

REGULAR DRAINAGE MEETING

Wednesday, June 30, 2021 9:30 AM

This meeting was held electronically and in-person.

6/30/2021 - Minutes

1. Open Meeting

Hardin County Drainage Chairperson BJ Hoffman opened the meeting. Also present were Trustee Renee McClellan; Trustee Lance Granzow; Lee Gallentine, Clapsaddle-Garber Associates; Adam Seward, Honey Creek Land Improvement; Al Meister, Landowner; Michael Pearce, Network Specialist; and Denise Smith, Drainage Clerk.

2. Approve Agenda

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

3. Approve Minutes

Motion by McClellan to approve the minutes of Drainage Meeting dated 05-19-2021. Second by Hoffman. All ayes. Motion carried.

4. DD 52 WO 215 - Discuss W Possible Action - Landowner Concerns

Hoffman stated he would like to discuss with Seward as soon as possible. Smith stated this is in as number 4 on today's agenda. Hoffman asked if Smith would like to lead the discussion. Smith stated sure, we had discussion last week and was asked to re-agenda this, and maybe provide some more information as to how that site looked when Honey Creek Land Improvement left it, and so Seward has submitted some photos for us today that Smith has also shared here on the screen of what that site looked like when they found that, we can scroll through the photos and you can address your questions to Seward. Smith stated it looks like there was some debris left behind when he found it on site, we will have Pearce scroll through these and we can start our discussion with Seward. Hoffman asked if Seward could hear us, Hoffman asked Seward to unmute himself. Seward stated he sent some pictures, they are a high foliage, high branch, a lot of consistency in that particular species of tree, we had to take them out to obviously kill the roots that were affecting the drainage district, they were falling down on all kinds of different items, Seward stated he guessed what we had to do is at the very end just make a decision on if we hauled off a fair amount of the Drainage District's responsibility, and how much of that happened to be Mr. Piel's and at one point in time, we were taking all the inert objects and they kind of got after us a little bit about bringing in too much other stuff with it. Seward stated when you are sitting kind of high up in a grapple truck or an excavator, it is hard to see what you are actually pinching and putting in, obviously we are cognizant of taking some more junk than maybe we should have but on an hourly basis it didn't make a lot of sense to pick through it, we were just trying to get the job complete. Seward stated once we were getting to the end, one of the tenants came out who Seward thought had the alfalfa rented, or maybe he still does, he was very irate that we were trampling the alfalfa, and Seward told him this was where the trees had fallen, there was very little we could do about it, then he kind of understood but he wanted us off there. Seward stated Piel's owned it at the time and it was right in the middle of the transaction or discussion of the transaction, so we got to a spot where we thought the trees were dead, and we hauled off quite a bit, as you can see there was already all kinds of other species of trees that were brought in, and Seward did not know whether they were going to sawmill them, and Seward did not know what their intentions were for those and that is why we stopped it when we did. Hoffman asked so a lot of the stuff we are seeing here was already there, correct. Seward stated yes, you will see in one of the pictures, there is some orange junk, Seward stated there was some poles there, who knows what they were going to do with. Hoffman stated so for the record, a lot of junk was there, and did you believe it was your responsibility to haul off other people's trash that was there when you arrived at the work-site. Seward asked Hoffman to repeat the question please. Hoffman stated so when you got there and you found that did you feel it was your responsibility to haul off the other debris that was already there

upon your arrival. Seward stated no, his responsibility was to replace the tile and make every effort to prevent what had happened from ever happening again, we accomplished that objective, and Seward is going back here a little bit, and believes the drainage district then said hey can you get that stuff hauled off from there as well, if you look at the images, we had several, several, several loads hauled off of there and to be honest with you Seward would be more than happy to continue hauling, it is real easy work and none of the guys complained about it that is for sure. Seward stated but at some point, we made a decision on behalf of the drainage district and Seward feels like we were taking too much time sorting through the stuff. Hoffman can bring some over for you haul it off and we can bill the drainage district because at what point is it drainage district materials and not the stuff that was just what the landowner's piled up responsibility.

Granzow stated he has Meister on the line, but he did not hear the first half. Hoffman asked Seward to mute himself for the moment for convenience, and we have Meister on the phone. Meister joined the meeting by phone. Hoffman asked Meister to go ahead. Meister stated his part of it is obviously that pile there, that he sent you guys a picture of, it 125' long and 15' high, that pile was made during that cleanup, was that material there before or not, Meister can't answer that, more than likely some of it was, but that pile was made by Seward when he did that work. Meister stated that long big pile wasn't there before. Hoffman stated ok. Meister stated his issue is Seward did great work, and they cleaned up everything but then they left that pile there, and that pile is going to take a lot to get that removed. Hoffman stated so he will cut right to the chase and asked Meister if he wanted that pile removed, so that is the resolution that would make you happy. Meister stated yes. Hoffman stated he thinks we can accomplish that, and stated he knows this has to go to the lottery, this picture on the screen here of this pile, and asked Seward if this is something he would be interested in removing. Seward stated yes, absolutely, Seward stated he wants the blessing of the Drainage District on that, like Seward said, he was looking out for the drainage district, and it was not his intention to leave any mess or pile, it was just a matter of costs at that point, Seward stated he felt that Mr. Piel probably could have prevented a lot of that situation, but that is neither here nor there, that pile will not be a problem, Seward will put it on his schedule and asked if maybe Meister would want it done after the haying season so we are not trampling they hay ground and have that issue come up again. Hoffman asked Meister how that works for him. Meister stated that works fine. Hoffman asked if Seward had any objections. Seward stated he had none. Hoffman asked if Meister had any objections. Meister stated he had none. Hoffman stated this is the simplest resolution we have had all day, Hoffman stated he would accept a motion to have Honey Creek Land Improvement go out after the haying season and clean this up.

McClellan asked and all of this is going to be district expense even though some of it may have been there before the drainage repair. Hoffman stated unless someone put a sticker on something that says cut down in July of 1973 or something I guess that is what we are going to have to do. Granzow asked Meister, we are having a hard time making a motion on this because some of that debris was there before hand, and asked Meister if he would be willing to pay for part of this removal. Meister stated that is where it depends on where it is going to be, Meister does not have a skid-loader himself, and he understands some of that debris was there before and guesses it depends on how much it is going to be. Granzow stated Seward is the only one that can price that, but Granzow could go off of a percentage, Granzow stated if his bill is \$10,000 and we say 20% you can do the math, but Granzow does not know what his bill is going to be but would Meister be willing to do a percentage of the total bill. Meister stated he would really have to think about that, if Meister is going to spend \$10,000 that is where it gets into can Meister do that himself or how much can I get it for at cost, Meister stated he means it depends on the numbers. McClellan asked if Seward has an estimate or estimation of what that may cost. Seward stated if you want to table it he can go take a look at it he guesses and we can come up with what is to be taken, what is not to be taken, and we will just figure out what it is going to cost, we can sort through a lot of that stuff and go from there he guesses, Seward does not feel comfortable giving an estimate without really spending some time to look at it. McClellan asked if Seward would be willing to meet. Hoffman asked Seward how about this, would you be willing to meet Meister out there, and go through that and then we can bring it back. Hoffman stated here is the thing if they can work out an arrangement of how much Meister is going to pay him to do it, if they go out there with a spray can or flags or whatever and if Seward says he can do this for \$7,000 or X dollars and Meister says he will give Seward \$500 for his part, let them work that out on their own, keep that out of this Boardroom, Hoffman would prefer that. Granzow stated he thinks it will cost more to pick through it and separate it and go through it, than it would just cost for them to do it. Hoffman stated let's let them go out and when they have come together, let the Clerk know and she will put it back on the agenda for a future date, and we are not going to get back to until haying is done anyway. Granzow asked if Meister was okay with that. Meister stated yes. Hoffman asked if Seward was okay with that, Seward stated he was. Meister

thanked the Trustees.

Motion by McClellan to direct Honey Creek Land Improvement to go out and meet with Meister to review the debris left on the site after haying season is over and return estimate with split of costs to the Trustees. Second by Granzow. All ayes. Motion carried.

DD 9 - Granzow asked Seward while he had him on the line, Granzow had talked to Seward last night on the question with Tom Roberts, the difference between the \$2,000 and \$10,000, Granzow stated he told Tom he would ask Seward for clarification is all. Seward stated just to bring everyone up to speed, Seward stated this was out on a railroad right of way, we took in and went out there and looked the property over and determined what we need to accomplish with it, we had a large set of trees that were a lot bigger than when they were reported, or if someone had actually gotten in there, the bottom line is it did take a considerable amount of time to get what we needed to, and Seward is sure as you know that working next to the railroad, anytime that you don't get permits for the railroad, and you see a train coming you have to pull all your equipment off, because they will send the railroad police down there and it makes jobs just about twice if not three times as difficult as they need to be anytime you deal with railroad right of ways. Seward stated there was a large, towards the south end, there was a large body of water that was feeding and watering a lot of trees, so that made some challenges, so the hill, for a track machine it wasn't terrible but if it was a wheeled machine, Seward would have had a lot more trouble, just because of the small mounds. Seward stated we had to tear the machine down pretty well because the railroad had shoved the used tracks off into the landowners or very close to the landowners where we had to take trees out. Seward stated that pretty much sums it up, that it was far more challenging than we had anticipated. Granzow stated that it was he needed, he told Roberts he would ask Seward to explain. Seward stated any time you work on the railroad you can expect twice the amount of work or twice the amount of time if you are waiting on permits as we all know, that particular one, we went in and achieved our goals and get the heck out of there. Granzow thanked Seward for the information. Hoffman asked if that was all we needed Seward for, Smith stated it was. The Trustees thanked Seward for his time.

5. DD 48 WO 274 - Discuss W Possible Action - Investigation Summaries / Original Work Order Request

Smith stated after our DD 48 landowners meeting last week, Smith had a little bit of conversation, Smith does not think that we ever received authorization or not of Larry's original repair request from that work order, there was no motion to authorize those repairs, so Smith added this to the agenda this week, in addition Smith did talk with Phillip Broer at the end of that meeting and he would like a work order written up to address sloughing on the curve of the open ditch and he stated that the ditch was cutting in on the curve and thought we might have to dredge the ditch to get it back into the correct channel, he also said it could be looked at in the fall, as crops are in now and there is no easy access now except to walk in, Broer states there is no drive in access to the area, you can walk in from the west. Smith stated she has tentatively assigned that a work order number 313 if the Trustees choose to take action on that. Granzow stated so Broer brought this up in the meeting and the request would be to send CGA out there, and report back to us, obviously if they can wait until fall. McClellan stated if Broer stated that, we can go ahead and wait until fall.

Motion by Granzow to approve Work Order 313 and to send CGA out to investigate the sloughing on the curve. Second by McClellan. All ayes. Motion Carried.

Granzow stated the first part was Larry Dougan's original request, Smith asked if Gallentine had any additional information on the original work request. Gallentine stated he would pull that information up in a moment. Smith stated that was just part of that original request submitted by Larry Dougan, Gallentine stated he thinks that is what it was, he is almost there. Granzow asked if it was needing new pipes in the open ditch if Granzow recalled. Gallentine stated Dougan stated the current open ditch was meandering from it's track and eroding into the field, so he wanted that addressed, when CGA looked at it we found that the banks were sloughed, there was a meandering channel and that the banks were sloughed and possible siltation, once we found out that the siltation wasn't accurate, it had just eroded too deep. Gallentine stated essentially there was 3 or 4 sloughs in the ditch at his farm near his crossing, probably needs some attention but they weren't impeding flow. Granzow asked if it was cutting into Dougan's field. Gallentine stated they were starting to, at least one of them so Gallentine would say yes. Granzow stated we should address it the same way we did with Broer's. Hoffman stated he would accept a motion, Granzow stated he

would put it with Broer's. Hoffman asked if we can just combine the work orders. Smith stated she can do that. Hoffman stated he would accept a motion to combine the work orders.

Motion by McClellan to combine work orders for Dougan's and Broer's requests. Second by Granzow. All ayes. Motion carried.

6. DD 167 - Discuss W Possible Action - Landowner Concerns - New Providence City Council Meeting

Hoffman stated he can not wait to here how this went. Smith stated she and Gallentine showed up Thursday night for City Council Meeting in New Providence and Smith thinks it went very well, we had about 10 people in attendance, that were landowners in the district, that is all, we had all of their City Council Members, the Mayor, one gal there filming, Smith thinks she was with Small Town Chronicle that filmed us. Smith stated overall it went very well, there were a lot of questions and we began with the petition, Smith explained that their petition was denied based on the fact that they did not have their district number written down, they did not have the requisite number of signatures as signed, that would have met the majority because a spouse and a spouse signed for the same parcel. Smith stated we talked a lot about the fact that the signatures weren't legible and couldn't be verified, Smith stated they were not very happy that it wasn't accepted, however they are aware now why it wasn't accepted, and they know if they want to come back with another petition, those are the standards that would have to meet. Smith stated there were a lot of questions about the assessment and about that process, Smith thinks we answered them very well, Smith thinks there were a lot of questions about why was it set up this way, why was this district created this way. Smith stated that Gallentine covered the history n that really well, that it was a mutual agreement district, it was established that way and that all of the landowners involved at the time were all in agreement. Smith stated it was overall a good experience and it was great educational opportunity for the landowners to come and talk. Granzow asked if it was the same landowners that were here. Smith stated yes and no, Smith stated there were new ones there and the woman that submitted the petition was there with her husband as well. Smith thinks we had a good turnout overall. McClellan asked if it was well represented from both sides of the issue. Smith stated she would say yes, Les Clampett and his wife were there as Renewal Corporation, the entity that represents the Roundhouse, Les had some good insights into the history, Smith stated that Clampett had come into Smith's office prior to this meeting and we had visited for about an hour, so Clampett had a good understanding of the working of the background of it. Smith stated of those that were upset, Smith thinks they understand better why it is the way it is, we had some folks that didn't have a whole lot of comment until after the meeting that thanked us for coming, Smith left with three hand shakes and a hug so she didn't think that was to bad. Granzow stated wow. McClellan asked if Larry Balvanz was there, Smith stated he was. Smith stated Gallentine can visit about what he thought about the whole thing too, Smith thought it was nice.

Gallentine stated he thought it was a good back and forth and it remained very civil, Gallentine thought it was a little disappointing that we didn't have a few more people in attendance but considering we only have what, twenty landowners in the whole district it is not surprising. Gallentine does not have a feel for whether they are going to try and do a new petition or not to tell the truth, Gallentine is not sure. Granzow stated it does not matter to him one way or the other, as long as they understand what they are doing. Gallentine stated that is what we told them, it doesn't matter who the Trustees are, the rules and laws are still the same, you maintain the tile, you maintain flow and if you don't do that you can be sued to compel you to do so. Smith stated she left them with a copy of Drainage Code that was in a binder for the Mayor to keep a hold of in the City Offices in case anyone has questions on that. Smith stated she left them a copy of the district map as well as a history of district assessments.

McClellan stated good, it sounds like it went well then. Smith stated she did not but if anybody asks, we are happy to open those records up for anyone and does not mind that one little bit. Granzow stated it sounds good, and asked how long did it take. Smith stated we were there an hour and fifteen minutes, it was good discussion. Hoffman stated he thought it would be longer, Granzow stated he thought it would be 2 hours or better. Smith stated it was a good discussion and was back in time to have dinner at the cafe so life is good.

7. Enter Closed Session To Discuss Drainage Clerk Performance Review

Hoffman stated the next thing on the agenda he would be willing to postpone, Smith has done her due diligence in doing her performance review, Hoffman has to run to prepare for a department head meeting and Smith did indicate she is willing to postpone until a later date.

Motion by Granzow to table the Drainage Clerk Performance Review until Smith puts it back on the agenda. Second by McClellan. All ayes. Motion carried.

In additional discussion on the motion, Hoffman stated he may or may not be here next week, just some personal things he has to take care. Granzow stated if it is a busy week, you may want to postpone, you can choose the time. Smith stated she can do that.

8. Exit Closed Session

9. Other Business

DD 55-3 Lat 9 - Thompson pond update, Smith reached out to Scott Thompson by letter. Smith stated Thompson got back to her and left a voicemail stating the riprap and seeding were to be completed by June 30th, his seed did not take due to drought conditions, Thompson stated the riprap is not done and he will hard armor the banks on that and call it good, he needs to move the dirt pile to get the dump truck in and needs to coordinate with Secondary Roads to utilize some of that broken concrete that is on site in Hubbard. Smith stated that is her update for the Trustees on that. Smith shared his voicemail with the Trustees in an email, so that you could listen through that yourselves as well. Granzow asked if Gallentine had any concerns. Gallentine stated no, as long as he does it right, we have been down this road before, on the correction, at least he tried to seed it, sorry it didn't take, Gallentine wishes we had rain. Granzow asked if the hard armor Thompson refers to is the riprap on top. Gallentine stated yes that is what he was talking about, versus a vegetative armor, like grass, it will be hard armored with riprap or broken concrete. Granzow asked if we were fine with that. Gallentine stated he thinks that is what the Trustees allowed him to do, one of those two options or a combination thereof. Smith asked if the Trustees wanted her to put this back on the Drainage Calendar for review in a certain amount of time, Hoffman stated how about 30 days. Smith stated okay. Hoffman stated we have had some decent rain and a little bit more in the forecast. Granzow stated give him 60 days. Smith stated she can do that. Hoffman stated he was fine with that too, and asked if the Trustees want Gallentine in 45 days to maybe swing by. Granzow stated to write him a letter and give him 60 days notice, and he has 60 days and we will check in 30, just keep us informed that is all we ask, Granzow stated we understand with the weather. Gallentine asked Smith to set a calendar reminder in 30 days, or is Gallentine keeping track of that. Smith stated she will set a calendar reminder in 30 days. Granzow stated thank Thompson for his efforts and a phone number would be awesome. Smith stated she can do that.

DD 67 - The other update Smith has for the Trustees is that yesterday we had an open meeting for Drainage District 67 in which we met with the attorney representing the district with their suit with the union Pacific Railroad, they moved to authorize counsel to request further review by the Supreme Court of the State of Iowa. Smith stated she wanted to share that with the Trustees because she thinks it is interesting in the sense that if they do not pursue this to the end of the appeal cycle, Dave Johnson, their attorney was concerned that any decision that would stay standing would be a case that could be represented as case law in future discussions with the Railroad in any other Drainage Districts. Smith stated she thought it was thoughtful of those Trustees to approve moving forward with that appeal to the Supreme Court. Smith wanted to share an update of where they were at with that. McClellan asked which one was 67 again. Smith stated it was a private Trustee District, Granzow stated the Trustees were Denny Prochaska and Gary Rabe, Smith stated and Jeff Heinzerth took Keith Helvig's place, Helvig stepped down in 2020 due to health reasons. Granzow stated and what they did was to assess more of the damages to the railroad, because it costs more to cross the railroad and they are appealing it. Granzow stated he believes David Johnson's answer was very accurate and also feels that it was very warranted, because the Iowa Supreme Court heard on DD 55, and asked Gallentine to correct him if he is wrong, DD 55 second award to the railroad came in and they dropped it. Gallentine stated he thinks Granzow is accurate on that, the one thing about DD 67 that is interesting is that the Appeals Court upheld one part of the ruling and dismissed 3 other parts of the ruling, so the District Court definitely did not get it correct, 100% or even 50% in Gallentine's mind. Gallentine stated he thinks it is a good idea to run it to the Supreme Court. Granzow stated if he remembers right it went all the way to the Supreme Court and then we lost. Granzow stated so he does not

have anything but to tell them thanks for the info. Smith stated she was happy to share it. Granzow asked if this was something the Drainage Districts of Hardin County or the Iowa drainage District Association need to know about. Smith stated she can communicate that with John Torbert. Hoffman stated if you could pass that on and even send Mike Richards an FYI as to what is going on. Granzow stated it would be bad if they lost. Gallentine stated just as an FYI, he thinks that these folks approached the IDDA at one time, before they decided to appeal and the IDDA at that time was not willing to assist and they did not want them to appeal because they didn't want any precedent out there either way, but will let Smith fill in either way if she remembers back. Smith stated she thinks that discussion was probably right before her time when this lawsuit began as she thinks this lawsuit goes back to 2018, and Smith started in October of 2019, so she was not part of those conversation, but will be happy to share this with John Torbert and Mike Richards. Granzow stated maybe we can get input to influence them one way or the other, or influence the other way, Granzow does not know, McClellan stated it would be hard telling. Granzow stated he thinks there is a lot pending on it.

10. Adjourn Meeting

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