

RACINE COUNTY BOARD OF DRAINAGE COMMISSIONERS

c/o Knuteson, Hinkston & Rosenberg, S.C.

500 College Avenue

Racine, WI 53403

(262) 633-2000

Alan Jasperson, Chairman (262) 721-5162

Russell Weis, Member (262) 534-2884

John Vyvyan, Sec., Treasurer (262) 939-1956

Greg Foat, Member (262) 210-4845

Matthew Rowntree, Member (262) 492-2943

Legal Counsel, Atty. Mark R. Hinkston

March 29, 2022

Date: March 29, 2022

Time: 9:00 a.m.

Place: Racine County Office Building, Ives Groves
14200 Washington Ave
Sturtevant, WI 53177

Agreement negotiations Yorkville/Raymond with the Villages of Yorkville, Raymond, and Union Grove

The meeting commenced at 9:15 a.m.

Commissioners in attendance: Alan Jasperson, Russell Weis, John Vyvyan, and Greg Foat. Matthew Rowntree is excused.

Other in attendance: Michael McKinney, Village of Yorkville, Doug Nelson, Village of Yorkville, Steve Nelson, Village of Yorkville, Doug Schwartz, Village of Raymond, Attorney Jane Landretti and Attorney Vanessa Wishart from Stafford Rosenbaum, Attorney Mark R. Hinkston from Knuteson, Hinkston & Rosenberg, Engineer Mark Madsen from Nielsen Madsen and Barber, and Carolynn Frazer, recorder.

Commissioner Jasperson started with an opening statement thanking all in attendance. Steve Wicklund from the Village of Union Grove called after the meeting commenced, returning Commissioner Jasperson's message to him, and stated that a representative from the Village of Union Grove shall not be in attendance based on correspondence sent by their attorney. The Village of Union Grove assumed the letter meant the meeting would be canceled which was not the case. Steve Wicklund and Richard Piette shall be copied on all future correspondence regarding negotiation discussions due to Mike Hawes resignation as Administrator of the Village of Union Grove.

Commissioner Jasperson continued his opening statement regarding opening discussions and finding common ground with the municipalities within and outside of the drainage district by discussing and understanding all viewpoints. Racine County Board of Drainage Commissioner (RCBDC) wants to work together to find a simple methodology to minimize administrative, legal, and engineering costs in order to optimize the resources for cleaning the infrastructure. All can agree that the RCBDC's role is to ensure adequate drainage across lands in the district and

entertaining the statutory responsibility to undertake work to fulfil that purpose. We can agree that runoff and other discharges from non-agricultural land creates additional costs. The developments generally amount to a greater discharge amount which creates greater costs when compared to agricultural discharges. There has been some discussion of assessing villages outside of the district based on benefits the district provides to it or whether the village should be charged for the district's costs attributable to that Village. If the Village of Union Grove believes there is a meaningful difference between those two perspectives, and the RCBDC is open to listening and understanding that perspective.

The infrastructure, construction, and maintenance is expensive whether it is considered a benefit to the Village or as a cost to the district, and a continuing cost/benefit as it must be maintained. The dischargers and the drainage district are allowed cooperate to come up with a simple methodology to replace a complicated methodology. Every discharger at the meeting has constituents that have benefited historically from using the above approach. The RCBDC is hopeful that by coming together to share a perspective we can continue to find common ground through a cooperative approach. Commissioner Jaspersen asked to have a full open discussion here and leave nothing on the table. RCBDC wants to work all things out at the table instead of in Court.

If no agreement is reached, we will simply do an assessment on the drainage districts and send an invoice to those receiving a benefit outside of the district.

Attorney Jane Landretti from Stafford Rosenbaum's office agrees about coming to an agreement. Otherwise the district gets to set the terms if an agreement cannot be reached.

Steve Nelson asked about the current split (40-40-20) is reasonable. Attorney Jane Landretti stated that if the plan proposed by the district and is backed up by the engineers, the court is most likely to side with the district. Steve Nelson stated that negotiating the terms will result in a better agreement rather than going to Court.

Attorney Vanessa Wishart brought up the separate statute that Union Grove is focusing on, Wis. Stat. §88.64. It is assumed that Union Grove is not getting the full picture. Union Grove's presence would have been beneficial to understand its perceived difference. The analysis remains the same regardless of semantics. Benefits received equal costs incurred by the district.

Doug Nelson stated that his experience is best to meet one on one with representatives of Union Grove instead of meeting in a big group. Doug Nelson stated that an informal discussion with Steve Wicklund would be better as the majority of the staff/board members in the Village of Union Grove administration is relatively new.

Commissioner Jaspersen read in an email from Attorney Mark Hinkston into the record regarding the growth of Union Grove regarding the Canopy Hill development. The development is on the Village's North side and would boost the population by approximately 20% or 1000 people and would add approximately \$100,000,000.00 to the community's tax base. Bringing the population to approximately 5,960. The village budgeted \$20,000.00 per the agreement for the 2022 tax year.

The drainage from the Canopy Hill drains to the underneath of the football field. Mike McKinney asked if the split incorporates the anticipated drainage from Canopy Hills. The engineers stated that the 40-40-20 split shall remain.

Per Mark Madsen, the outflow is averaged over a 10-year period. Once the new developments are completed, the averages go up as it increases runoff and sanitary. The development requires a new permit for the DNR and the RCBDC can get that document and then could redo the calculations. However, if the numbers increase substantially due to the completion of the developments, a reworking of the agreement may be required or a shorter duration of the Agreement may be required to review the numbers. Or separate agreements for each municipality due to rapid growth.

Commissioner Vyvyan asked Attorney Jane Landretti if RCBDC should have a separate assessment for the treatment plant as it is for the rest of the districts. Union Grove's treatment plant is combined with the sewage treatment plant instead of having separate assessments/agreements. The underlying premise comes from DATCP 48.04 for this situation. The same point is reiterated in Wis. Stat. §88.64 and the RCBDC can levy an assessment for any costs for enlarging or maintaining the drain due to increased water flow from a development upstream. RCBDC can hold a public hearing and levy an assessment. If contested, DATCP has to review the methodology and approve the report which would allow the assessment to proceed.

Union Grove needs to know that it will be primarily their cost to enlarge the ditch because they are increasing their output with the extra developments and growth.

Gary Kastenson is a landowner and a resident in the Village of Raymond. He stated that if it rains, there is no flooding but when the surge of water comes through from Union Grove, a few days later, there is a flooding. More water keeps coming in from the other developments in the community, Yorkville and Raymond included. There is flooding that lasts for 4-5 days which rots crops by then. The field tiles need to continue to work and the level in the river needs to be low enough to have an outlet. If there is no way to decrease the level, then the farmers lose their crop.

Michael McKinney from the Village of Yorkville asked about litigation for argument's sake. He asked who pays depending on who prevails. Generally, each party is responsible for their own legal fees. Michael McKinney asked about any precedent where a municipality challenged the methodology and prevailed. No cases were known of at that time. Michael McKinney also asked about the breakdown of the \$2,000,000.00 sought in addition to the amounts usually due under prior agreements of \$20,000-\$20,000-\$10,000. Once an agreement is reached, the numbers will be fully allocated.

Commissioner Jasperson asked about the bank balance of the Yorkville/Raymond Drainage district which was provided. The Village of Yorkville paid their amount due under the agreement and the Village of Raymond's payment was approved two weeks prior at their board meeting. The check was issued and mailed. No correspondence or funds have been received from Union Grove at this time. The RCBDC does not know if Union Grove will pay under the proposed one-year extension agreement circulated at the end of 2021.

Commissioner Jasperson asked Michael McKinney regarding a tiff or grant for the stormwater project. The Land Trust is really the only financing place available for getting a loan outside of a bank.

Commissioner Jasperson asked if the municipalities can do the borrowing? The RCBDC prefers that the individual municipalities doing the borrowing. If there is an agreement, the municipalities would have to do the borrowing as the RCBDC would not have any collateral. There is speculation regarding Union Grove's debt limit with all of the other loans it's been taking out for developments. The RCBDC does not care how the funds are paid.

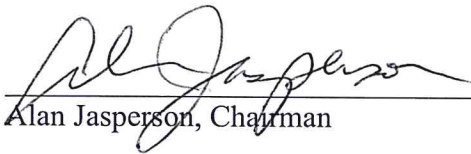
Michael McKinney also asked about the budgeted amount of \$1.8 million and the additional \$200,000.00 that was requested in the memo. The extra \$200,000.00 requested is for engineering and administrative costs associated with the maintenance required.

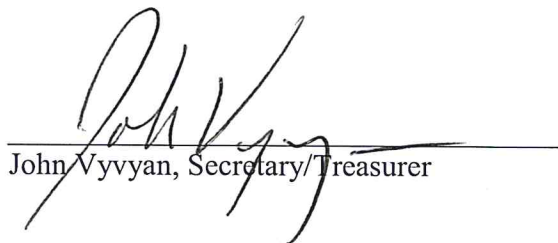
Attorneys Landretti and Wishart shall prepare a better explanation based on the minutes of today's meeting and material already sent and send to the Village of Union Grove and their public works director.

It was asked if the RCBDC is required to take the treatment water? Could the Village of Union Grove get tankers and haul it or pump it to the Des Plaines watershed side? The RCBDC can reject the runoff; however, the Village of Union Grove would need DNR approval and a different permit. The Village of Union Grove would need to be notified and provided an opportunity to redirect.

A motion to adjourn was made by Commissioner Vyvyan and seconded by Commissioner Foat. The motion passed unanimously and the meeting concluded at 10:32 am.

Dated: 6-9-2022


Alan Jasperson, Chairman


John Vyvyan, Secretary/Treasurer