

DRAINAGE DISTRICT MEETING  
DISTRICT GRANT #13  
MARCH 12, 2013

The Story County Drainage District Trustees met in the Public Meeting Room of the Story County Administration Building in Nevada, Iowa, to consider a proposed removal of brush and trees from the open ditch in Drainage District Grant #13. Members present were Rick Sanders, chair, Paul Toot, and Wayne Clinton. Also present for the county were Conservation Director Mike Cox, Vegetation Management Biologist Joe Kooiker, Vegetation Management Specialist Tyler Kelley, and Drainage Clerk Scott Wall. One private land owner attended as well as representatives from the Iowa Department of Transportation (IDOT) and the City of Ames (see attached).

Sanders called the meeting to order at 6:30 p.m.

Kooiker and Kelley gave a PowerPoint presentation on Story County's new program to maintain the open drainage district ditches in Story County. This entails removing all vegetation that impedes the flow of water and seeding the ditches with grasses to hold the banks in place. Kelley has been a part-time employee of the county for five years but will begin working full-time in July of this year specifically to maintain the open drainage ditches.

Sanders pointed out that most of the drainage district ditches in the county had not been cleared in 30 years or more and, in at least one case, had never been cleared or maintained. The goal of this new program is to bring all the open ditches back to their original capacity but this is a problem that has taken decades to develop and it won't be resolved in the first year or two. Kooiker and Kelley have been inventorying all the open ditches in Story County which is what led to this meeting.

Clinton said there has not been intentional neglect of the open ditches. Previous supervisors have relied on land owners in the drainage districts to bring problems to their attention. Typically the land owners have only done this when problems become too large to ignore and the resulting repairs are large and expensive. The goal of the maintenance program is to reach the point where future supervisors won't be faced with drainage district projects costing hundreds of thousands of dollars as has already happened in Story County.

Kelley said the current proposal in Grant #13 is to clean the trees and brush out of the stretch of open ditch between 265<sup>th</sup> Street and the Skunk River. This is the area with the largest trees and thickest growth. He and Kooiker believe they can take care of the ditch north of 265<sup>th</sup> with county equipment since the growth there is more sporadic. They put the project out for quotes last December and four contractors responded with estimates of \$12,500, \$14,000, \$17,250, and \$23,760 respectively.

Kelley said trees are a particular problem as they provide materials for beavers to build dams in the ditch. Trees growing inside the ditch itself are not as efficient as grasses at preventing erosion. The soil outside the tree's root ball tends to wash away creating holes in the ditch banks which leads to meandering of the waterway.

Potter asked for clarification on the scope of the work. The letter he received said 11,870 feet of ditch would be cleaned. Kelley confirmed that the quotes only covered the part of the ditch in Section 30. Wall said he'd written the letter and had not been aware that the contracted work did not cover the entire ditch. The error in the letter was his.

Sanders said that didn't mean the rest of the ditch would be left alone. He understood Kooiker and Kelley to have said they were going to clean the remaining trees and brush using county equipment. Kelley confirmed this.

Sanders asked if anyone present wanted to comment on the proposed project. Wall said the land owners need to be aware that the supervisors, acting as drainage district trustees, are responsible under the Code of Iowa for maintaining drainage districts in their original design capacity. The trustees cannot just ignore a problem once it is brought to their attention.

Sanders said there are a couple of options for landowners if they don't agree with the way the supervisors are managing the district. Land owners can become their own trustees or they can dissolve the district.

Martens, an area engineer for the IDOT, said Potter had contacted him about this meeting with concerns that Interstate 35 had severed the district when it was built in the 1960s and Potter's land could no longer access the open ditch. Martens looked at the as-built plans for the interstate this afternoon and there is no drainage from the west side of I-35 to the east side.

Sanders asked how the water was getting past the interstate. Martens replied that it was travelling south along the ditches and emptying into the Skunk River. Martens said he believed a reclassification was in order for Grant #13.

Potter said that is what he's observed on his land west of the interstate. Water that runs off his property, drains to a ditch on the west side of the interstate, and then runs south to the Skunk River. It cannot reach the drainage ditch on the east side of the interstate so the drainage district does not benefit his land.

Sanders said a reclassification has to be done by an engineer and two land holders who do not reside in the district. Wall said there are no guarantees a reclassification will create significant changes. It could reduce benefits on a specific property or raise them. It might eliminate some lands from the district and annex others. Unfortunately none of this can be known until the reclassification is complete and it is another expense for the district. Wall's understanding is that the reclassification would be paid for by the current owners under the original classification. This is according to Fox Engineering, a firm the county uses for its expertise in drainage districts.

Sanders asked what the costs of reclassification were. Wall said the only one we've done was in a joint district controlled by Boone County which has all the claims. The estimates were around \$50,000 so he would guess Grant #13, which is a much smaller district, would cost around \$25,000 to reclassify.

Sanders asked what the Code says about reclassification when the trustees are aware of a significant change (I-35) in a district. Is there something that says the trustees must reclassify. Wall responded that he was not up on that part of the Code but there are provisions about when reclassification should be considered.

Wall said Grant #13 was established in 1909 and the interstate was built in the 1960s. He'd looked through the district's records and there is no mention of the interstate. Obviously the district was aware of it since there is a benefit to ROW to the State of Iowa that is not in the original classification but there is no record of how that benefit was determined.

Toot said it would be appropriate to involve the County Attorney in this. When Grant #13 was established no one could anticipate that an Interstate Highway would cut it in half. It doesn't seem right to him that land owners who may have been severed from the district should share in the cost of reclassifying that district. The trustees need to do some research on this before making any financial decisions.

Clinton said in the Boone-Story district that was reclassified part of the issue was that Highway 30 had cut through the edge of the district. One land owner in particular believed his benefits had been adversely affected by the highway. Once the reclassification was completed there was little if any change to that person's benefit. That is not to say this would be the case for Grant #13 but it shows that the expense of reclassification is not always justified. Once a reclassification is done it is an additional expense on top of the maintenance that must be done. Clinton feels strongly that the push for reclassification should come from the residents of the district.

Potter said he would have expected the district to be reclassified as part of the I-35 construction. Sanders agreed but it appears that wasn't done. Potter said he fully supports drainage districts in Iowa but this project will not benefit his land or any other land west of the interstate and he doesn't believe he should have to help pay for it. He also doesn't believe he should have to pay for a reclassification that should have been done in the 1960s since he's only owned the land for 15 years.

Sanders said he did not disagree with Potter's position but the trustees are not the ones who make the decision about who has to pay for benefits or reclassifications. What the trustees can do is refer this issue to counsel to see what they can or must do. If reclassification is the only option then Potter will have to do what he feels is best for him. The circumstances in Grant #13 are unique enough that Sanders is not willing to make any decisions without more research into what the trustees' options are.

Toot concurred, saying there may need to be two drainage districts or the land west of the interstate may have to be taken out of drainage altogether.

Sanders asked Wall about abolishing drainage districts. Wall said dissolution of a drainage district requires a petition from a majority of the landowners controlling over 60% of the lands in the district. Once dissolved the district facilities would revert to the individual land owners whose property they cross. There are 19 landowners in Grant #13, four of which are governmental agencies. This is a no cost option for the district.

Toot asked how that would affect the landowners who still have access to the open ditch. Wall said the ditch would still be there but it would be up to the landowners to maintain the portion of the ditch on their property. The ditch is just over two miles in length.

Potter said he thought once the county gets the ditch cleaned it should be the responsibility of the adjacent landowners to walk their portion once a year with a chain saw and keep it clean. That would incur no cost to the district. The trustees didn't disagree but, under the Code, they can't pass that responsibility to the landowners. What happens in practice is some land owners keep the ditch clean and some don't but they all have to pay when the trustees clean the unmaintained portions.

Duvall said the City of Ames owns the land where the contracted work will be done. He does not want to see the district dissolved and supports the proposed cleanout. He asked if the project was only to remove the trees or if some of the erosion damage would be repaired as well.

Sanders said there is no dirt work involved in this project. The trees will be cut close to the ground and the stumps will be left in place and chemically treated to prevent regrowth. Kelley said any areas of bare dirt will be reseeded to prevent further erosion.

Potter said he thought it would be fair to charge only those properties on the east side of the interstate for maintenance of the ditch and to leave the land on the west side, which is not benefitting, out of it. Toot said that wasn't possible the way the Code is set up.

Sanders said he believes where this is headed is to refer it to the County Attorney who will research existing case law for similar situations.

Wall said a reclassification might take the lands west of the interstate out of the district. When he stated that reclassification costs are paid under the original classification that is what the trustees have been told by an engineer they work with on drainage matters. He didn't know that engineer's basis for the statement and an attorney may view the Code differently.

Duvall asked how the assessment works. There are two cost estimates for land owners available this evening, one for a \$15,000 levy and one for \$20,000. Wall said when a district is levied the amount is such that there is money left in the account for future repairs. This is so the district is not levied immediately after an initial levy if some small project comes up. For a district like Grant #13 we might levy to have \$1,500 left after the contract is finished. Also, the county intends to clean the north part of the ditch themselves and those costs would be assessed against the district in addition to the contract work.

Potter asked if the project went ahead and his bill is about \$1,600 would that be a lump sum or could he pay it in installments? Wall said there is a provision to spread payments over 10-20 years for any parcel assessed at more than \$100. The trustees set the term and the interest rate. The county's interest rate is currently 7% but land owners are welcome to seek a better rate.

Toot said he believes the trustees only recourse at this point is to consult with the County Attorney for an interpretation of what should be done and what options are available to the trustees under the Code.

Sanders asked Kooiker if he would let the companies that submitted quotes know that the project is on hold while the trustees seek more information. Kooiker said that would not be a problem.

Toot moved, seconded by Clinton, to refer this matter to the County Attorney's Office for an opinion and there would be no further action until the trustees hear back from the attorney. Motion carried unanimously (MCU).

Clinton moved, seconded by Toot, to adjourn. MCU. Meeting adjourned at 7:15 p.m.

Respectfully submitted,

Scott T. Wall