granzow stated the east side is paying for an outlet on the west side. Gallentine stated the only real benefit he sees to the landowners on the east is they are avoiding a new crossing bill, the drainage really only benefits the landowners on the west. W. loerger asked how much do you think that saves the East. Gallentine stated a new crossing can easily be \$100,000. Granzow stated we could still be looking at \$100,000 for the bottom end of it. Gallentine stated someday you will be, yes. Gallentine stated he will say you have improved drainage on both sides because the west side does have it's own outlet and the east side now has an upper end that is a lot shorter so you did receive a drainage improvement as far as capacity goes on both sides. Granzow stated he does not recall what we said. Hoffman stated Smith is reviewing minutes, Gallentine stated it would probably be around that June 19, 2019. Pearce pulled up the minutes of that meeting. McClellan asked if we had video of that meeting. Smith stated we had audio recording of that meeting upstairs. Pearce stated he only keeps Drainage recordings less than a month. Granzow asked if we had audio upstairs, Smith stated we did, Hoffman stated you could review it and bring it back to us. Smith asked if the Trustees wanted her to run upstairs and print it. Granzow stated he would say the intent of the discussion was to classify it with the new classification unless it is said different in the audio, Gallentine stated when the new classification comes out, you will have a classification for Lateral 1, Lateral 2, Lateral 3, and a classification for the East and one for the West, so really you will still need to say which classification the costs are being applied to, theoretically you could split it between the East and the West in the new classification. Smith stated here is your motion on that, it was just to reclass at the time, possible action, you appointed Denny Friest, Chuck Walters and Gallentine to start the Reclassification for a new district, looking at public comments section: the current classification was discussed as being the original classification and Granzow reminded us that the reclass had already been approved at a previous meeting. In Smith's review of the minutes, it was not discussed whether the project would be assessed under the old classification or the new classification, there was not clarity on that.

Gallentine stated right now there is only one classification schedule for the whole district, once you reclassify you will have one for each main and one for each lateral, you will still have to direct Smith which one of those schedules to put this cost against. Granzow stated that is where he would say that would be an East and a West, because he would say this whole project happened and the classification would go all to the West because that is the only side it impacts. McClellan asked if all the laterals are on the east, Gallentine stated no, he thinks there are one or two on the west, there is one that goes all the way up and crosses the track again to the north, and there is also one to the south, so Lateral 1 and Lateral 2 is on the West side. Granzow asked if there is one that comes down between loerger's, and the one that crosses the track we found up north was incorrect. Gallentine stated yes. Stanbrough stated the dashed line was actually a swale on the map.

loerger asked if it was possible to calculate the benefit the east side received since it wasn't really the actual improvement. Hoffman stated he did not know if that could be done accurately. Gallentine stated benefit is always a little bit of a subjective thing, we calculate based on soil types, we can calculate based on soil types. Granzow stated we can also look at they used to have an old crossing that you all used to have, and half of them don't have anymore once we reclassify. Gallentine stated the thing is the East side has one less crossing they have to pay for whereas the west side has one less crossing the have to pay for, really there were costs that were dodged between both sides.

McClellan asked where the split was between the east and west side, Gallentine stated it was right in the middle of the railroad tracks is where we split the main so Lateral 1 and Lateral 2, but this is the southern crossing that is still in effect for people on the east side, essentially this new outlet down through here. Granzow stated we will have Smith listen to the audio and get back to us on that. Smith asked if the Trustees would like her to do that between meetings, Granzow stated if you have time, we can always recess and come back whenever, and does not want to put any undue pressure on her. Smith stated we have a running minutes word document that details anytime the district was ever discussed in a meeting, Smith can run up and print that, which is what Smith reviewed, and would be happy to pull a copy of that and highlight wherever the reclass was discussed. Gallentine stated whether we reclassify this on the old classification or the new, Gehrke is still owed his money on that.

W. loerger stated as we are really most on the west side, he does not think it is in his opinion to split it 50/50 with the east side, he thinks the west side should pay more but he does not know if that is 100% or 90% or 80% or what. Granzow stated that is a nice statement but it is good to hear. Hoffman would agree with loerger, but how do we determine that today or do we let the reclassification happen and then determine it, Granzow stated we might find there is not much of a difference. Hoffman stated he would have something from an independent then just throwing spaghetti at the wall and seeing what sticks. Gallentine asked if the Trustees want the reclassification Commission to look at it and make a recommendation, you can always amend it. Hoffman stated that would be a really good idea, Gallentine stated they may not have a better answer but at least you have an outside opinion. Granzow was fine with that and asked for Roberts comments, Roberts stated it sounds like we have a plan.

Gallentine stated when we meet with them, we will try to come up with some kind of apportionment. Hoffman asked loerger if that sounded equitable to him. loerger stated yes. Hoffman stated we can accept or reject anything. Gallentine stated we will still have another hearing. W. loerger stated at least that gives you an idea how to split it up, that makes sense to him. Granzow stated the problem is we can't pay Gehrke's yet. Gallentine stated no, you can pay Gehrke's, you operate on a debit system anyway. Hoffman stated once we figure out how much, we can figure assessment percentages, Gallentine stated it won't go out until next spring anyways, Smith stated yes, in 2022.

7. Written Or Verbal Comments/Discussion

Hoffman asked for any further written or verbal discussion at this point. Smith stated the only question she has for the Trustees is do you want her to calendar this to have this project walked in two years time before the warranty expires. Granzow stated yes, and do we want to have us do it or do we want the landowners to do it themselves,, that would be the question Granzow has for the two landowners that are here. Hoffman asked if Roberts and loerger would rather do it or have the Trustees send CGA out to do it. Roberts asked what the question was. Hoffman asked in about 2 years before the warranty is up to go out and make sure everything is functioning as it was provided in the provisions of the contract. Roberts stated yes, that sounds like a good plan. Hoffman asked if the landowners should do it or have CGA do it. McClellan stated the landowners can do it for nothing but CGA probably charges for it. Roberts asked if they would. Granzow stated they will, Hoffman stated or you guys could go out there in your ranger or gator and report back to the Drainage Clerk any issues or no issues found. Roberts stated that sounds like a better idea, to have us landowners doing the checking. Granzow stated and send a reminder out to the landowners, Gallentine stated and to Sailer. Smith asked if the Trustees would like a whole DD postcard to go out, so anyone can report any issues found. Hoffman stated sure, then everyone's voice can be heard and no one can say they didn't get it, at this point in Drainage District work in Hardin County, the more notification the better, we have learned over the last month and a half we can't force someone to read their mail. Gallentine stated and more landowner interaction is good.

Hoffman asked for more or other comments. None were made.

8. Damage Claims

Hoffman asked if any damage claims were received, Smith stated no damage claims were received for this district's project. Granzow asked Roberts if it was correct that he was not worried about the replacement of

the 25' of fence removed, they tore a fence out. Roberts stated he has no concerns with the fence, it should be gone. Granzow stated okay, he was just making sure.

McClellan asked Roberts and loerger if they had any other questions, comments or concerns. Roberts stated not at this time. No other concerns/comments were made.

9. Close Public Hearing

Motion by Granzow to close the Public Hearing. Second by McClellan. All ayes. Motion carried.

10. Possible Action

McClellan stated possible action is approve the Completion of the project. Granzow stated we have no other issues and asked if we were keeping the retainage. Gallentine stated no you are issuing the retainage right now. Granzow stated with no other issues we will motion.

Motion by Granzow to approve the Completion of the DD 9 Main Upper Tile Diversion Project. Second by McClellan. All ayes. Motion carried.

McClellan stated possible action to approve the final pay estimate. Granzow asked if there were any issues with the final pay estimate. Gallentine stated no.

Motion by Granzow to approve the Final Pay Estimate for DD 9 Project. Second by McClellan. All ayes. Motion carried.

McClellan stated possible action to approve damage claims, and there were no claims so no action on any claims.

11. Other Business

Gallentine stated he is hoping to get that Reclassification wrapped up, and then we will have another meeting for that, and the landowners will get another postcard.

12. Adjourn Meeting

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

The Trustees thanked all of the participants for their attendance.