

LARSEN DRAINAGE DISTRICT

Meeting Minutes

9:30 a.m. on Tuesday, March 14, 2017

Town of Clayton Meeting Room, 8348 County Road T, Larsen, WI 54947

I. Call to Order:

A. Notice Verification, Roll

1. Chairman Eckstein called the meeting to order at 9:30 a.m.
2. Roll

a. District Board

Chair Abe Eckstein	PRESENT
Secretary Jerry Peterson	PRESENT
David Sleik	PRESENT

b. Staff

Attorney Paul Kent	PRESENT
Town of Clayton Deputy Clerk Stevens	PRESENT
Joanne Sievert	ABSENT

II. Approval of Minutes:

- A. Approval of the Minutes of the Larsen Drainage District Meeting held on December 8, 2016.

MOTION:

Motion by David Sleik

Second by Jerry Peterson

Motion made to approve the minutes of the Larsen Drainage District Meeting held on December 8, 2016.

Motion carried with a 3-0 vote

III. Discussion with Attorney Paul Kent regarding the DNR Fine and Settlement

Attorney Kent addressed the Board and explained he had met with the Attorney General (A.G.) and after review of the complaint, they have reached a preliminary agreement pending approval of the Larsen Drainage District Board. Attorney Kent explained that because the drainage ditch which was dredged has a stream history, the DNR has grounds to base the complaint and the District should have acquired the proper permits before beginning any work.

Attorney Kent explained that there is currently a bill before the State Legislature which, if passed, will simplify the permitting requirements and make the process to obtain any required permits easier.

Attorney Kent then explained the preliminary agreement which he and the A.G. were able to agree upon. The terms included the following:

1. An archeological survey and review of the site and the impact the dredging has had which would need to be completed by May 1, 2017 or shortly thereafter depending upon the approval date and signing of the agreement.
2. Review of the work completed to ensure there is no erosion of the banks or adjacent areas and corrective measures if erosion is found.
3. Invasive species (i.e. buck thorn, barberry, etc.) monitoring and treatment for a period of four years
4. Additionally, the Larsen Drainage District would pay a fine assessed at \$10,000 within 30 days of the agreement.

Attorney Kent explained that these terms were essentially providing the District with a “General Permit” after-the-fact and would resolve any outstanding issues related to the dredging project.

Abe Eckstein stated he feels the DNR is overstepping their bounds because for more than 100 years the drainage has been maintained by the Larsen Drainage District. Additionally, the work that was done was completed according to the County Handbook regarding dredging and related work and the DNR should have no complaint. Mr. Eckstein also noted that the area was never of interest to the DNR until they renamed the waterway to be called the Arrowhead River and suddenly it became an important archeological area. Mr. Eckstein also noted the District had submitted a permit request to the DNR four years ago, but the DNR did not respond to the request.

Attorney Kent explained the area does have Native American ties and the renaming of the waterway did not trigger the classification.

Jerry Peterson asked for clarification of what is meant by “stream history.” Attorney Kent explained the region was examined through historic documents and descriptions, as well as any available photography, and it was determined that there is a navigable history for the area. Whether natural or artificially created, is inconsequential.

Dave Sleik noted that the construction of the Neenah Dam had the greatest influence on the area and if the Dam were to be opened up, the water table would drop up to 6½ feet, leaving what are now considered wetlands or streams, dry, and tillable. He questioned why the construction of the Dam should influence the history of the area.

Attorney Kent conceded that the Dam did in fact affect the area, but noted that the research used to determine the “stream history” started with the original government survey which was completed in 1832 and which clearly indicated the area as having a stream. He continued by clarifying that the use of this type of survey is standard practice and while the District Board can choose, to argue the point, it is likely to lose, based on the information included in the survey.

Dave Sleik expressed concern regarding the position the District will put itself into if they vote to concede to the settlement agreement. Attorney Kent explained the only concession the Board will be making is that the ditch / stream has a history as a waterway. The settlement will resolve all of the outstanding issues and complaints and the District would be able to put the issue behind them and move forward. Attorney Kent also noted that if the District chooses to fight the DNR’s complaint, it is likely to spend much more as a result of litigation than the settlement fines and stipulations will cost. He again assured the Board that any settlement agreement would completely resolve any and all issues relating to the project.

Dave Sleik made a motion to authorize Attorney Kent to negotiate and approve the proposed settlement agreement with the A.G. and the DNR.

It was questioned what will happen if five years from now, there are invasive species found along the ditch. Attorney Kent explained that as long as the District is compliant and meets the requirements of the agreement, what happens after the terms are fully met and completed is treated as completely separate issues. He added he will be able to provide a list of various contractors which the District Board can solicit bid requests from and subsequently hire to complete the stipulated terms.

It was noted and copies of historic photos were provided, showing the ditch was dredged in 1910, the 1930s, and again in the 1960s, and therefore the requirement of the archeological survey is not valid. Any artifacts would no longer be evident due to the extensive dredging history. Attorney Kent agreed and stated he would take that information with him and utilize it to minimize the requirement for the Archeological survey if possible.

Abe Eckstein again noted the application for a permit which was submitted four years ago and stated the DNR did not respond to the permit request. Attorney Kent reviewed the information and noted the DNR in fact, denied the permit and provided reasons. He stated that the permit request was denied rather than ignored and the project under complaint was not exempt from permitting due to any relation to the denial of the previous permit application.

Mr. Eckstein again asked for Attorney Kent's recommendation. Attorney Kent reviewed his recommendation stating the DNR and the Attorney General are willing to scale back the requirements, allowing the Larsen Drainage District to get a "General" permit instead of an "Individual" permit with the three stipulations noted earlier in the meeting. He also noted he would take the dredging history with him and discuss the elimination or minimization of the Archeological survey with the A.G.

David Sleik noted the erosion control and the invasive species management are actions the District should be implementing regardless of the settlement agreement. Those actions make them good stewards of the land and waterway and are part of the responsibility of the District. He then asked for confirmation from Attorney Kent that the General Permit will allow them to finish the project, as it has been stopped and left uncompleted since the action by the DNR came to light. Attorney Kent explained that the final phase of the project would not be covered under the settlement agreement and its related permit but would rather require application for a new permit, or the Board can choose to wait to see what happens with the proposed bill which is before the State Legislature and if passed, would likely eliminate or minimize the permit requirements for the final phase of the project.

Mr. Sleik also asked for clarification that the settlement would resolve ALL claims relating to the project. Attorney Kent assured the Board it would take care of the matter completely and he would add additional language to clearly clarify and confirm that fact. Mr. Sleik noted he feels the Board should cover the costs of the settlement as the Ecksteins were working in the best interest of the Board and should not be held personally liable for the lack of permitting and the resulting issues.

MOTION:

Motion by Dave Sleik

Second by Jerry Peterson

Motion to authorize Attorney Kent to negotiate the terms of the settlement agreement with the A.G. and the DNR including the discussion and possible negotiation to eliminate or minimize the archeological survey requirement based on the dredging history presented during the meeting.

Roll call Vote:

David Sleik Yes

Jerry Peterson Yes

Abe Eckstein No

Motion carried by a 2-1 vote.

David Sleik clarified that Attorney Kent will provide the Board with a list of contractors capable of completing the required work resulting from the agreement. Attorney Kent confirmed the request.

IV. Per Diem Pay for the Board to match the County Rate

The Board reviewed the current rate of \$40 for meetings up to four hours long and \$60 for meetings lasting more than four hours and considered an increase to match the current County rates of \$44 for meetings up to four hours long and \$66 for meetings lasting more than four hours.

MOTION:

Motion by Jerry Peterson

Second by David Sleik

Motion to increase the per diem rate for Board members to match the current rate of the County.

Motion carried by a 3-0 vote.

V. Larsen Drainage District Newsletter

David Sleik noted two errors he found in the newsletter. Town of Clayton Deputy Clerk confirmed use of the Town of Clayton Municipal Office address as the return address on the newsletter was acceptable.

VI. Payment for Services to the Town of Clayton for services in Joanne Sievert's absence.

MOTION:

Motion by Jerry Peterson

Second by David Sleik

Motion to pay the Town of Clayton for Clerk's services included record of the meeting and photo copies of documents for Attorney Kent.

Motion carried by a 3-0 vote.

VII. Adjournment:

MOTION:

Motion by David Sleik

Second by Jerry Peterson

Motion to adjourn at 10:55 a.m.

Motion carried by a 3-0 vote.

Respectfully submitted,

Holly Stevens, Deputy Clerk
Town of Clayton