

DRAINAGE DISTRICT MEETING
JOINT DISTRICT BOONE #93B-STORY #4
FEBRUARY 6, 2020

The Drainage District Trustees of Boone and Story Counties met in the Boardroom at the Boone County Courthouse to present an Engineer's Report on repairs to Joint Drainage District Boone #93B-Story #4, Boone County controlling, and to consider acting on the recommendations in that report. Members present were Bill Zinnel, chair, Chad Behn, and Stephen Duffy (arriving after a prior obligation) of Boone County and Linda Murken, Lisa Heddens, and Lauris Olson of Story County. Also present were Boone County Engineer Scott Kruse, Auditor Philippe Meier, and Drainage Clerk Kaitlynn Moran, Story County Drainage Clerk Scott Wall, Drainage Engineers Kent Rode and Tyler Conley from Bolton & Menk, Inc, and 12 landowners in the district (see attached sign-in sheet).

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

Rode presented the Engineer's Report (on file in the Boone and Story County Auditors' Offices) to the landowners. The main district tile is blocked where it runs under the King's Terrace Mobile Home Park. The main tile then runs along the north side of the park in the Lincoln Highway right-of-way where it is joined by Lateral B from the north side of the road. The report recommends that the main tile be abandoned in place from where it enters the park to where it is intersected by Lateral B. A new main tile will be installed running along the southern edge of the park in the agricultural land there. This is at the request of Steve Kaltenhauser, the owner of that agricultural land, and the petitioner for the repair. The new tile will be 24" reinforced concrete pipe. The original tile is 22" but that size is no longer available. The Code of Iowa allows the district to use the next larger available size while still being able to do the project as a repair, not an improvement.

The Code requires that the trustees maintain drainage districts to their original design capacity. Because this project is a repair the trustees must do it or an equivalent project to restore the district's capacity to drain the lands it serves. The estimated cost of the recommended repair is \$140,600. Rode said Kaltenhauser had approached the Boone County Trustees recently with an alternative suggestion for re-routing the tile. Kaltenhauser asked that the tile now run through the center of his land, following a natural depression along which surface water already flows. Rode distributed a map showing the original re-routing and the suggested alternate routing along with an estimate of cost for the alternate route (on file). That estimate was about \$20,000 more than the cost of the original re-routing.

Bill Leibold asked isn't there a right-of-way over the existing tile? If the tile has an easement the district should just go into the park and remove the blockage. The trailers are mobile homes and can be moved. Also, all the development that has taken place in this area and may take place in the future has altered the need for drainage. Shouldn't that be taken into account?

Rode said development is a constant but drainage districts were created to serve agricultural needs, not urban needs. Developers should consider how to handle water on their projects but the drainage district is not obligated to change its capacity to meet current or projected commercial needs.

Olson questioned the timing of the report on the alternate tile routing. Why was she not aware of this? Had any of the trustees seen it prior to this meeting? She was upset that new information was being presented before the trustees had a chance to review it.

Behn said Kaltenhauser had called about a week ago to propose the alternate routing. This was the first time any of the trustees had seen the estimate for an alternate routing of the tile.

Olson said this should have been made available to the trustees prior to the meeting.

Behn said because it is so difficult to get both sets of trustees together and because of the way notifications of meetings must be made he felt it was important to have any information on possible options available for this meeting. The alternate tile routing was suggested by the landowner who would be affected and who had asked for the repair initially and Behn felt the trustees should make every attempt to look into the alternate routing. He stressed again that this was the first time any of the trustees had seen this.

Murken asked for clarification on the alternate route. Would it still be classified as a repair?

Rode said both suggested routes for the new tile are repairs because neither will increase the capacity of the district. The request from Boone County to consider the alternate routing had been to bring it to the meeting. Rode said the new information could have been forwarded to the trustees prior to the meeting but had not been requested and with the short notice he hadn't thought to send the information out ahead of the meeting.

Dennis Cooper said the report specifies reinforced concrete pipe. Why not use plastic? It has the same design life as the concrete and is less expensive.

Rode said he prefers reinforced concrete to plastic. The concrete is self-supporting whereas the plastic relies on pressure from the surrounding soil to maintain its shape. Both are excellent materials if installed properly but the concrete is more forgiving of less than ideal soil conditions and installation procedures.

Leibold and Cooper said they were concerned about soil compaction. Concrete pipe will require semi-trucks for transport and heavy equipment for installation.

Rode said the equipment needed is the same for concrete as it is for plastic. Both have to come in on trucks and both require excavators, bulldozers, etc. for installation. Certainly there will be some compaction but construction will not affect as large an area as people might think and landowners can claim damages for reduced crop yields caused by compaction.

Cooper asked if there had been a cost analysis of repairing the blocked tile in the park.

Rode said there had not. Due to the presence of mobile homes, mature trees, and infrastructure he had not been directed to pursue repair of the existing tile.

Several land owners said there was no point to repairing this part of the tile when the tile downstream was not sufficiently large to accommodate additional flow. The trustees should investigate enlarging the downstream tile before replacing tile in the middle of the district.

Olson asked why no cost analysis had been done on repairing the original tile.

Rode and Wall both responded that at the initial meeting in which Rode had been instructed to proceed with the report the existing tile had been discussed. Wall said with the existing mature trees and their proximity to the mobile homes there was a safety issue with having to work in such a confined area. Rode said it would be an engineering nightmare to work around everything in the park and could very well lead to legal action from the park's owners and residents. Those costs can mount up rapidly and there is no guaranteed outcome in a trial.

Olson asked if there was any precedent for having Kaltenhauser pay the additional \$20,000 if he wants the alternate route to be used. Wall said he didn't know of a particular Code Section or a precedent but could not see any reason why that could not be done.

Olson asked what documentation Boone County had that Kaltenhauser had requested the alternate routing to save money.

Behn said he'd spoken to Kaltenhauser on January 27 and that was what Kaltenhauser had told him.

Olson said she understood that but was there anything in writing that someone could find 20 years from now to see why this had been done the way it was.

Moran said she had a letter (attached) from Kaltenhauser dated January 30 that did spell out his reasoning for the alternate routing. Moran read the letter for the record. Kaltenhauser had procured a quote from a tiling firm for \$35,000 for 18" plastic tile and he feels that is all that is needed and an engineer's services are not necessary as the cost is below the \$50,000 threshold in the Code which mandates an engineer's report.

Olson said that was what she was looking for. She felt she could not vote in favor of this project without more information on the alternate proposal and the letter answered her questions.

In response to additional questions about the blockage in the existing tile Kruse said there have been tiling companies in to clean and televise the tile several times in the past few years. Every time they reach a certain point in the tile there is a mass of tree roots that blocks at least 50% of the pipe and is too large to remove by jetting which is the normal procedure for clearing roots from tile interiors.

Murken asked if the district abandons the original tile and the owners of the trailer park later request that the district repair the blockage can they force the trustees to do that. Is the district liable for any problems that the abandoned tile could cause within the park?

Kruse said there is an intake at the southwest corner of the park and when there are heavy rains water backs up in the tile and comes out of the intake to flood the surrounding area including the park. The proposed re-routing of the main tile would give the water that is forced out of that intake a new path, reducing water issues in the park.

Brant Lemer said there is a sale of 35 acres of land that will be closing in the next week or two and that land will potentially be developed commercially. Will that affect drainage in this district and should it be considered as part of this project?

Rode said he was not aware of any development.

Murken asked if the land in question was in Story County east and north of the intersection of the Lincoln Highway and 500th Avenue.

Lemer replied that it was.

Olson said that land is adjacent to the Ames City Limits but it is currently not inside the city. Because the land is within two miles of Ames it must be developed in accordance with Ames storm water requirements so it will meet them if it is annexed into the city.

Murken said it is not the trustee's place to speculate on what types of development may or may not occur in the future. Their responsibility is to maintain the district as designed so it continues to serve all the landowners within its boundaries.

Zinnel said Boone County had received two letters opposing the project (attached), one from William Leibold and one from Dennis Cooper. Leibold felt that development in the district should be taken into account before any repairs are made and Cooper felt that the proposed repair was following design criteria

for municipal drainage. He favors using agricultural drainage criteria and the use of dual wall plastic pipe rather than reinforced concrete.

Rode said if the trustees wish he can request that the project be bid using either reinforced concrete or high performance polypropylene so the costs can be compared.

Behn asked if there was a consensus among those present. Should the trustees proceed with this repair or delay a decision and investigate other options such as improvements.

Leibold said if the main blockage is removed from the existing tile there are other, smaller blockages there as well. Unless the trees near the tile are removed blockages in the park will continue to be an issue.

Cooper said that since the mid-1980's he has spent \$80,000 in assessments in this district for various projects. He supports Kaltenhauser's proposal as Kaltenhauser has gone out and done some investigating on his own and procured a quote for the tiling.

Zinnel said the trustees need to follow the engineer's recommendations to avoid liability issues for the district.

Rode said that is why he will specify that quotes be made for both reinforced concrete and for high performance polypropylene. He believes the costs will be comparable. As an engineer his duty is to design a project that will last and he believes that concrete is the better material in the long term.

Behn asked Rode about the timing. If the trustees move forward tonight how long will the project take?

Rode said it could be completed this year.

Murken moved to accept the Engineer's Report on Joint Drainage District Boone #93B-Story #4 contingent on an opinion from Boone County's drainage attorney on the legality of abandoning the main tile within King's Terrace Mobile Home Park.

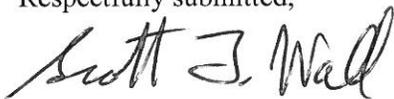
Olson asked if the motion included the alternate tile routing requested by Kaltenhauser or if it was specific to the original report. She did not feel comfortable voting in favor of anything including the alternate routing in light of the way it was presented to the trustees.

Behn said Rode's estimate indicated the alternate routing would be more expensive than the original proposal and should be excluded. He seconded Murken's motion specific to the report as originally submitted. Motion carried unanimously (MCU).

Olson moved, seconded by Behn, to direct the engineer to proceed with preparing final plans and specifications and bid documents for both reinforced concrete and high performance polypropylene for the re-routing of the main district tile along the south boundary of King's Terrace. MCU.

Zinnel moved, seconded by Olson, to adjourn. MCU. Meeting adjourned at 7:25 p.m.

Respectfully submitted,



Scott T. Wall

INFORMATIONAL MEETING
JOINT DRAINAGE DISTRICT BOONE 93B/ STORY 4
February 6, 2020 6:00P.M.
201 STATE ST. BOONE, IA 50036

PLEASE PRINT NAME	ADDRESS	OWNER/TENANT
Bill Leibold	12714 AVE	Owner
BRANT LEMER	5615 Lincoln Way	Owner
DENNY COOPER	2331 240 th St Ames	Owner
Nancy Tiefenthaler	1680 SE Delaware Ave Ankeny	Owner
Duane Tiefenthaler	1680 SE Delaware Ave Ankeny	owner
Bin Lin	311 W. P. St. AVE	Boone 24 Supervisor
Linda Murken	900-6th St. Nevada	
Lin Cho	900 6th ST - Nevada	
	201 STATE ST	ENGR.
Madal	1704 1 st St	Boone supervisor
JOHN CRANE	632 N. 500 th AVE.	AMES Owner
Kevin Berg	5339 Cervantes Dr	Ames
John McMahon	2366 230 th ST	Ames
Jane McMahon	" "	" "
Tom Aoy	2274 240 th St.	Ames

Joint Drainage District Meeting
Boone 93B/Story 4, Boone County Controlling
February 6th, 2020

The Board of Supervisors of Boone and Story Counties acting as Drainage District Trustees met in the Boardroom at the Boone County Courthouse to hear a presentation of the Engineer's Report on repairs to Joint Drainage District Boone 93B/Story 4, to hear landowner comments and to consider accepting the recommendations.

Present with Boone County Supervisors were Bill Zinnel, acting chair, Chad Behn, and Steve Duffy (arrived after prior obligation); Story County Supervisors present were Linda Murken, Lisa Heddens, and Lauris Olson; also present were Boone County Engineer Scott Kruse, Auditor Philippe Meier, and Drainage Clerk Katie Moran; Story County Drainage Clerk Scott Wall, Drainage Engineers Kent Rode and Tyler Conley from Bolton & Menk, Inc.; Landowners present attached.

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

Kent Rode handed out and presented the report explaining that there is two parts, the report and the plans. The report shows a route for a proposed tile, there was a request by a landowner to fix a blockage in the main tile running under the trailer court. The report recommends that tile be rerouted along the South edge of the property. The new tile will be 1,650' of 24", the original tile is 22" but that size is no longer available. The Code of Iowa allows the district to use the next larger available size. Lateral B will stay connected to the existing tile and the existing tile along Lincoln Way would remain and act as an outlet for lateral B. The portion between Lateral B and the new tile would be abandoned. This is a repair as the code allows to replace tile with similar sized tile, the next available size.

The Code requires that the trustees shall keep the facilities of the drainage districts in good repair. There was some discussion since the report was prepared for an alternate route. Kaltenhauser asked that the tile now run through the center of his land, following the "low" where surface water naturally flows. Rode distributed an additional cost estimate and map that showed the alternate route (on file). That estimate was about \$20,000 more than the cost of the original re-routing.

Lauris Olson asked about the timing of the report on the alternate tile routing. Rode explained that Behn called him and stated the request had been made a few weeks prior. Scott Kruse mentioned that Steve Kaltenhauser turned in his objection letter on January 30th, 2020 when having a discussion with him. Olson was concerned that the information wasn't presented before the time of the meeting. This was the first time any of the trustees had seen the estimate and map for an alternate routing of the tile.

Bill Leibold asked about a right-of-way under the trailer court, over the existing tile. He thought if this is the case, the trustee's should be able to dig up the problem and take fix it. Rode confirms that there is in fact a ROW but it isn't always known about. Leibold states that there

has always been a natural ditch behind the apartments that continues to be filled up. Rode states that it isn't a facility of the district therefore it is up to the landowner to maintain.

Leibold states that development is continuing and making drainage impossible. He states that the apartments have a sewage lagoon making this area wet and should be investigated.

Rode states that drainage districts were intended to drain agricultural land and it becomes an issue with urban and rural areas come together. The trailer park most likely didn't know the drainage district existed. He continues that there is always more development creating more run off and more need for drainage. There were no studies on improvements in this district with the report.

Rode states that today we are here to discuss the repair option and blockage to be taken care of by re-route.

Olson wants to ensure the trustee's are involved in the conversation. She is unhappy that the trustee's did not receive the alternate re-route information prior to the meeting. She states that she did not see the letter from Kaltenhauser either. Her question to Kent is about the blockage, her understanding was that this was blocked with a rock not tree roots. Rode confirms that there was a blockage with rock but it was on Lateral A, different from this blockage.

Behn explained that because it is difficult with joint trustee's to establish meeting times, he felt it was important to have any information on possible options available for this meeting. The alternate tile routing was suggested by the landowner who would be affected and who had asked for the repair initially and he felt the trustees should make every attempt to look into the alternate routing. He stressed again that this was the first time any of the trustees had seen this.

Olson asked for clarification on the difference between the two proposals. Rode responds by explaining that the original re-route option is just south of the property line and the second re-route is in the "low" area, path of surface water. Olson asks if anyone has talked to Kaltenhauser about his plans with the property, the consensus is no.

Linda Murken asked for clarification on the alternate route. Would it still be classified as a repair or would it be an improvement? Rode explains that the information that landowners are speaking on with the natural ditch or depression behind the apartment buildings follows the original re-route presented and the second re-route is something that could be reviewed at the meeting. The findings were more expensive and not likely to move forward.

Denny Cooper asks why the report specifies concrete pipe instead of plastic. Rode prefers concrete as it is self-supporting. The difference is that the concrete is reinforced within itself. Plastic relies on the soil surrounding it to receive more support, it is very dependent on the soil envelope around it. There can be alternate bids for either material.

Leibold is concerned about soil compaction with concrete pipe requiring semis for transportation/delivery and heavy equipment for installation. Rode states that there will be some compaction but construction will not affect as large an area as people might think and landowners can claim damages for reduced crop yields caused by compaction.

Cooper asked if there had been a cost analysis of repairing the blocked tile in the park. Rode responded that there had not.

Olson asked why no cost analysis had been done on repairing the original tile. Rode stated that there were ultimately too many obstacles.

Wall responded that at the initial meeting in which Rode had been instructed to proceed with the report the existing tile had been discussed and that Kaltenhauser had offered the land for the re-route. Wall said with the existing mature trees and their proximity to the mobile homes there was a safety issue with having to work in such a confined area. Rode said it would be a construction nightmare. Olson wonders with new information about trailers being moved is it worth going back to look at this. Murken wonders if trailers are being swapped out, a landowner states that even if the trailer is out, there would still be infrastructure to go around. Leibold questions the sewage lagoon backing up the tile. Kruse responds that the tile goes to the East of the mound, the mound system is no longer connected to the tile. Whatever comes out of the new system probably goes into the tile but it is now treated waste.

Murken asks, besides the cost difference what would be the advantage to spend 160,000 vs 140,000. Rode states that the advantages are with the 140,000 repair as the tile would allow for further development down the road, also it better provides for better existing drainage for whatever lies on the North side of the main. Rode states the portion to be abandoned is the diagonal portion. Zinnel asks if the district has any responsibility to the trailer court if they want the abandoned portion cleaned out later. Rode states that if abandoned it becomes private.

Olson asks the drainage clerks if there was any precedent for having Kaltenhauser pay the additional \$20,000 if he wants the alternate route to be used. Wall said he didn't know of a particular Code Section or a precedent but could not see any reason why that could not be done.

Tyler Conley states that the alternate re-route was asked for with the thought that it would be cheaper than the originally presented re-route. Olson asked what documentation Boone County had that Kaltenhauser had requested the alternate re- route to save money. Behn said he'd spoken to Denny Cooper and then Behn had called Kent. His intentions were simply to save time and not have to schedule a second meeting. Olson wanted to know if there was anything in writing that someone could find 20 years from now to see why this had been done the way it was.

Katie Moran read aloud a letter (attached) from Kaltenhauser dated January 30. Kaltenhauser had received a bid from Osborn Excavating for \$35,000 for 18" plastic tile in the middle of his field, stating it should be well under the \$50,000 amount requiring an engineer's report.

Behn asks what should be done about the letter. Lisa Heddens states that within the letter, Kaltenhauser states his opinion of cost is less than \$50,000. Olson isn't interested in pursuing as it seems the ideas may be unsubstantiated. Zinnel states that he thinks the idea was to shortcut the engineer's specifications.

Landowners have concerns about other issues and blockages within the district. Kruse states that there have been jetting companies in the area to clean the tile several times in the past. Every time they reach a certain point in the tile where there is a large tree root or something that blocks over 50% of the tile and is too large to remove by jetting.

Murken asks if the district abandons the original tile and the owners of the trailer park later request that the district repair the blockage can they force the trustees to clean it out. Is the district liable for any problems that the abandoned tile could cause within the trailer park? Rode believes that with the water going around the trailer park, the drainage in the area should be improved.

A landowner asked if there are intakes in the trailer court. He states that the trailer court should see no change in drainage as the water is going to be routed around. Kruse said there is an intake at the southwest corner of the park that acts as a relief so it doesn't blow the water out of the ground inside the trailer park. The new tile south of the trailer park will now go into the new tile without flooding the area. The trailer park should be much drier by doing this.

Brant Lemer states there is a project with the sale of 35 acres of land that will be closing in the next week and that land will potentially be developed and ground could be disturbed. Lemer wondered is that would affect drainage in this district and should it be considered as part of this project. Murken asked if the land in question was in Story County at the intersection of the Lincoln Highway and 500th Avenue. Lemer confirmed it was. Rode said he was not aware of any development but if it's in the city of Ames, the developer would have to meet retention guidelines. Lemer asks if the drainage district should have any responsibility of monitoring the situation.

Olson said that the land is currently not inside the city but because it is within the two mile fringe of Ames it must be developed in accordance with the City of Ames standards and requirements so it will meet them if it is annexed into the city. Murken states that it is not the trustee's place to speculate on what types of development may or may not occur in the future. Their responsibility is to maintain the district to its current standards.

Zinnel reads aloud two other letters from Denny Cooper and Bill Liebold. (On file)

Rode states that the alternate re-route was provided and if the trustees wish they can request that the project be bid using either concrete or plastic so the costs can be compared.

Behn asked if the landowners are ready to move forward with the repair, should the trustees proceed or delay a decision and investigate other options such as improvements.

Leibold states that if the main blockage is removed from the existing tile there are other, smaller blockages there as well. Zinnel states that unless the trees near the tile are removed blockages in the park will continue to be an issue, therefore going around is the best option.

Cooper states that since the mid-1980's he has spent \$80,000 in assessments in this district for various projects. He supports Kaltenhauser's approach as he has gone out and done some investigating on his own and procured a quote for the tiling. Zinnel states that the trustee's should go with engineering as the liability could fall back on them. Cooper is convinced that the plastic tile will last as long as the concrete. Rode states that he doesn't disagree, as long as the plastic is installed properly. He also states that plastic will most likely come out to costing very close to the same as concrete. Rode states that he will specify that quotes be made for both concrete and for plastic.

Behn asked Rode about the timing. If the trustees move forward tonight how long will the project take?

Rode said it could be completed this year.

Murken moved to accept the Engineer's Report as submitted with the exception of a bid alternate for both concrete and plastic as well as obtaining an attorney's opinion on that the tile can be abandoned in the trailer court. Behn seconded motion. MCU. Olson clarified if the motion included the alternate tile routing, she did not feel comfortable voting in favor of anything including the alternate routing as it was submitted late.

Murken moved to direct the engineer to proceed with preparing final plans and specifications and proceed with bid letting, Behn seconded motion. MCU.

Zinnel moved to adjourn meeting at 7:30p.m., Murken seconded motion. MCU.

January 30, 2020

TO: Trustees of Boone #93B-Story #4 Drainage District.

My name is Steve Kaltenheuser. I own the property where the proposed tile is to be placed. I strongly support the move to get this repair made. This plugged tile has been a problem for at least seven years. I have had a considerable loss of yield due to the flooding this has caused. I feel I have been patient waiting for this to be fixed, but frankly now I am getting sick of waiting and I want it fixed now.

I do not support the proposed route that Scott and I first talked about 2 years ago. I support laying the new tile – consisting of dual wall plastic 20' sections in a formed trench so it does not need to be bedded in rock. Using rock would cost a lot and would have a bad effect on the field from the compaction due to the rock trucks driving up and down my field.

The route that I support is pretty much in the middle of the field in the low ground, running straight east and west. This will reduce the price of the project big time. It should be well under your \$50,000 limit because there will be much less digging. This is not a big complicated project and should not be deemed as one. It is a simple 2300' run of 18" tile straight and not too deep. I sure hope you have not paid too much for engineering fees, because there really isn't anything to engineer. I will include with this letter a copy of an estimate that I gave to the trustees on 9/15/19. It is from Osborn Excavating, Newton, Iowa, for approximately \$35,000. This company recently did a large project for the city of Luther and I believe they are very satisfied. I have used this company for many years, and I have had no problems.

Thank-you very much for your time to hear this and let's get the job done.

Please feel free to call with any questions you may have. (515) 239-7477.



Steven Kaltenheuser

FILED
2020 JAN 30 PM 3:14
BOONE COUNTY IOWA

Osborn Excavating LLC
9301 E. 20th St. N., Newton, Iowa 50208
Phone: 641-521-0083

Bid to install 18-inch dual well tile (2300) feet installed. Starting East of 500th Ave. cutting through 500th Avenue continuing west to the South West corner of trailer court connecting to existing 18-inch tile. Also connecting another 8-inch tile and any other tiles to new 18 inch.

\$15,000 for digging
\$8.56 per foot for 18" tile
Based on 2300 feet at dig.

Kevin Osborn

09/15/19

Landowner Ordered to Pay for Damaged Drainage Tile

By Kitt Tovar | July 24, 2019



The case is *Countryman v. Lex*, No. 18-0970 (Iowa Ct. App. July 24, 2019).

On July 24, 2019, the Iowa Court of Appeals issued a [ruling](#) concerning damage done to drainage tile in Webster County. The court found the neighbor's trees damaged a farmland's drainage tile causing water to pool and damage the crops in the field. Therefore, the court found the neighbor liable for the damage and responsible for replacing the damaged tile.

Background

A trust owned a farm field which had tiling running beneath it. This drainage tile ran beneath the neighbor's land as well. Water flowed from the farmland down to the neighbor's land. The neighbor owned trees which grew over the tile lines. At some point, the roots of the trees damaged the tile line and prevented water from the trust's property from being carried from the property.

A trustee brought a lawsuit claiming a right to drain the land using the drainage tile beneath the neighbor's property. The lower court agreed and ordered the neighbor to replace the obstructed tile with new tile. The neighbor appealed.

Water Drainage in Iowa

Iowa law permits landowners to drain their land with open or covered drains and then discharge the water into any natural waterway. Iowa Code § 468.621. This law allows a dominant landowner the right to use a drainage system to carry water away from their land and to the land of a servient estate. *Cundiff v. Kopseiker*, 61 N.W.2d 443, 445 (Iowa 1952). However, this water cannot cause damage to the servient landowner's property. *Id.*

When determining drainage rights and obligations, the property at a higher elevation is considered the dominant estate and the property at a lower elevation is considered the servient estate. A dominant estate has a natural easement over the servient estate for water drainage. The servient estate may not obstruct the flow of water from the dominant estate.

Here, there was no question that the neighbor's land was at a lower elevation than the farmland. Additionally, evidence showed that the tile was completely blocked by the neighbor's tree roots and soil. The Court of Appeals affirmed the lower court's ruling and held the neighbor must pay for the replacement tiles.

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IN THE COURT OF APPEALS OF IOWA

No. 18-0979
Filed July 24, 2019
Amended July 25, 2019

**ROBERTA R. COUNTRYMAN, TRUSTEE OF THE RONALD W. WOODBURY
GENERATION SKIPPING TRUST,**
Plaintiff-Appellee,

vs.

CHARLES B. LEX,
Defendant-Appellant.

Appeal from the Iowa District Court for Webster County, William C. Ostlund,
Judge.

Charles B. Lex appeals from a district court order requiring him to replace
obstructed drainage tile located beneath his land preventing water from flowing off
a neighboring property and under his property. **AFFIRMED.**

Andrew B. Howie and James R. Hinchliff of Shindler, Anderson, Goplerud
& Weese, P.C., West Des Moines, for appellant.

James L. Kramer of Johnson, Kramer, Mulholland, Cochrane & Cochrane,
P.L.C., Fort Dodge, for appellee.

Heard by Vaitheswaran, P.J., and Tabor and Bower, JJ.

VAITHESWARAN, Presiding Judge.

This appeal arises from a dispute over obstructed drainage tile running beneath the ground from one landowner's farm field to a field of the neighboring landowner.

Plaintiff Roberta R. Countryman, trustee of the Ronald W. Woodbury Generation Skipping Trust, which owned one of the fields, sued Charles B. Lex, owner of the other field. Countryman alleged Lex "permitted trees . . . to grow over the private tile on his land with the result that the roots of the trees . . . entered and obstructed the private tile, preventing it from carrying drainage waters from [the trust's] land to the county tile." Countryman sought injunctive relief and damages for crop losses and diminished land value. Following trial, the district court ordered Lex to "replace the obstructed tile with new, 12-inch plastic, corrugated, non-porous tile." The court also found but did not award damages for crop losses. Lex appealed.

Lex contends the district court should not have found an easement "on subsurface tiling from the trust property onto [his] property." In his view, Countryman failed to prove an easement by: (1) express grant or reservation, (2) prescription, (3) necessity, or (4) implication. Countryman counters that the trust had a statutory and common law "right to drain its land via subsurface drainage tile across Lex's land to the county's main drain." Countryman implies the right arises independently of the four types of easements enumerated by Lex. We agree with Countryman.

Iowa Code section 468.621 (2017) authorizes "[o]wners of land" to "drain the land in the general course of natural drainage by constructing or reconstructing

open or covered drains, discharging the drains in any natural watercourse or depression so the water will be carried into some other natural watercourse." The provision has survived in largely the same form for more than a century. See, e.g., *Schlader v. Strever*, 138 N.W. 1105, 1107 (Iowa 1912) ("[P]rominence is to be given the recent statute, [Iowa] Code Supp. § 1989a53, which provides that owners of land may drain the same by the construction of open or covered drains discharging the same into any natural water course or into any natural depression whereby the water will be carried into some natural water course"); *Valentine v. Widman*, 135 N.W. 599, 600 (Iowa 1912) (quoting Iowa Code section 1989a53, which stated: "Owners of land may drain the same in the general course of natural drainage, by constructing open or covered drains, discharging the same into any natural water course, or into any natural depression, whereby the water will be carried into some natural water course"). As construed, the statute affords "[a]n upper landowner . . . the right to construct a drain in order to carry water from his land in its natural and usual course onto and over the land of another unless [the] quantity of water thrown upon the other's land is materially and unduly increased to his damage." *Cundiff v. Kopseiker*, 61 N.W.2d 443, 445 (Iowa 1953). The upper landowner or "dominant estate has the right to discharge water upon" the lower landowner or "servient estate whether such water is surface water or from a natural water course, either open or tiled." *Id.* at 446. In determining the dominant estate holder and the servient estate holder, the "general movement of flood waters is not determinative." *Downey v. Phelps*, 208 N.W. 499, 502 (Iowa 1926). Each is determined "largely by the elevations of the lands." *Id.*; see also *Moody v. Van Wechel*, 402 N.W.2d 752, 757 (Iowa 1987); Ctr. For Transp.

Research & Educ., Iowa State Univ., Iowa Drainage Law Manual 78 (2005), http://publications.iowa.gov/19966/1/IADOT_tr_497_Iowa_Drainage_Law_Manual_April_2005.pdf. These principles derive from the statute and opinions construing the statute as well as a common law easement for natural water courses. See *McKeon v. Brammer*, 29 N.W.2d 518, 527 (Iowa 1947) (discussing various types of common-law easements but stating, "In any event, [the predecessor to Iowa Code section 468.621] provides that owners of land 'may drain the same in the general course of natural drainage by constructing open or covered drains'" and "it seems that the rule under the statute now is that the upper proprietor may drain his land through natural watercourses in a way to increase the water that is to flow over the servient land, providing the increase is not too great or in such unnatural quantities 'as to be the cause of substantial injury'"); *Maben v. Olson*, 175 N.W. 512, 513 (Iowa 1919) ("[T]he right to drain into a natural water course is an easement appurtenant to the lands, and that all must take notice of the fact that the drainage may throw more water into that natural outlet.").

Applying the statute as construed, there is little dispute the trust property was at a higher elevation than Lex's property and the general course of natural drainage was from the southern portion of the trust property through the Lex property. A Webster County supervisor testified, "It was pretty obvious just standing at the road that there's a hill there." He noted the water "would have to go to the south" and, of necessity, cross Lex's property to the county drain. He stated there was "no way possible" the water could drain through an alternate drainage system to the north. One of the individuals who farmed the trust's land seconded this opinion. He testified the property was situated uphill from Lex's

farmland, and water could not drain to the north because “[t]he water won’t run uphill.” Even Lex agreed some of the trust’s land was at a higher elevation than his. Although he noted a portion of both properties were “at approximately the same level,” he did not seriously dispute the overall elevations.

Just as the land elevation was essentially undisputed, so too was the existence of a tile line beneath the properties. Countryman’s husband testified the clay tile had “been there for a long time” and preexisted the trust. Another witness pegged construction of the line to at least the 1970s, based on the clay composition of the tiles. Although Lex was unaware of the line when he obtained his land twenty-two years before trial, he confirmed its existence with the county engineer and referred to part of the line as “my tile.”

With those key facts established, the only remaining factual question was whether Lex obstructed the tile line to prevent the natural flow of water.

The general principle of law is ‘that the owner of the upper or dominant estate has a legal and natural easement in the lower or servient estate for the drainage of surface waters, that the natural flow or passage of the waters cannot be interrupted or prevented by the servient owner to the detriment or injury of the dominant proprietor . . . and that the owner of the dominant estate may cast an additional quantity of surface water upon the servient estate; if in so doing, he does not thereby do substantial damage to the servient estate.’

Ditch v. Hess, 212 N.W.2d 442, 448 (Iowa 1973) (citation omitted). Lex acknowledged his contract with the Conservation Reserve Program did not allow trees to grow on his property. He also confirmed the tile was “totally blocked by . . . tree roots . . . and soil.” He stated he had not “removed all of the trees” or “all of the roots.” The result of the obstruction was pooling of water on the trust’s field and damage to crops.

On our de novo review, we conclude Lex obstructed the natural waterway to the detriment of the trust. See *Moody*, 402 N.W.2d at 757 (“The flow may not be diverted by obstructions erected or caused by either estate holder. . . . When fences, as they sometimes do, become filled with debris or soil, whether carried by water or directly built up by tillage of the soil, or when the obstruction results from growth of trees or brush, they should be cleared.”); *McKeon*, 29 N.W.2d at 527 (concluding plaintiffs were entitled to have metal dam across a tile line removed); *Schlader*, 138 N.W. at 1107 (“[T]he drainage in question is along a natural waterway, and defendant cannot rightfully obstruct the flow and set the water back upon the land of the plaintiffs. The open ditch in which the tile was laid had existed from some more remote date, and afforded an outlet or means of escape for the drainage of both farms. Defendant has both filled this ditch and stopped the tile, thereby wholly preventing the flow from the dominant estate, except as the obstructed waters may arise and overspread the surface. There is no sound theory of law on which such action can be justified.”); *Sobotka v. Salamah*, No. 11-1634, 2013 WL 104794, at *4 (Iowa Ct. App. Jan. 9, 2013) (finding obstruction of the flow of water). We affirm the district court’s order for injunctive relief in the form of replacement of the tiles.

Anticipating a possible affirmance, Lex alternatively asks this court to “amend the district court’s ruling to order [Countryman] to be required to maintain said tiling, bear any future costs related thereto, including, but not limited to: maintenance, repair, assessment, taxation, or any other monetary consequence related thereto, pursuant to Iowa Code chapter 468.” The trust responds the issue

"is not properly before this court nor is it ripe for decision." We agree the issue was not raised or decided and resolution of the issue is premature.

AFFIRMED.

Dennis Cooper
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Ames, IA 50014 |
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Coopcorp68@gmail.com

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Drainage District Trustees of Boone and Story Counties, Iowa

Joint Drainage District Boone #93B-Story #4

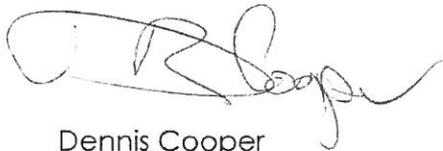
Letter of Objection,

In analyzing the tile repair design provided by Bolton & Menk, the first thing that caught my eye was the title "STORM SEWER PLAN AND PROFILE". Construction details of this plan follow a municipal design profile versus an agricultural drainage profile. If this is to be a repair of an existing drainage system, I would think agricultural drainage criteria should be followed. Therefore, I agree with rerouting the repair to the south of the proposal to a path closer to following the natural contour of the field. This should allow connecting directly to the existing main without two 90% directional changes as proposed. This southerly route will also move away from a couple of hills, doing away with a ~14 foot deep cut required in the original plan. The new route would add ~400 feet to the project.

As far as materials for the pipe, dual wall plastic pipe is a proven product with many benefits of preparation, construction time, cost, strength and durability exceeding properties of RCP as proposed. There would also be beneficial drainage provided by dual wall plastic.

Rerouting southerly would protect the repair from possible future encroachment of trees and construction from neighboring properties.

In lieu of rerouting, there is always the choice of repairing the original routing and assessing costs as per the Iowa Court of Appeals ruling of Countryman v. Lex. No. 18-0970, July 24, 2019.



Dennis Cooper

Philippe Meier

From: William LEIBOLD <billiebold@msn.com>
Sent: Thursday, January 30, 2020 10:52 AM
To: Boone County BOS
Subject: Water drainage District

I don't understand why we're still paying for this water drainage, when the topography this land has radically changed from when this agreement was drawn up. A farmer may not draining his field as fast as he once was because of all the businesses like the storage units the hotel apartment unit and the storage complex that you allowed to be built upon this delta type of floodplain. And furthermore throughout the year you'll see the county digging out rural ditches of the farmers residue and topsoil yet nothing is charged back to the land owners for not retaining any of that. No encouragement to put up a barrier because that would allow water to sit there on their land.

Sent from my Verizon, Samsung Galaxy smartphone

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BOONE COUNTY MISSOURI