

REGULAR DRAINAGE MEETING
Wednesday, July 28, 2021 9:30 AM
This meeting was held electronically and in-person.

7/28/2021 - 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; Bill Ibeling, Drainage District 148 Trustee; Jessica Sheridan, Environmental Health; Jamie Geissler, Accounts Payable; and Denise Smith, Drainage Clerk.

2. Approve Agenda

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

3. Approve Minutes

Motion by Granzow to approve the minutes of Regular Drainage Meetings dated 07-14-2021 and 07-21-21. Second by McClellan. All ayes. Motion carried.

4. DD 56 - Discuss W Possible Action - Right Of Way Easements

Hoffman asked if we just needed to take action. Smith stated yes, Gallentine will give you a rundown on the per acre price. Gallentine stated we visited about this somewhat in Closed Session, for three of the tenants of these 4 parcels are requesting some additional future damages due to compaction, at \$1,065 per acre, we just need the Trustees blessing or official okay of going forward with that during negotiations. Gallentine stated that was 3 of the 4, in all equity you probably want to extend that to all 4 of the landowners or tenants for the cropped area. Smith stated you have a copy of that on the back of your agenda if you would like to look at that. Hoffman asked about the only issue was we just did not want anyone to feel shorted after the fact if someone found out someone else got a little bit more. so we can just do it across the board from the get go to hopefully keep any issues from arising. Granzow asked this is for crop damages for all damages in previous years. Gallentine stated this would be damages for the coming years for any standing crop above and beyond. Granzow stated he said that backwards, Gallentine was correct.

Motion by Granzow to approve the DD 56 easement damages for future low crop yield at \$1,065 per acre for all 4 tenants/landowners for tillable ground. Second by McClellan. All ayes. Motion carried.

5. Discuss W Possible Action – Open Ditch Brush Spraying 2019 Bid Cycle Work

Hoffman stated he would call Bill Ibeling into the meeting as DD 148 Trustee, Hoffman noted those in attendance, and introduced Ibeling and stated we are ready to address the 2019 Open Ditch Brush Spraying work. Hoffman asked Smith to lead into that conversation. Smith stated she had sent a letter out to DD 148 and DD 3 Trustees on this, regarding the history of the Open Ditch Brush Spraying on this, that has been addressed in previous meetings. Smith stated this Brush Spraying was from the 2019 bid cycle, based on previous years cycle of districts listed in that bid. Smith stated when she sent the letter out, we were hoping that we could find some kind of consensus to come to an agreement on how that invoice that we received from Honey Creek Land improvement might be handled. Smith stated Ibeling and she have had the opportunity to speak, and Ken Smith and D. Smith have had the opportunity to speak, and Smith thinks their feeling is that they didn't authorize this work so they have some concerns about paying for that, so Smith will let Ibeling address that with the Trustees.

Hoffman stated Ibeling has the floor. Ibeling stated it seems to him, for some reason we did not get taken off

your list for spraying ditches or whatever, Ibeling does not know whose responsibility that was, it wasn't ours, so it got sprayed and they didn't do a very good job, so Ibeling does not know why you would expect DD 148 to pay that bill, as we were in charge of that drainage district and we didn't authorize it. Ibeling stated as far as he was concerned, the guy you had before didn't do a very good job and nobody checked up on him and it sounds like this guy is kind of on the same path, Ibeling is just wondering, maybe you have to have somebody do it, but if nobody is going to check up on him or there is no supervision, which Ibeling didn't realize, he would just forget the whole thing and not have anybody do it. Granzow stated he apologized and knows Ibeling had asked to talk to us before the meeting, and Granzow thinks it is better that we speak during the meeting so we are all together on the conversation, but the question you asked is 100% right, you as trustees can decide not to do brush control, that is your decision, the problem we ran into was when we approved this for your district, it was back when we were still under control of that district, and you are right the communication never got to the brush spraying crew, from there the performance of them can still be addressed by you guys with honey Creek because you are the current Trustees, because yes, we don't physically go out and look at these districts, we leave it up to the landowners to let us know what is going on.

Ibeling stated we never knew that anyone was supposed to do it to tell the truth, those trees they sprayed are probably 15' to 20' tall, so Ibeling guesses that you can ask somebody to do it, but nobody tells the landowner what is going on, we didn't even know there was anything like this, Granzow stated okay. Ibeling stated talk about a lack of communication. Granzow stated this is one that got caught between the change of you guys taking over and us, but Granzow wants to stress the fact that it is the responsibility of you as Trustees to make sure that these trees stay out, and at that responsibility you can do it as you see fit. Hoffman stated yes, whether it is removing, chemical applications, a combination of both, but yes, maintaining of facilities is by Drainage Code is the Trustees responsibility. Hoffman stated the transition wasn't followed up on well, it seems, so Hoffman also agrees that we can't go out and police this, but most of the districts police this really well. McClellan stated the landowners do.

Hoffman asked when this transition was. Smith stated the transition was in June of 2019 when they went to Private trustee district, so it would have been right before Smith started, in the previous landowner meeting that DD 149 had, which Smith wants to say was probably in early 2019, prior to them going to a Private Trustee district, there was some brief discussion of B & W's spraying, we were still under B & W's contract and the DD 148 folks mentioned that they wanted to ensure that spraying was done and that was in the minutes of that last landowner meeting and that would be something if you wanted to review those, we could certainly bring those down and have maybe Ibeling and ken Smith come in o discuss that if that is something that you are interested in. Smith stated but they noted at the time they wanted to make sure the spray work was being done, so if there was ever a change in their stance on wanting that spray work to continue or not, Smith does not know if that was ever communicated to previous Drainage Clerks, Tina Schlemme, as Smith does not have access to her emails or to Junker's, so if there was an issue in communication it may have been between their going to Private Trustee management, and the new contract being awarded or between drainage Clerk transitions, Smith just does not know have access to all of the emails or conversations that other Drainage Clerks may have had.

Hoffman asked if this something we want yo have a landowners meeting over or do we just want to invite the Trustees in, Hoffman is willing to do anything, Hoffman stated according to the documentation, the spraying as Smith just explained at one of the last meetings that was had, the landowners expressed interest in having the spraying done. Ibeling stated he believed that was not the case. Hoffman stated he will not argue it or debate it without having the meeting minutes in front of him. Ibeling stated the last time we were down there was with all the landowners, correct. Hoffman stated that was correct. Ibeling stated that was when the Engineer was there, and in his proposal was this and that and cut the trees down, and all that, what did we do with that proposal,, we got rid of it. Smith stated it was not approved, they did not move forward with it. Ibeling stated so we got rid of that proposal and that ended it, we never ever went to another meeting down there and talked about we need to cut those trees down and sprayed the weed, the big thing is you never canceled the contract, it is on your end. Hoffman stated he would say that we are supposed to keep the trees and weeds down, the job you had done the last 15 years, we won't have any trouble keeping up with your job with the outfit you guys hired, we will be way ahead, we won't have any trouble with that.

Granzow stated we don't have that outfit either, we switched outfits. Ibeling stated you may not have that

company, without any supervision on your end, the landowners all know it is not going to get any better, we will just do it ourselves. Hoffman stated you have to do it yourself. Ibeling stated we agree with that, but we aren't going to do any worse than what the county has done, that will be easy to keep up with that. Granzow asked what the bill was. McClellan stated \$1,100. Granzow stated you have an \$1,100 bill that was sent to you guys and you have a conflict that you don't think you got \$1,100 of work done. Ibeling stated that is right we got that done and it wasn't a very good job, and she wanted them to come back, they didn't do a very good job in the first place. Hoffman stated even if we take them to small claims court, the Court would say you have to give the contractor a means of remedy, and correcting the situation, by not allowing them to correct the situation, Hoffman will guess it will be unfavorable in the Drainage District's or the County's favor.

Ibeling stated well it was not our deal, it is not our contract, it is your contract, it is not our contract we are out of it, it is your contract. We are responsible to do it and that is what we are going to do, you are the ones who signed a contract with people, it is your contract, whether you want to fess up to it or not, it is up to you. Granzow stated at this point what he is hearing is they don't want to pay it, they want the County to pay it, and we want to know who is liable for that contract that was hired, Granzow asked if that is what he is hearing. Ibeling stated that is right. Granzow stated we could spend money on an attorney, and go for legal advice as to whether that contract is valid, since it was done prior to you guys taking the Trustees over which is the question, and asked if that was correct. Ibeling stated you guys didn't cancel it. Granzow stated but it was already done, the contract was already agreed to before you guys became private Trustees. Ibeling asked did they do the work, no so you can cancel the contract whenever you want, so in other words, you are saying even though we took over the district, that contract is good for how many years, we are stuck with that contract. Hoffman stated when you guys became the private Trustees, that was your opportunity to say you want out of any contracts. Ibeling stated that is bull, you should have known better than to say that's our contract, that is your contract that you started.

Hoffman stated to avoid the additional conflict and to take out the emotion, Hoffman is hearing that you don't want to pay the contract, we probably need to confer with the Drainage Attorney and legal counsel and have them make a determination and then we can reconvene at that point. Ibeling stated yes, if you want to. Hoffman stated then the Drainage Attorney can establish a time line of when the contract was established, when it was assigned, when it became a Private Trustee district and determine who is responsible for the contract. Ibeling stated that was fine with him, we didn't make a contract or continue a contract. Hoffman stated that sounds good, we will confer with Mike and we will let you know when we get something from Mike and we will agenda another meeting, and let you can then let you know when that is going to be. Ibeling stated if you expect the landowners to supervise the contractors, to supervise who you hire. Hoffman stated yes we do, otherwise Hoffman is sure Clapsaddle-Garber would be happy to send an observer out. Ibeling asked if that was a policy you have there. Hoffman stated yes, it is one of those things that most landowners don't want us to send someone out for something unless they give implied consent for that, because for us to that we are going to have Clapsaddle-Garber, one of their observers go out, that is going to get billed back to the Drainage District. Ibeling stated that is fine, but is that in the contract to have the farmers observe their work. Hoffman stated he does not have a contract in front of him. Ibeling stated he has never heard that before. Hoffman stated this should not be an issue for DD 148 going forward because you guys and gals are responsible for the maintenance and upkeep and making sure the facility is maintained and working properly, so going forward you won't have to worry about this. Hoffman stated we have not had any other complaints about the brush spraying or tree removal, so this is the first time we have had somebody complain about the quality of work on this, so it seems like it is an isolated incident. Ibeling stated it still does not make any difference as far as he is concerned, you have the contract we don't have a contract. Hoffman stated we will have the attorney figure that out and we will reconvene. Ibeling stated send us a copy of the contract so we know we are responsible for looking at it, if that is in the contract we will do it. Hoffman stated going forward, Granzow stated before we go into this any farther, you want a contract for future services, is that what you are asking for. Ibeling stated no he wants the old contracts, he wants to know if the farmer is responsible for looking at the trees that need cut down. McClellan stated that wouldn't be in the contract, the contract is between the drainage Trustees and the contractor. Ibeling asked where would it be then, find it and send to me. Hoffman stated we will send you a copy of the contract and we will confer with the drainage attorney, and we can go from there. Ibeling stated that is fine, it is your contract, we will look it over.

Smith stated prior to the next bid cycle in 2022 there will be a form sent out asking if you want to opt in or

opt out of that bid cycle's spraying so that this does not ever happen again in the future, Smith stated so look for that in the spring of 2022, you guys will say you want in or you want out, if you say you want out your district will not be included in that year's bid price list. Ibeling asked is that something that is normal or is that something happened. Smith stated that is what we are doing moving forward to make sure we are not creating issues like this in the future. Granzow asked if we had that three years ago. Ibeling stated so this is something you just came up with. Hoffman stated yes because we can see that with some foresight as districts go from County Trustee managed to Private Trustee managed, we don't want there to be any miscommunication, we want to be very clear that it is your responsibility but as long as we are bidding large scale projects, that you can get in our large scale buy in or you do not have to, but Hoffman does not know if our other districts say yay or nay, Smith stated she has not yet heard back from the other 3 Private Trustee districts that have open ditches, but those letters all went out at the same time as Ibeling's. Ibeling stated well you are finally doing something so that is good. Granzow stated if our drainage attorney comes back and says that the contract stands are you still going to argue this. Ibeling stated well yes. Granzow stated well then we are wasting our time talking to the attorney. Ibeling stated if you want to take legal action against me then go ahead, Ibeling feels that way himself, but just because he feels that way, that doesn't mean it is right, if the attorney presses us to do it, Ibeling guesses we will pay it. Granzow stated that is why he is asking, we do not need to go to an attorney if you are still wanting to go to court over it, the problem we have is if we have to pay this some way other than through the district, we have to have some kind of explanation for spending the public's money, and we can't, that is your opinion, if we went and got legal opinion and they say that then yes, we will spend the money, but if they say it the other way, and you are still going to argue the fact and you still want to take us to court over \$1,100, we are both going to lose money over that, but are you going to be satisfied with whatever the attorney says. Ibeling stated he supposes he will have to be. Granzow stated that is all he had to hear. Ibeling stated he will have to go by what the attorney interprets the contract, when we can get out of it. Granzow stated he might be in your favor. McClellan asked if all of the DD 148 Trustees have the same opinion as Ibeling. Ibeling stated he will go by what the attorney's opinion says. Granzow stated that is what he is asking, he did not want to go down a rat hole that took us no where. Ibeling stated well then we will have his opinion, like we have my opinion, it is just an opinion. Hoffman stated as long as we are all amicable to that, and we can agree to disagree, and if we agree that we are going to take the legal expert, the guy with the law degree's opinion, Hoffman thinks we can move forward in a positive manner. Granzow asked if Ibeling would be comfortable with a different drainage attorney's opinion and not ours. Ibeling stated if a drainage attorney looked it over, either way it is going to cost us, you pay the county attorney anyway. Hoffman stated we don't use the County Attorney for this. Granzow stated it is not the County attorney, he doesn't do this one. Hoffman stated this would be Mike Richards. McClellan stated we have a drainage attorney out of Des Moines. Granzow stated we have to pay him. Hoffman stated someone has to pay him, Granzow stated if you would like we could ask the County Attorney to. Ibeling stated he is probably the expert, the drainage attorney, but you guys can go with whoever you want to. Hoffman stated he will be very, very honest that Hoffman thinks this is more of a contract law item than a true drainage, Ibeling stated that is true. Hoffman stated it really does not have anything to do with waterflow. Ibeling stated it is more of a contract, it is a matter of termination, it comes down to you guys had control of the district and we terminated your control when the contract is still in place. Hoffman and McClellan stated that was correct.

Ibeling stated that is basically what he sees. Granzow asked if Ibeling was ok with just the County Attorney's opinion on that. Ibeling stated he does not care what lawyer you get, it is just a contract, anybody who is a lawyer should be able to figure it out. Hoffman asked if Ibeling would be okay if the County Attorney looked at it, that way it doesn't cost either of us any money. McClellan stated Code says they have to maintain it. Hoffman stated what we will do is initially confer with Attorney Meyer, Smith will contact you when we are going to meet again and we can have his opinion given. Ibeling stated that sounds good, thank you. Ibeling stated that is fine, we are good. Hoffman Thanked Ibeling, Ibeling thanked the Trustees.

Hoffman asked Smith if that was clear. Smith stated it is, she will contact Attorney Meyer and provide him with all of the documents and a timeline, and let him look over the documents involved and let him look over the bid process and all of the envelopes, and when he has an opinion ready for us, Smith will agenda this again, and we will have Ibeling in attendance, and if the Trustees would like, we could have Attorney Meyer attend if it works with his schedule. Hoffman stated that was excellent. Granzow stated the contract law is all that is really at issue, should they cancel it or not. Hoffman stated he is thinking he assumed, it goes with you. Granzow stated he believes so unless they canceled. McClellan stated it sounds like they don't want to maintain it. Granzow stated no they said they do that themselves. McClellan stated he wanted to

see where it says that they maintain it. Hoffman stated that is in Iowa Code. Granzow stated we can easily get that. McClellan stated she is thinking maybe Richards needs to respond to that too because he wants to know where it says farmers have to do it. Hoffman stated we can easily get that and just send him the Code Section. Granzow stated he is a Trustee he can just look it up.

6. Discuss August Meeting Schedule W Possible Action

Smith stated we have a meeting today which will be our last meeting in July, and we will be done. August 4th we have Board of Supervisors and Drainage scheduled, August 11th you have Board of Supervisor meetings canceled, so Smith is going to assume Drainage is canceled also, Granzow stated that is right. Smith stated August 18th we are on for Board of Supervisors and Drainage and August 25th you are canceled for Board of Supervisors and Drainage, does that sound correct. Hoffman stated that is correct, Smith stated our next meeting will be August 4th and then Smith will see the Trustees again on August 18th. Hoffman stated that sounds awesome. Smith stated August 16th there is a DD 3 Hearing on an Engineer's Report, that is a Private Trustee district, so other than that, we don't have anything else going on until September 1st and then you have a DD 48 Landowner Meeting.

7. Other Business

Smith thanked the Trustees for the opportunity the Trustees have afforded Smith to serve the Board as Drainage Clerk, she has learned so much from the Trustees and has so much enjoyed working with all of you, Gallentine included. Smith thanked the Trustees for the opportunity to serve as Clerk. The Trustees thanked Smith and wished her the best of luck.

8. Adjourn Meeting

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