

DRAINAGE DISTRICT MEETING

DISTRICTS IN CITIES

MARCH 20, 2012

3/20/2012 - Minutes

1. CALL TO ORDER: 6:30 P.M.

Clinton opened the meeting at 6:30 p.m. He asked that those present introduce themselves and say which community they were representing. He stated this meeting was to hear any concerns and questions from those present prior to setting a date to transfer control of the districts under consideration. Those districts are Washington #59 and Ontario #63 in Ames, Union #38 in Cambridge, Palestine #24 and Huxley Extension #24 in Huxley, Washington-Palestine #28 in Kelley, Roland #50 in Roland, and Story City #53 and Lafayette #106 in Story City. The county has received letters (on file in the Auditor's Office) from several of the cities requesting more information which has led to this meeting. Members present were Wayne Clinton, Chair, Rick Sanders, and Paul Toot. Also present were Huxley Public Works Director Jeff Peterson and Neil Guess from Bolten & Menk, Inc., Jodi Meredith from the City of Kelley, Harold Hovick from the City of Roland, Ames City Engineer Tracy Warner, County Engineer Darren Moon, and Drainage Clerk Scott Wall.

2. Address Concerns And Questions Of Story County Cities To Which The Trustees Are Proposing To Transfer Control Of Drainage Districts Under Code Of Iowa Sections 468.322-326

Clinton asked Wall to give some background on how we've gotten to this point.

Wall summarized the Iowa Code Section allowing the drainage district trustees to transfer district control to cities which encompass 25% or more of a district. There are 9 districts in 6 cities under consideration out of 119 total districts in the county. Many of those also include land inside city limits but do not meet the 25% threshold. The county engineer's crews perform simple repairs and maintenance in drainage districts and it can cause questions from city residents when they see county employees working inside their city. The goal of the transfer of control is not to absolve the county of all duties with regard to the districts but to give the cities administrative control over what is already happening within their borders. The trustees would relinquish their role as would the county engineer but the Auditor would still maintain the district accounts and send out levy notices and the Treasurer would still collect the levy payments. We would also assist the cities with any questions they might have going forward.

Sanders interjected that he viewed this as a local control issue. The cities are more aware of what is going on inside their borders than the county so why shouldn't they have more say in the operation of these districts? This is a no-cost issue for the cities as they would levy the districts for the cost of maintenance and administration would be minimal as Wall will still perform most of his duties regardless of who controls the district. He referenced the situation in Story City where that community had tied storm sewer into the drainage tile and permitted housing construction near or on the tile without the county's knowledge. Wall added that the county relies on the residents of the districts to notify them of problems. In a city the people typically go to the city government and it is a city representative who ends up calling the county about problems with the tile.

Moon said cities like Ames and Story City are already working on the tiles and increasing their capacity in some cases which is, technically, illegal but not necessarily wrong. Particularly in Story City, the county has had to go in and remove trees from people's yards and that is a whole different issue from removing trees in the country. His department performs basic maintenance in drainage districts but he pointed out when the Code of Iowa refers to the engineer that is not him. It refers to an engineer hired by the district to perform whatever service the district requires as the trustees do now with Fox Engineering in Ames.

Clinton asked that the cities comment on their concerns alphabetically as they appear on the agenda. Ames has already sent a letter (on file in the Auditor's Office) concerning Ontario #63 stating why it does not meet the Code requirements for control by the city.

Warner said the letter from the Ames City Attorney addressed their concerns regarding Ontario #63. These concerns apply to Washington #59 as well. She asked what information the county was using to determine that Ames is using the district tile for drainage. Sanders said he didn't think there was any empirical evidence but since there is a tile system in place it must be draining something. Since the city has investigated Ontario #63 and has storm sewers in place to take care of moving water away why does there even need to be a district in place? Maybe the county should look into dissolving the district.

In response to a question from Moon Warner said the city had checked all of their storm sewer structures and could find no evidence that they were connected to the Ontario #63 tile. Moon pointed out that the Code reads, "the district's drain or drains are needed **or** being used by the city for storm sewer or drainage purposes", the key word being "or." The tile may not be linked to the storm sewer system but it is still helping to drain the land within the district.

Warner asked how the county could prove to the city that the tile was draining anything. If it hasn't been maintained and the tiles are butt joined they have probably filled up with silt and are no longer functioning. Sanders said he is questioning why this district still exists if the city storm sewers are taking care of the water. Maybe we should look into abolishing the district. Moon said any move to dissolve a district has to come from the residents of that district. It requires a petition from at least 51% of the land owners holding at least 60 of the lands in the district.

Wall said there was no reason the trustees couldn't initiate the petition. Any district in Ames could likely be eliminated without problems as Ames has a robust storm sewer system. This may not be the case in our smaller communities where the tile might even be the primary storm sewer.

Sanders said the fact that Ames is taking care of the Ontario area takes it off the list of priorities for him. Wall said some of these districts haven't been levied for as long as 50 years (note: Ontario #63 was last levied in 1949) which tells him they are not active districts.

Clinton said if there ever was an issue that came up in Ontario #63 would it be the city's problem because they are taking care of that area. Wall said as long as the county has jurisdiction over the district it would be up to the county to resolve any issues with the district tile. If there was an issue and we dug up the tile and found evidence it was hooked into Ames' storm sewer system we could then turn control over to Ames but it doesn't sound like we'd find anything like that.

Moon repeated that the Code says "storm sewer or drainage purposes." Wall said no one is saying the city is using the tile as storm sewer but that the residents of the district are benefitting from the presence of the district tile. It may be performing some of the duties of a storm sewer without being part of the storm sewer system. Sanders said since the city has checked into this he's ready to drop it and move on. If a problem does arise in the future the city is the first place he'll be going to for answers. Sanders said he was satisfied with leaving Ontario #63 alone and moving on to Washington #59.

Warner said the tile in Washington #59 enters the city from the southwest, runs under the airport, and ends in the Teagarden area. Again, the city has checked their storm sewer system in this area and they found one intake that may be tied into a tile but it appears to them that the district is relying on the Ames system rather than the city using the district tiles. Even the airport property is served by Ames storm sewers.

Sanders said he recalled there was an issue a year ago when someone was covering one of the tiles with dirt. Warner and Moon both said it was Rueters that was moving the dirt. Warner said Reuters was filling in a waterway and the city stopped them before the EPA or DNR could come in and fine them so they ended up doing some grading instead. Sanders said it was issues like these that he thought would lead the city to want to have more control over the district inside their borders.

Warner said a large portion of this district is in the county and the city doesn't want to be assessing county residents. She is taking this to the city council next Tuesday and they can direct her to take whatever action they see fit. Warner asked if there was an active assessment on Washington #59 as the last work she was aware of was in the 1980's. Wall said there was an assessment in 1986 and there are no active assessments.

Toot asked if this was the district the county wanted to turn over control of in the 80's and the city asked the county to wait. Wall replied that it was and it had been one our records as being under city control until that was questioned last year. He'd looked through the records and found no evidence of the county transferring control, only a letter from then Mayor Goodland requesting that control not be transferred until a project in that area was completed.

Sanders said wasn't this the ditch that runs between all the houses in the Teagarden area. Warner said no, the tile runs under the city's paved swale. The pavement is part of the city's storm city system.

Clinton said the county and city may never come to an agreement on what role the district plays vs. the storm sewer system. His position is that, if the district meets the requirements of the Code, he will vote to transfer control unless he can be convinced that such transfer would be an improper action. Warner said Steve Schainker wanted her to ask about an appeal process. Wall said he was not aware of any appeal process in this Code section. If the district meets the requirements the county can transfer control and the city "shall" accept control. Warner noted that came down to the county's opinion on the district vs. the city's opinion.

Sanders said he would like Warner to take this to her council meeting on March 27 and tell the city it is the drainage district trustee's intention to discuss and consider transferring Washington #59 to the city because 100% of the improvements and 67% of the area lie within the city limits and the trustees believe it is being used for drainage and they believe in local control wherever possible and get some sort of response from the city before the trustees set the date to transfer control because he would like to know where the City of Ames stands before the trustees make their final decision.

Toot said that final action has to be done by the board of supervisors per Code Section 468.323.

Warner asked if the city would receive written notification that the trustees would take no further action regarding Ontario #63. The city has written a letter regarding their position on Ontario #63 and their legal department will want to know if there will be a written response. Wall said he could write the letter. Sanders said he was satisfied with the situation in Ontario #63.

Toot said his concern was that the trustees would not be able to transfer control of any of these districts because they were unable to absolutely prove they are being used by the cities for drainage. You'll never know if the tiles are being used for storm sewer purposes unless you dig them up. Many of the homes in the Teagarden area were there before the city annexed the land and why wouldn't those homes have hooked up to the tile. Many of those homes still have septic systems and wells.

Warner said the storm sewer system was built with the streets. The homes that were already there were grandfathered in but the homes that were built after annexation are all served by the city storm sewer system. Sanders said we could argue all day about whether the district tile is being used for storm sewer purposes but if there is any water in the tile it is clearly being used for drainage purposes. Warner said she would let Steve Schainker know that one of the trustees would be contacting him.

Wall asked if the trustees intend to take any further action on Ontario #63. Clinton thought the final action on that would have to come with the meeting to transfer control of districts. Wall said he would not write a response to Ames on Ontario #63 at this time.

Peterson said his position was similar to that of Ames. He knows where the district tile lays along the old railroad right-of-way and the city has done work on the tile for the county because they've had problems getting the county to come down and take care of problems with the tile. Huxley has probably helped protect the district tile but their storm sewers are built to city standards and they do not utilize the district tile. He's hearing two different things from the county. One is that they don't want the responsibility and the other is they feel the city should have control. He doesn't see any benefit to the city from getting control of the district.

Sanders said it sounded to him like the city is already doing a lot of work on the district tile. If they have control they won't have to go through what they've gone through in the past trying to get someone else to come out and look at the tile, they can just go ahead and get it fixed. Peterson said he doesn't want to take responsibility for something when he doesn't know where it is or what condition it's in. These tiles are old and he doesn't have the time or the money or the equipment to try to take care of them. The city doesn't have jurisdiction, they haven't asked for it, they aren't tied into it, and they haven't asked to tie into it. It would just be an additional burden on Huxley at a time when they are cutting their budgets.

Sanders said he didn't see any cost to Huxley in having control of this district. They can levy the district for any work they do so the money comes from the residents of the district just as it does now. The only difference is who is making the decisions about how things are maintained. Wall said the downside is the funds might not be available until the district is levied depending on how much is in the fund. Sanders said the city could decide how much to keep in reserve in the fund to pay for repairs. Sanders said he doesn't have a problem making decisions about the district but it would be better if the city where the district lies was making those decisions.

Peterson said he doesn't have the staff time to pursue drainage district issues. It can take hours to locate the tiles and figure out if they are district or private. He'd be happy to see the district dissolved because Huxley doesn't use it and doesn't want it.

Sanders said he had questions about Huxley Extension #24 since it looked like it was an addition to Palestine #24 but it has been handled as a separate district. Wall said Palestine #24 starts west of Huxley, runs through the city, and empties outside the city to the east. Huxley Extension #24 is entirely within the city. The district maps show no tile in the extension but the written records indicate over 1,000' of tile. The records make it sound as if it was intended as an annexation to Palestine #24 but it has always been treated as a separate district.

Sanders said the county does not own nor has it ever owned the drainage districts and their tiles. Management of the districts falls to the county by default and, while he agrees with Huxley's concerns, they still know more about what is going on in Huxley than the county does. Peterson said he's the only one in Huxley who knows what these tiles are and where they are. When he retires no one will know what's going on with respect to the drainage district.

Moon said he'd found a request to his predecessor, Bob Sperry, from Huxley for repair of a district tile in 2003. Peterson said the county told them it was not a district tile so they dug it up and it was district tile. The city ended up taking care of the problem. Clinton said this was why we're having this discussion now. The situation Moon and Peterson are describing illustrates to him why the local government is in a better position to know what should be done.

Guess said there is a substantial amount of ag land east of Highway 69 that is served by this district. Huxley has no interest in this land and doesn't want to be responsible for repairing tile outside the city that serves property outside the city. In his view this is still an agricultural tile, not a municipal facility.

Sanders confirmed that this was Palestine #24 not Huxley #24. Guess said there were no documented improvements on Huxley #24 were there? Wall said when the supervisors were petitioned to create Huxley #24 the engineer who wrote the report, John Wells, detailed in his report how much tile would be necessary and where it should be placed by referencing existing streets. There are bills to the district for tile but, for whatever reason, no tile is shown on the map of the district. Wall said he wasn't comfortable with transferring control of Huxley #24 without transferring Palestine #24 as well since it relies on Palestine #24 and looks like it should have been an annexation to Palestine #24 rather than a separate district. Sanders said right now they are handled as separate districts.

Guess said he suggests Palestine #24 stay under county control. If the city people in the district object to being levied for drainage they can petition to dissolve the district. The city has no way to force dissolution of the district. As for Huxley #24 he wants to see proof that there is pipe in that district.

Peterson said when he started with the city there was a tile near Dairy Queen, the car wash, and the old Casey's that the county used to come out and repair. One day he called the county and they said they weren't going to repair that tile any longer because it wasn't a district tile. Huxley has taken that tile over and has put a lot of money into it to keep the peat pond it drains down.

Sanders asked what was involved in figuring out just what is Huxley Extension #24. Moon said you would have to hire a company to come out and locate the tile and probably videotape it to determine its condition. None of that work is inexpensive. That would be levied against the district. Sanders said we'd done that in Collins recently.

Clinton said the work in Collins was in response to a drainage problem. From the property owner's perspective he would have a hard time justifying the expense when there is no problem and we are just evaluating the tile.

Guess said in all these cases the district has a responsibility to provide all the information to the cities so the cities know what they are getting. Clinton said absolutely. He said a large part of the problem we are facing now is due to the cities growing into the drainage districts and adding storm sewer and building homes without the county being consulted so now no one is sure what is out there.

Sanders said the documentation is all public information and available to the cities. Wall said the letter he sent out about this meeting was just a starting point. Guess repeated that the city is not using Palestine #24 and it is and should remain an agricultural tile under county jurisdiction. Sanders said he was satisfied with the disposition of Palestine #24 but he still has questions about Huxley Extension #24. This whole discussion leads

to him wondering if Huxley is already maintaining district tile and we need more information before anything can be done about it. It is possible Huxley is spending money they could be recouping from the district.

Cambridge was absent from the meeting but Wall said he did get a call from the city when they received the letter about the meeting. They voluntarily took over another district in the city last year but are reluctant to have this one since it predominately drains ag land. That land is predominately within the city.

Meredith said the City of Kelley's main concern was that they lack the resources to maintain a drainage district. If there is a problem they don't have the staff to even know who to contact to get a problem addressed.

Moon had mentioned this concern prior to the meeting. Now he added that Kelley did install a large tile parallel to the district tile to alleviate issues the city has had recently with flooding.

Meredith said the old tile carries water from the agricultural land northwest of Kelley and the new tile was to take pressure off the district tile by taking the surface water in the city. Kelley has only one part-time maintenance worker who bills the city on an hourly basis.

Hovick said he was at the meeting to get information on what the transfer of control would mean for the City of Roland and to request the records for the district. The discussion has answered his questions and, the way he reads the Code, he believes Roland must accept control of Roland #50.

Sanders said he wanted to assure the City of Roland that the whole point of the transfer was to give them more control of their own drainage. Hovick said the city would probably maintain the tile at its expense and not levy the minority of citizens within the district's borders. Wall said that is what Cambridge has elected to do with the district they control.

Clinton said Story City #53 was the district that had triggered this whole discussion. Toot and Sanders commented that Story City has known this was coming for a long time as we've been in discussions with them several times over the last year.

Wall mentioned we may not be able to transfer control of all these districts at once. For instance, Palestine #24 has a negative balance and we cannot transfer control of it until it has been levied. Also, the cities need to get copies of the district records from us and have time to look them over before any transfer takes place.

Sanders said we absolutely need to set a date to transfer control and he likes Tuesday, April 24 during the regular Board of Supervisors meeting. Toot said whatever action is taken the Code gives a period of 30 -90 days after a resolution to transfer control for that transfer to take place.

Clinton asked if Wall would have enough time to get the drainage records copied for the cities before the 24th. Wall said it was just a matter of making photocopies of most of the records but some of the maps were quite large and we don't have any way to put them on one sheet of paper. Darren said the engineer's Office has a large format scanner but it may be too hard on some of our more fragile documents.

3. Consideration Of Setting A Date For The Meeting To Transfer Control

Sanders said he would like to see the information to the cities by the first week in April for the 5 districts he felt were up for consideration at this time. Wall asked which districts were under consideration. Sanders said Washington #59 in Ames, Union #38 in Cambridge, Roland #50 in Roland, and Story City #53 and Lafayette #106 in Story City. Wall felt that would be enough time. Toot said those were the districts he felt we could act on as well.

Sanders moved, seconded by Toot, to set April 24 at the regular Board of Supervisors meeting to consider the transfer of control for Drainage Districts Washington #59, Union #38, Roland #50, Story City #53, and Lafayette

