

DRAINAGE MEETING
JOINT DISTRICT HAMILTON #105-STORY #1
NOVEMBER 17, 2021

The Hamilton and Story County Drainage District Trustees met in the Public Meeting Room of the Story County Administration Building in Nevada, IA to present an Engineer's Report (on file in the Hamilton and Story County Auditors' Offices) on repairing the Main Open Ditch in Joint Drainage District Hamilton #105-Story #1, Story County controlling, to the landowners in the district and to consider action on the report's recommendations. Members present were Lisa Heddens, chair, Latifah Faisal, and Linda Murken from Story County and Rick Young, Dan Campidilli, and Jerry Kloberdanz from Hamilton County. Also present were Story County Outreach and Special Projects Manager Leanne Harter, Vegetation Management Biologist Joe Kooiker, Story and Hamilton County Drainage Clerks Scott Wall and Lori Kloberdanz, Engineers Kent Rode and Tyler Conley from Bolton & Menk, Inc., and 5 landowners attending in person (attached sign-in sheet). Hamilton County attended virtually via Zoom.

Heddens called the meeting to order at 6:00 p.m.

Faisal moved, seconded by Young, to approve the agenda. Motion carried unanimously (MCU).

Conley showed aerial video of the open ditch shot from a drone in the Spring of 2021 while Rode went over the particulars of the report.

Rode said the report was requested to investigate the current conditions in the Hamilton #105-Story #1 ditch and make recommendations for repairs to restore the 4.75-mile ditch to its original condition. While some trees were removed from the ditch between 2013 and 2015 there were numerous trees left standing. Many of these trees are growing within the ditch banks. The ditch banks were originally designed with a 1:1 side slope but they now vary due to erosion. The ditch banks should be reshaped with a 1.5:1 side slope to lend them greater stability. The ditch will be reshaped to restore the original ditch bottom and the removed material will be spread along the top of the ditch. All of the trees within the ditch right-of-way will be removed. Pipes entering the ditch are corroded and/or broken and need to be repaired or replaced.

Conley said the estimated costs of repairing the ditch are based on previous, similar projects but there is some uncertainty given the current fluctuation in steel prices. The total estimate for construction is just over \$400,000 and, with Engineering costs, the total estimate is \$569,050.

Rode said if steel prices are excessive at the time the project is done the replacement of metal pipe entering the ditch could be delayed until prices drop.

Rode said the ditch has a presumed easement along the open ditch established by the Code of Iowa but that easement is not clearly defined. Current practice is a 100' easement, 50' on either side of the centerline of the ditch. Landowners can still use the land within the easement but cannot place permanent structures within it. The land within the easement is exempt from property taxes. The district would have to compensate the landowners along the ditch to acquire the easement. Damages to property from construction would also be due to affected landowners at project completion.

The preliminary investigation indicates there are about 475 acres of land outside the district that receive a benefit from the district facilities and should be annexed. If an annexation is approved the district must be reclassified or, if the trustees believe there are inequities in the original, 1910 classification, the district can be reclassified without any annexation.

Rode recommends that the ditch be restored to its original capacity, including the removal of silt from the ditch, reshaping the ditch bottom and banks, repair of pipes entering the open ditch, and the removal of trees within the ROW, that the ROW be formally described, that benefitted properties outside the current district be annexed, and that the district be reclassified. The annexation and reclassification are separate items from the repair work and will have their own reports and public hearings.

Wall said he had received two objections to the proposed tree removal from residential property owners and one query from a realtor and their buyer concerning the tree removal on a third residential property. The questions concerning the property for sale were resolved over the phone and no objections were received concerning that property. Wall also received an objection to the proposed annexation. That objection indicates that the properties concerned are cut off from access to the district by 530th Avenue and they are also served by tiles that take their water away from the district.

Wall said the two written objections to the tree removal are fairly lengthy. Essentially, they state that the trees create a wind break for the properties involved, add value to those properties, serve as wildlife habitat, and do not impede the function of the ditch. Wall will read the objections if the trustees wish but the two landowners are present this evening and will probably want to make their arguments verbally. All of the trustees and the engineer have received copies of the three written objections (on file at the Hamilton and Story County Auditor's Offices).

Murken said it appeared from the video that parts of the ditch appear to be well maintained while other areas are overgrown with trees. Does Rode know how much was cleaned out in 2013/2015?

Rode said there wasn't a lot of detail on that earlier removal of trees and they didn't try to investigate that. He was tasked with looking at the issues that still exist in the district. In the proposed project the stumps will be removed which was not done in the earlier tree clearing.

Murken asked about two-stage ditches. Would they be beneficial to this project?

Rode said a two-stage ditch has flat areas along and above the ditch bottom. These slow the flow of water into the main channel, allowing sediments to drop out of suspension. They are good at removing phosphates but not effective at filtering nitrates and they require more area as they are wider than a single stage ditch. For this project that means another 10-15 acres of land acquisition and every pipe entering the ditch would have to be replaced to accommodate the wider ditch. Rode said a very rough calculation would be an additional \$600,000 to reconfigure the existing ditch as a two-stage ditch.

Conley said two-stage ditches are much easier to build as new facilities than they are to retrofit into an existing drainage district.

Young commented on the trees within the ditch. The trustees are obligated by the Code of Iowa to keep the ditch and right-of-way clear of obstructions and, if they fail to do so, they can be sued and forced to clean the ditch by a writ of mandamus. There are also numerous beaver dams along the ditch.

Faisal asked about land use within the easement. What can the owners do there?

Rode said owners can use the land inside the easement. Typically, it is used for farming or CRP plantings. Permanent structures or anything else that might block access to the ditch by construction equipment is not permitted. He has seen instances where agreements with the trustees allowed landowners to keep some trees near the ditch that will not block an excavator's access but not within the ditch banks.

Young repeated his statement that the trustees can be taken to court if they do not satisfactorily clean the ditch. They are bound by Code to repair the ditch now that a request has been filed.

Landowner Jason Rechkemmer has an acreage bordered by the ditch. He does not object to the ditch being maintained but he does object to the loss of his trees along the ditch. He wants someone to meet with him on his land to look at the trees in person. He does not believe the trustees are bound by law to remove all the trees. They just need access and there is adequate access for construction equipment on the opposite side of the ditch from his land. He would like a formal agreement allowing him to keep his trees for as long as he maintains those trees and removes any debris from those trees that falls into the ditch. He is already doing this. He had to clean up trees that were left in the ditch by the previous contractor. There are two miles of un-named waterway between the end of the district and Keigley Creek that have heavy growth of trees. If these trees are not removed why should his trees have to go?

Murken asked where the additional two miles of open ditch were. She doesn't see it in her materials.

Rode said the report only deals with the existing district. The two miles in question are not within the district boundaries. Rode said the district can go outside its boundaries to remove obstacles. It would require permits from the IDNR and the Army Corps of Engineers. He is not recommending annexation south of the district's current terminus.

Murken asked who would pay for work done outside of the district.

Rode said the people in the district would pay. If they believe obstructions outside the district are adversely impacting the district, removing those obstructions is a benefit to them.

Faisal asked if the additional ditch could be annexed into the district.

Rode replied that it can be if the trustees believe that would be beneficial to the district. Based on the information Rode has he is not recommending annexation of any land to the south of the district.

Jerry Kloberdanz asked if any of the Story County Trustees have visited the property. What if a tree is 51' from the ditch?

Murken said she had driven by the site on her own and had driven along the ditch with the county engineer. In neither case did she get out of the vehicle or meet with the landowners. Her recollection is that most of the trees are right along the ditch.

Rode said the proposal is to remove trees to the 50' line.

Conley brought up the drone video of Rechkemmer's property.

Rechkemmer said his septic mound, approved by the Story County Sanitarian in 2015, is less than 50' from the ditch.

Rode said that would need to be marked so the contractor can avoid it. It would add greatly to the cost of the project if the septic system was damaged.

Rechkemmer said if cost is such a big concern it is much less expensive to leave his trees alone and work around them than it is to remove and dispose of them. He is taking responsibility for maintaining the trees and keeping them out of the ditch and they are not blocking the flow of water in any way.

Murken said she did not think that was the only issue with the trees. They also provide building material for beavers. Story County had a drainage meeting two nights ago where the landowners, who are farmers, were adamant that all the trees must be removed to discourage beavers.

Rechkemmer understood that but said the trustees are willing to decrease the value of his property to increase the value of the agricultural property in the district.

Campidilli asked if the trees were volunteers or if they had been planted. What species of trees are they?

Rechkemmer said some are volunteers and some were planted. There are some Maples and some pines. He is not saying every tree has to stay. He is open to some sort of compromise. All he is asking is that someone come to his property to take a look in person. Sitting here and not taking a look at the site is not fair to him. The trees have been there for 50 years not hurting anything and many of them can be worked around.

Young said his earlier statements about drainage law are factual. They come from Hamilton County's drainage attorney who has been in that business for a long time. The trustees must clean debris.

Rechkemmer countered that a standing, living tree is not debris.

Young said the trustees are obligated to clean the ditch and right-of-way.

Rechkemmer said they are not obligated to remove every tree, they have the ability to do that and there is a difference. He challenged Young to show where a trustee had been arrested for failure to remove a tree.

Faisal said the trustees are obligated to act once they are made aware of a problem in a drainage district which is what has happened here. If they do not address issues with the entire ditch and there is a problem later they have to hire the engineer again and get plans and go out for bids again and every time that happens it costs the district more money. Rechkemmer may be willing to take care of his property but what happens when a new owner comes in? If that owner allows the ditch to become blocked and the trustees need to clear it the district as a whole will demand to know why it wasn't taken care of when the rest of the ditch was cleaned.

Rechkemmer said he is willing to sign an agreement allowing the district to do whatever it wants when the property transfers. When he bought the property, it was advertised as a natural, wooded area.

Heddens said one of the problems Story County is having now is that our open drainage district ditches are suffering from years of neglect. That is why there are 50-year old trees where there shouldn't be any. There is at least one other district in Story County where the trustees are dealing with these issues right now and the costs present a huge burden for the landowners.

Landowner Austin Carlson echoed Rechkemmer's concerns. He is Rechkemmer's neighbor to the west and the person who submitted the other objection to the proposed tree removal. He also supports the repair of the ditch but not at the expense of his trees. Like Rechkemmer he is taking care of his trees and keeping debris out of the ditch and will continue to do so. There are issues beyond the aesthetics that are not being considered here. The trees provide a wind break for his and Rechkemmer's homes, they store carbon and are important in combating climate change, and they provide wildlife habitat. The condition of the ditch in the two miles beyond the district boundary is a big deal. There are numerous beaver dams below the district. There should be a way to do this that preserves a lot of the trees and restores the ditch.

Kooiker spoke on behalf of Story County Conservation. Part of his job for the last seven years has been trying to control vegetation in drainage ditches and he thinks he talked to Carlson and Rechkemmer during the 2013/15 tree removal. He believes there is room for negotiation but there are trees that need to go. He'd like to see more buffer strips along the ditch and he'd like to see the ditch planted with native grasses following the repair as opposed to the Brome grass specified in the report. Recent prices for Brome and Fescue are comparable with the cost of native seeds right now so this would not impact the project cost.

Rode liked the idea of seeding with native plants but thinks they are more difficult to establish. There needs to be experienced staff to nurture these plants. Contractors don't really want to deal with seeding so they'd be happy to have someone else deal with that.

Murken said she was concerned that Story County does not have adequate staff to seed the entire 4.75 miles of ditch right-of way.

Rode said this would only be the area within the top of the banks.

Kooiker said they would be happy to work with the contractor or with landowners along the ditch who are interested in planting natives.

Heddens asked about Rechkemmer's septic system being within 50' of the ditch.

Rode said care would need to be taken to avoid damaging the septic system. It would be off limits to construction equipment.

Jerry Kloberdanz asked wouldn't a two-stage ditch require that more trees be removed and would it then be an improvement?

Rode said that was correct. There would be a wider right-of-way and more trees impacted. The two-stage ditch would decrease siltation but, at the same time, it would likely increase the capacity of the district. If the intent is to improve water quality is the two-stage ditch just a repair or is it an improvement? An improvement opens a host of other issues. This should go to an attorney if the trustees want to pursue the two-stage ditch. To do this Rode would need additional direction from the trustees to add the two-stage ditch to his report and a new hearing would have to be scheduled.

Murken said her sense is that, based on what has been said this evening, a two-stage ditch is off the table for consideration here.

Campidilli said landowners have the right to have someone who will be making the decisions meet with them at their property. The contractors who do this sort of work are not landscaping specialists and they need to be clear about anything that should not be removed.

Jerry Kloberdanz asked how many trees Rechkemmer and Carlson want to keep. Six, nine, twenty?

Rode said 99% of the trees are within 50' of the ditch centerline and most of them are in the ditch banks or along the crest of the banks.

Rechkemmer said the majority of his trees are at the top of the banks and there are only 5-7 trees inside the banks though there are a lot of trees within 20' of the centerline.

Faisal asked what the possibility was for on-site visits. She would be happy to visit on-site but does that mean another meeting?

Rode said he is willing to meet on-site. Whether another meeting is needed depends on the action the trustees take this evening.

Carlson said there is an issue with the original location of the ditch. He thinks it may be encroaching on his property more than if it was in its original location. Is there any thought to determining where the ditch was originally placed? He doesn't know if the ditch has moved from its original location but thinks it is worth investigating.

Murken said moving the ditch sounds like an expensive proposition.

Carlson said moving the ditch 20' to the south would save most of the trees.

Rode said there are no plans to move the ditch. The plan is to reshape and clean the ditch in its current location to bring it back to its original capacity.

Murken asked what a site visit would require of Rode.

Rode said just his time to drive down from Algona, view the site, and drive back – perhaps five hours.

Murken said she is willing to meet with the landowners at their property but she is not an expert on trees or an engineer and would want Rode to be present. She had concerns of adding costs to this project for the sole benefit of two landowners.

Carlson asked if there was any possibility of getting a second opinion. He and Rechkemmer are both engineers. They are not drainage engineers but they both know how things work and he feels we are getting to the point where what should and should not be done are matters of personal opinion.

Heddens said Bolton and Menk are the county's drainage engineers. She does not think the trustees should look for another engineer to possibly undermine our current engineer.

Murken asked if Rode should look at the two miles of un-named ditch downstream from the district. How would we even do that?

Rode said if there are indications that downstream obstructions are impacting drainage in the district those obstructions can be removed. It would require permits from the Iowa DNR and the Army Corps of Engineers and that could add considerable time and cost to the project. He sees no need to look at the ditch beyond the district boundary.

Murken said Story County has been trying for 20 years to get some land back from the Corps of Engineers. Her sense is that getting permits to do work outside the district would add considerable delay to this project along with additional engineering costs.

Rode said he sees no need at this time to work beyond the southern edge of the district. Rode said the recommendations on page 8 of his report may help clarify for the trustees what they need to do next. Item 2 is consideration of repairing the ditch with any modifications the trustees deem desirable.

Young asked what modifications are we talking about?

Heddens said the reseeding of the project area with native grasses, possibly keeping some of the trees near the ditch, and the proximity of a septic system though that is not necessarily a modification, just something that needs to be located.

Young asked who would pay for the native plants.

Kooiker asked who would pay for the Brome grass. He repeated his assertion that current costs for Brome and Fescue are very close to costs for native seed and would not impact the cost of the project.

Conley said they can add an estimate for reseeding with native plants to the report so the trustees can compare costs.

Rechkemmer asked about the reseeding costs.

Conley said landowners do the reseeding outside the ditch banks on their property as the seed mixes, especially in CRP land, can be fairly specific. They then submit those costs as damages to be reimbursed by the district after the project is completed.

Carlson said the removal of his trees will adversely impact the value of his property and would constitute damages to him.

Rechkemmer repeated that he wanted Rode to visit his and Carlson's properties.

Rode said the trustees can direct him to perform a site visit but he believes that the imagery from the drone shows him what he needs to see. He does not believe it is a good use of his time or the district's money for him to come to the same conclusions he already has.

Rechkemmer asked why the trees outside the ditch banks needed to be removed.

Rode responded for access to the ditch by an excavator and a track hoe to reshape the banks on that side of the ditch.

Rechkemmer said the ditch on his property is in good condition.

Rode replied that it was not and the drone footage makes that clear.

Rechkemmer said you can't see that level of detail from the drone.

Rode said he was concerned that they would have the same arguments onsite that they are having right now with each side unwilling to concede anything.

Rechkemmer said he was willing to pay the costs of Rode making a site visit. The district will then have nothing to lose by having an in-person look at his trees.

Rode said he will meet on-site if the trustees direct him to do so. He works at the direction of the trustees.

Jerry Klobberdanz repeated his view that some of the trustees should meet with the landowners on their property to look at the trees in person.

Faisal said she would be willing to do that but only with Rode present as she is not an expert.

Murken said if we direct the engineer to visit the site it will mean another meeting here.

Heddens asked if anyone was willing to make a motion to adopt the report, to adopt the report with modifications, to direct the engineer to visit Rechkemmer's and Carlson's property's in person – are we ready to take some action to move us forward.

Young moved to direct the engineer to adopt the repair of the open ditch as recommended in the engineer's report with no modifications.

Murken seconded Young's motion for purposes of discussion.

Jerry Kloberdanz said the issue with the septic system will have to be viewed in person regardless of what happens with the trees.

Murken said that can be addressed in the fourth of the engineer's recommendations which is to direct the engineer to proceed with design plans and specifications.

Faisal referred to Monday's drainage district meeting which had six years of history behind it and we'd finally landed in a good place because there had been some give and take with the landowners. While she doesn't want to add to the costs incurred in this district, if some of the trees can be preserved she would like to see that happen.

Campidilli supported Faisal's comments. Someone needs to meet onsite with the landowners because they are part of the district. We don't need to agree or disagree with the landowners but we need to see what they are talking about.

Murken's concern is that if we go that route and meet onsite we'll still have the same impasse we have right now.

Campidilli has spent a number of hours on-site with Jacob Hagen of Bolton and Menk on other drainage districts and they've both expressed their opinions while standing on the project site and those meetings were productive and moved those projects along.

Heddens said she is hearing that Campidilli is saying the trustees should direct the engineer to meet with the landowners onsite then the trustees will have another meeting to consider the results of the site visit.

Campidilli said there should be an on-site meeting with the engineer and a supervisor or supervisors present.

Jerry Kloberdanz supported this as well. We need to determine the centerline of the ditch and see what is within 50' of that centerline in person. If the trees have to go they have to go but that should not be decided in this meeting with no first-hand observation.

Rechkemmer said his understanding is that the district does not currently have 50' but needs to acquire that easement. Will the County Attorney be contacting the landowners to acquire the land?

Rode said the easement already exists. The problem is that it is not specifically defined. The trustees can choose to specifically define that easement tonight.

Murken asked about easements in other districts. How wide are they? Does establishing a defined easement automatically mean all the trees within it have to go?

Rode said in the projects he has done in Story County the easements have been defined as 100' in width, 50' on either side of the ditch centerline. Just because the easement is defined it does not mean that all of the trees within it have to go. The trustees still have some discretion in deciding what can be allowed within the easement.

Young withdrew his motion and Murken withdrew her second to that motion.

Murken moved, seconded by Young, to direct the engineer to establish a uniform right-of-way of 100', 50' on each side of the centerline, along the main open ditch in Joint Drainage District Hamilton #105-Story #1. MCU.

Murken moved, seconded by Klobberdanz, to direct the engineer to meet onsite with Jason Rechkemmer and Austin Carlson to locate Rechkemmer's septic system and to review the trees on both properties to determine if any of them can be retained. MCU.

Carlson asked if any representative(s) from the counties would accompany the engineer during the site visit.

Heddens said that a trustee or trustees would join the engineer onsite.

Rode said if a motion was passed to direct him to proceed with design plans subject to what is decided following a site visit to the Rechkemmer and Carlson properties the trustees could avoid the need for another meeting.

Young said Hamilton County has been getting good bids on drainage projects currently and the faster this project can move forward the better. Delays could increase the final cost significantly.

Murken moved, seconded by Young, to adopt the repair recommended by the engineer with the provision that the engineer may alter the plans if some trees can be retained and to direct the engineer to prepare an estimate for reseeding the ditch with native grasses. MCU.

Faisal moved, seconded by Campidilli, to direct the engineer to proceed with final plans and specifications subject to modifications specified in the previous motion and proceed toward a bid letting. MCU.

Murken said we hadn't discussed annexation yet but had received an objection to annexation already.

Rode said at this point the trustees would be directing him to move forward with an Annexation Report which would consider the received objection along with any other evidence landowners in the potential annexation areas are able to provide. When the Annexation Report is ready it will be submitted to the trustees who will then set a time and date for an annexation hearing.

Faisal moved to direct the engineer to initiate investigation of the annexing of benefitted lands not currently on the district's assessment schedule.

Jerry Klobberdanz asked if you can have an annexation after you've approved a repair. Hamilton County is going through a lawsuit right now on this question.

Young said the Supreme Court says you cannot annex after a project is approved. You have to annex prior to approving any work.

Rode said this is a repair project, not an improvement.

Hamilton County said that makes no difference and this went through the Supreme Court in 1971.

Jerry Kloberdanz said you have to annex prior to any project so the people being annexed have an opportunity to speak for or against the project. You can't approve a project then annex people who had no voice in the project to help pay for it.

Young said this went to the Federal Supreme Court and they ruled against the district and for the people fighting the annexation.

Heddens asked for clarification. This was a U.S. Supreme Court ruling?

Hamilton County confirmed that it was the United States Supreme Court.

Faisal asked if the case Schwartz Farm Corp. v. Board of Supervisors in of Hamilton County in 1972 was the case Hamilton County was referring to.

Young said that began in 1965 and it was 1974 when it finally got to the U.S. Supreme Court. He said the case was Wahrenbrock etal v. Hamilton County Supervisors.

Young said the trustees could proceed with the annexation and see if it gets challenged.

Faisal's motion died for lack of a second.

Young moved, seconded by Faisal, to adjourn. MCU. Meeting adjourned at 8:05 p.m.

Respectfully submitted,



Scott T. Wall

(Note: I was unable to find anything on the U.S. Supreme Court website concerning Wahrenbrock v. Hamilton County. I did find Schwartz v. Hamilton County in 1972. Lisa Heddens talked to me on November 18 and she had only found what I had located. She emailed Rick Young and received a confirmation email back (attached) confirming that Schwartz v. Hamilton was the case they were talking about during the meeting. Lisa sent the information along to Story Civil Attorney Ethan Anderson for his opinion.)

Lisa K. Heddens

From: Lisa K. Heddens
Sent: Friday, November 19, 2021 10:48 AM
To: Ethan P. Anderson
Cc: Linda S. Murken; Latifah A. Faisal; Scott T. Wall
Subject: FW: DD Question

Just heard back from Rick Young, Supervisor from Hamilton County. See his response below.

Lisa

From: Rick Young <ryoung@hamiltoncounty.org>
Sent: Friday, November 19, 2021 10:35 AM
To: Lisa K. Heddens <LHeddens@storycountyiowa.gov>
Subject: Re: DD Question

[External Sender - Please Use Caution]

Before we go about interpreting Iowa Code it would be best for your drainage attorney to contact ours. He has read through the hundreds of pages in this 8 year case. David Johnson is the one who gave us this opinion (at a very cost)
David Johnson
david@johnsonslawfirm.com
cell phone; 515-851-2070

Case;
Schwarz Farm Corp. vs Hamilton County Supervisors, Iowa - Iowa supreme court
1964 to 1972

<https://law.justia.com/cases/iowa/supreme-court/1972/54662-0.html>

DD71 Mud Lake

On Fri, Nov 19, 2021 at 9:35 AM Lisa K. Heddens <LHeddens@storycountyiowa.gov> wrote:

Rick,

What was the name of the case you referenced at our drainage district meeting Wednesday evening?

Was it Wahrenbrock? Also what year and DD? Was it 1974 and DD71?

We are wanting to look into this and I wanted to be sure I had correct information.

If you have the correct name etc, please pass it along to me.

Thank you



Lisa K. Heddens

Board of Supervisors, Chair

Story County

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Rick Young
Hamilton County Supervisor
515-460-0952

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