

**MINUTES OF THE INFORMATIONAL MEETING AND PUBLIC HEARING
FOR
DUCK CREEK ANNEXATION PETITION
January 18, 2017**

Al Kramer, Jr., President, introduced members of the Outagamie County Drainage Board present: Gerald VanderHeiden, Greg Nettekoven, Jason Van Eperen, Mike Van Asten,. Greg Baneck and Jeremy Freund from the Land Conservation Office and Nancy Christensen – Administrative Assistant, were also introduced.

An informational meeting was held at 7:00 p.m. Greg Baneck, Land Conservation Department (LCD) presented a power point presentation. He explained there are currently 8 drainage districts in Outagamie County. State Statute, Chapter 88 and ATCP Chapter 48 gives the drainage boards their powers. These regulations spell out what the Drainage Board needs to do when a petition is received for additional lands to be annexed into a drainage district. A copy of the power point presented is on file.

Legal ditches are maintained by the Drainage Board. The Drainage Board holds monthly meetings where property owners within a drainage district may attend and voice their concerns to the Board. An annual meeting is also held every year in each district where projects, completed and future, are discussed. The Board can levy a special assessment to the property owners to complete the work required. Currently, Duck Creek is assessed \$3.00 per acre for agricultural land and \$30.00 minimum for 10 acres or less. These funds stay within the Duck Creek district.

Duck Creek is unique due to the weir in Burma Swamp that was required by the U.S. Corps of Engineers approximately 20 years ago. The weir regulates the water level within the swamp. Basically everything (water) comes to Burma Swamp after the ditches are cleaned out to what they originally were, water will get there more efficiently. DNR will not allow the wetland to be impacted by adding water at a faster rate. An engineering study will need to be completed to determine what percentage of flow will need to by-pass Burma Swamp.

A map was projected on the screen. The green lines on the map showed existing drainage ditches. Again, a study would have to be done to see how to get the water to those ditches.

Questions from those in attendance:

Is the engineering study done before or after the annexation? *Response: Baneck - Basically the district needs to be formed prior to any work getting done. Existing Duck Creek District funds cannot be used. This is consistent with State Statutes.*

Who started the petition? And why wasn't this area included in the original creation of the district?

Response: Baneck – The district was created in 1928 and at that time it was pre-weir. It is unknown why the Northeast part wasn't included. The public hearing notice will be read in the Public Hearing session providing the petitioner information.

The area east of Ballard and to the south, we are on Kropp Road, both sides. The water comes down off of hill and through the culvert on Ballard Road and floods us out. Will this help us? *Response: Baneck – it may dry things out and help.*

Why isn't there area on the end of Kropp Road included in this annexation? *Response: Baneck/Freund - USGS maps, based on topo lines one way or another were used to create the boundry lines. The Board can make changes to the boundary lines proposed, which may happen after the study is completed, which will fine tune the drainage area based on more detailed elevation data.*

How many acres are you talking? *Response – approximately 5,310 acres*

How come the area further to the west where the water on Kropp Road to PP is not included in this district? *Response: Baneck – without knowing the elevations, if it could, it may be possible. However, this area currently does not flow into Duck Creek. It is actually a part of the Black Creek watershed.*

Are the lines shown on the map "hard" boundaries? *Response: Baneck – Basically if you own 20 acres but 14 are effected that area would be prorated.*

Are these designed to go through marshes or just through the high lands? *Response: Baneck - The red line is the boundary not the ditch.*

Your brochure says "Landowners who benefit from drainage must pay assessments to cover the cost of constructing maintaining and repairing district drains." Are you saying anyone in that district needs to pay and benefits? *Response: Baneck – Right, Basically, everyone in that district has water that goes in those ditches and goes downstream further affecting drainage within the District.*

How do we benefit? *Response: Baneck - If the water didn't drain away from your place, you could be impacted. The water coming from your property effects the person further downstream.*

How are the assessments made? In terms of; Where does my water go? What's the land area? What improvements? *Response: Freund – Part of the engineering is the study would determine that. If you are nearest the ditch and have tiles lines, you would be charged accordingly, based on a collective benefit. Those benefitting more pay a higher rate accordingly.*

I realize that, how is the assessment made based on the value assessed? *Response: Freund - It is based on how the land is used, if the land is tiled drained. The old Duck Creek District is assessed on a per acre rate or minimum charge. Kramer – It depends too on what work has to be done, what the future work needs to get done determines the cost, could be \$5/6 per acres. Baneck – Wetlands are not charged. If it is not agricultural, or is recreational property what is the rate? Whether it is agriculture or recreational land does not matter. If It is defined as mapped wetlands, it is not charged.*

If you are not charged for the wetlands, what's the purpose, aren't you trying to drain the land for more use? *Response: Baneck – They cannot drain Burma Swamp or other wetlands. They are trying to make the land more productive. Kramer – DNR will not let us drain it out, and will not let us create more.*

If you are going to put a ditch in, you cannot tell me the water won't drain out of the wetlands too. *Response: Kramer – They (DNR or US Corps of Engineers) may require us to put in a weir on the other side so a certain amount of water goes in or goes around. Trying to keep the water levels within the swamp stable.*

Baneck – In some of the other districts, if there is blockage within the district, the water table has come up but you are effecting the top 3 – 4 feet.

The Corps of Engineers won't let you drain the water because it's a filter. Baneck – The DNR is very particular, even what can be done with the spoils if you are working in hydraulic soils.

There are ditches there already, will you be putting in new ditches? *Response: Baneck – The blue lines are existing ditches within that area. Depending on what the engineering shows, it may be required to put in new ditches to connect. Most of these are ditches put in 30 – 40 years ago that have grown or silted in. It would help to maintain those.*

In the Burma, the road ditches are full of water, the woods are tipping over. If they don't clean out those ditches, what's the swamp going to be worth? There is water in there year round. When the main creek was dug out, it was supposed to be maintained and nothing was done. *Response: Baneck – When I came 14 years ago, there was little work being done by the Drainage Board. Now in most districts they have caught up to where they should be. The maintenance is where it should be and the assessments are coming down. The upper part needs work, between Krueger and Stingle the ditches are so deep that the trees don't interfere. But the corridor needs to be cleared.*

I have land in the swamp and the ditch from County Rd C, French Road and Mielke Road ends up in my woodland. If the ditch by the weir would be extended to the woods so it can drain. It's a mess down there.

Baneck – There is some corridor work in the stretch between Keuhn's and the swamp that needs to be completed. This should help.

Are we going to subsidize an engineering study first? If we can't get the drains, it doesn't pay to do it. *Response: Kramer – We need to create the district, do the engineering and if it doesn't work, the district would then be dissolved. We need to work with the DNR.*

The Information Meeting ended at 7:33 p.m.

PUBLIC HEARING

The Public Hearing was called to order at 7:34 p.m. on January 18, 2017.

The Notice of Public Hearing was read. The notice was published in the Appleton Post Crescent on December 30, 2016, January 7 and January 12, 2017.

Questions will not be addressed during the public hearing. Questions will be answered after the public hearing.

Greg Matuszak, N7143 County Road C, Seymour: owns woods, has a ditch on that property, will that ditch be used? *Based on what the study determines as to what is needed, existing ditches will be used if possible.*

Carol Schwister-Heminger, W1828 County Rd J, Freedom: How would the benefit be measured? We have properties on both sides of Kropp Road, western portion of the map. Why isn't the district being taken down to the corner of Kropp Road? *Dependent on the detail of the study, benefits may be assessed as a benefit to the individual resulting in a sliding scale assessment or as a whole where all property is assessed on a per acre charge/minimum charge. The study would also determine what area should be included in the drainage district, establishing proposed boundaries.*

Mark Wichman, N9782 County Rd EE, Appleton: We own property on Kropp Road. The water in the ditch on Kropp Road and Ballard Road goes through our hunting land and goes towards Black Creek. That water doesn't go to Duck Creek. *The exact drainage area will be determined as part of the study.*

Norm Steffens, W3990 Krueger Rd, Appleton: Would the district look at other options to move water to Doersch's to other districts? *The Drainage Board would consider other options dependent on the study's findings and limitations of DNR, if any. Currently this area is not within the Duck Creek District.*

Allyn Staley, N6053 French Rd, Seymour: Ditch ends in the woods and he would like to see the ditch extended on his property to get water out of swamp area. *The District cannot drain existing wetlands. If there is excessive water due to blockage, maintenance will help alleviate this.*

Dave Steffens, W4100 Stingle Rd, Seymour: Where does this actually derive from? If you do more research as to how the laterals effect everything, I think there is too much individual interest that is driving this forward and more research needs to be done for long term effects and what short term projects should be done before this actually is completed. *The study should help to clarify benefits.*

Per State Statute, Chapter 88.78: Annexation of benefited lands.

(1) Whenever any lands outside a drainage district are in fact receiving the benefits of any drain of such district but such fact was not evident or was inadvertently overlooked at the time of organization of the district, such benefited lands may be annexed under the procedure prescribed in this section.

(2) Any owner of land within the district may file with the board a petition to have the benefited lands annexed to the district and assessed benefits and assessed for costs as other lands in the district. The petition shall describe the benefited lands and how they are benefited. Upon the filing of the petition, the drainage district shall issue an order directing that the owners of the benefited lands be notified of the filing and the contents of the petition and requiring the owners to show cause at a fixed time and place, not less

than 20 days after the petition is filed, why their lands should not be brought into the district and assessed.

(3) Any owner of lands sought to be annexed may object to the petition at the hearing thereon. If the drainage board is satisfied that any or all of the lands are receiving benefits from any district drain, the drainage board shall so find in writing and shall issue an order requiring that the benefited lands be made a part of the district.

(4) The board shall assess benefits and assess for costs and award damages to each tract of the annexed lands.

A petition was received from Harlan Volkman, N5171 County Rd EE, Seymour. His property is within the existing Duck Creek Drainage District.

Eric DeBruin, W3625 Mielke Rd, Seymour: If what I heard in the informational portion, that nothing has not been maintained for the last 40 years, why are we annexing a bunch of people and properties that have not been maintained in the original areas that should be maintained to study to get the stuff done as originally affected. *District maintenance has been very active in recent years.*

Scott Schumacher, W2489 Ranch Rd, Seymour: If you are planning to annex this to Duck Creek area in order to get funding to research to see if it's possible, why can't you do a one-time funding and get Corps of Engineers involved prior to study and research prior to annexing? This seems extreme to bring it in and start collecting fees and then dissolving it would be slim if they are getting money from it. That doesn't make sense to bring it in if it's not going to be effective at all to begin with.

Per DATCP guidelines 6/10/2016: Following the process in s. 88.78, Wis. Stats., the board should arrive at a point of issuing an order to annex benefited lands. Next, the board should assess benefits and assess for costs and award damages to each tract of the annexed lands.

The board does not have to levy a cost assessment for the full cost related to annexation. Or to put it another way, the board can levy cost assessments in stages to pay for the costs related to annexing lands into the district. For example, maybe the board's first assessment to the larger district would cover costs related to public notices and hearings, attorney fees, and engineering fees (to assess benefits and costs to annexed lands). Perhaps a later assessment would pay for costs related to further engineering work, updated district specifications (ATCP 48.20 and 48.21), additional attorney fees, filing to DATCP a construction project and drainage alteration application (ATCP 48.34), and construction costs.

Mike Holz, N5449 County Rd PP, Black Creek: The financing seems all backwards you should have a plan first before you have a large mass out-going of money or work. Show a plan that is feasible, northwest, south which way can the water go. Get a simple, precise plan, what is going to work. Which way is the water going, then go forward. *Similar to previous answer.*

Jerry Steffens, N5331 Mullen Rd, Seymour: The old system hasn't been taken care. The old district needs to be taken care of first before we add more, the swamp area. How can you bring in new stuff in when you can't take care of the old. *Existing Duck Creek maintenance is on schedule and continues annually as needed. The comment about lacking maintenance during the presentation referred to a period of time previous to the recent district board.*

Josh Konkle, N5575 Mullen Road, Seymour: I'm concern about the long term effect. I don't know a whole lot about the swamp. What's going to happen to his property? On north end and west end of property drainage runs through, is anything going to happen to that. *The study will take impacts into consideration before making recommendations.*

Michael Garvey, W4107 Kropp Rd, Black Creek: What can the Drainage Board do that our town's can't do? If our towns don't have the authority or funds to clean out a ditch, because of cattails, how can you over come that? *Towns are responsible for maintenance and construction of ditches within the town road right of way. They do not have jurisdiction to do construction/work on private property. WI § 88 gives the Drainage Board the authority to enter drainage district corridors to perform maintenance and construction work to maintain the legal drains as approved on private property.*

Shawn Schumacher, W4154 Kropp Rd, Seymour: How much can you get done with the \$3.00 assessed at \$15,000 per year. You said it would be \$15 to \$20,000 for the study/engineering. How are you going to take care of this in 5 to 10 years. Would that money be better spent by the town? *Towns cannot perform work on private lands. Assessments would be applied directly toward drainage issues within the district.*

Evert Wendt, 805 W Bent Oak Lane, Appleton: I have dealt with the U.S. Corps of Engineers trying to put a driveway in. They know where the water comes from and how much. Why don't you start with them? *The Drainage Board must follow DATCP regulations. ATCP 48.36 Applying for approval specifically states the application shall include all of the required information, in detail commensurate with the proposed action. The US Army Corps of Engineers and WI DNR will both be part of the study.*

Al Kramer: The Informational and the Public Hearing is for you to ask questions and get information. We are not answering the questions tonight. We will go through the questions and get answers.

Eric DeBruin: I would to thank you guys for having this and for trying to fix the significant problems that we are seeing and on whether it's already been cleaned out and done some things to this so far. (applause)

Brad Johnson, N6587 County Rd C, Seymour: As you stated there is a big engineering effort up front, we have limited dollars as pointed out earlier. You will not make significant progress in a short amount of time. This is going to be a half century before we seen any long-term benefits. I'm not quite sure I see this is a benefit to most of the people here. I want to see this is not to the benefit of a few. This needs to be the entire district and how things are prioritized. This will take a long time in coming. *If annexed, projects would be scheduled in stages based on available budgets. This would be determined by the level of assessment voted on at the annual meeting.*

Scott Schaumberg, W2489 Ranch Rd, Seymour: If an owner has a backhoe, can an owner clean out their own existing ditch if they have the equipment available and is there funding available for them? *ATCP 48.02 Assessing costs against lands in a drainage district. (3) ALLOCATING COST ASSESSMENTS. Except as provided under sub. (4), a county drainage board shall allocate cost assessments amount all of the parcels of land in a drainage district in proportion to the last confirmed assessment of benefits for each parcel. A county drainage board, when levying cost assessments, may allow a reasonable credit to a landowner who provides maintenance services or other "in kind" payments to the drainage district.*

President Kramer stated the Drainage Board meets every month the first Tuesday, at the Outagamie County Highway Department, 1313 Holland Road at 8:30 a.m. If you are in an existing district, you can get on the agenda and come and discuss issues with the Board, or provide comments during the public participation portion of the meeting.. The Board works with the property owners, a lot of us have drainage ditches on our properties, we are farmers and such.

Question from the floor - How are Board members selected? *The Drainage Board is appointed by the Circuit Court Judge – Branch #1. We work with Land Conservation and DATCP. Everything we do is approved by DATCP. Wisconsin State Statute, Chapter 88.17, Appointment and organization of drainage board. In part, (2h) The court shall*

appoint drainage board members from among persons recommended by any of the following: (a) the committee on agriculture and extension education created under s 59.56 (3)(b), which shall recommend at least 3 persons for each position to be filled. (b) At least 3 landowners owning property in a drainage district that is subject to the jurisdiction of the drainage board. (2p) In appointing members, the court shall attempt to assure that at least one of the members serving on the drainage board at the any time is an experienced farmer who is familiar with drainage and that another of the members is familiar to some extent with drainage engineering.

Duane Gorges, N7066 French Rd, Seymour: How do individuals get charged? Do we pay for ours plus the others? Do my cost of the drainage ditch get put in with the others. That wouldn't seem right unless you include everybody. *District dues are used collectively within the district for maintenance. Establishing what ditches are used will be dependent on the study's findings.*

It was pointed out that the Drainage Board member's phone #s were on the projected screen in front.

The public hearing was closed at 7:52 p.m. The Board will hold the public hearing open for written comments for 30 days from today.

Ken Tlmm, W3016 Blohm Road, Seymour, (Written slip): I own some land on Kropp Road by Highway C. An existing ditch goes across the field, water stays in there year around. It can't drain unless the ditches downstream are cleaned. *The annexation would allow for work to be performed in the District that would likely help address this issued.*

Respectfully submitted,

Nancy J. Christensen
Administrative Assistant