

**St. Joseph County Drainage Board Meeting
March 6, 2023 – 4th floor Chambers - County-City Building**

St. Joseph County Drainage Board Public Hearing

BIRK MAIN TILE RECONSTRUCTION

(Audio Position 00:00:04)

The St. Joseph County Drainage Board Public Hearing was called to order by Mr. Thomas Schlarb at 8:29 a.m.

Thomas Schlarb: After investigating this matter further, we realized that this isn't a legal drain of ours. We have no jurisdiction over this project. This is a private entity and considered the Upper 2 Birk. They have their own board and president. It is a legal association recognized by the state. Therefore, at this point, the St. Joseph County Drainage Board is not responsible for this project. It would be up to the private association to take care of their project as usual.

Marcel Lebbin: It's a private drain association. We have no jurisdiction over the private drain association. If they're saying it needs repair, it's on the Association.

Mr. John Linn made a motion to adjourn the public hearing at 8:33 a.m. being seconded by Mr. Randall Matthys, and the motion was unanimously carried, 5-0.

St. Joseph County Drainage Board Meeting

The St. Joseph County Drainage Board Meeting was called to order by Mr. Thomas Schlarb at 8:34 a.m., with the following members present:

**Thomas Schlarb
Randall Matthys
John Summers
John Linn**

**Marcel Lebbin, Attorney
Robert L. Kruszynski Jr., Ex-Officio Member
Morgan Ealy, Administrative Assistant**

APPROVAL OF FEBRUARY 6, 2023, MINUTES

(Audio Position 00:04:49)

Mr. John Linn made a motion to approve the February 6, 2023, minutes, being seconded by Mr. Derek Dieter and carried unanimously, 5-0.

SURVEYORS REPORT

(Audio Position 00:05:07)

A. Payment to Contractors

Mr. John Summers made a motion to approve the February payment to contractors, being seconded by Mr. John Linn and carried unanimously, 5-0.

B. Change of Assessments

(Audio Position 00:05:48)

None.

PRIVILEGE OF THE FLOOR

(Audio Position 00:07:06)

Tom Fox (28910 CR 38): The property is my ownership in St. Joseph County. We are owners of that land and it has been in the family since 1952. Pertaining to the map and the showing of water drainage, my 80 acres wasn't using that outlet. We created the outlet that the farm had been using from 1952 to 2018. Then, I had construction of a patterned tile system added and we routed the water the traditional way which did not use that other outlet. We didn't even know that other outlet existed. We used the outlet that we had known of and continued to use that today. The issue of what this property is asking to repair at that ditch, we had the idea that the ditch, because it was a closed tile, was not part of the Birk 2 Ditch Association. We started this Birk 2 Ditch Association in 2011. At that point, the Association thought we were only responsible for open ditch. We were only assessing the people that were using that open ditch for the repairs that the open ditch needed. The question that came up is if this 18-inch is a closed tile, was considered part of the County ditch responsibility since it was enclosed in approximately 1884? Up until that point, it was an open ditch. The thought that is going through our mind is, who is responsible if it's a closed tile, does it count under the St. Joseph County Drainage Board? If so, if that tile that they're asking for the repair to decided not to make the costly repair and to sever the ditch and closed tile ditch at that property line that is shown there, then the rest of the watershed above it would have to accept a different outlet and the rest of the acres of watershed there is a 60 and an 80 acres of which has been owned by the same family and was handed down to inheritance. They have an outlet and 50% of their current water on those acreages was outletting to the Billman and not to Birk. The Billman, if you look at your map, will show that the Billman is actually much closer to their outlet and it would just be a very valuable situation if those two parcels did not want to help in cost sharing of the private tile that enters the Mason Farm if there was no cost sharing wanting to be shared, why wouldn't it be acceptable for the Drainage Board to say in that tile at the property line and let those sharing use their closed water outlet that 50% of their acreage is already draining to, and that would be the Billman. It's a question as to who wants the expense and who doesn't want the expense the cost of maintaining or repairing. It's been on the liability of the Mason family for the last 60 years and they've had to share all the costs of all the repairs and there have been 30 or 40 major repairs to the deep tile that's 8 feet down.

Thomas Schlarb: Why didn't your association help take care of them?

Tom Fox: The situation was the Association wasn't started until 2011. Before that period of time, we didn't understand that the closed tile was part of your responsibility as the St. Joseph County Drainage Board. That wasn't determined. Now that it's determined that it is an 18-inch and that it was put in since 1884, it should have been part of because it was an open ditch in St. Joseph County until they closed it down in 2018. I guess what I'm asking is can the County Drainage Board give permission to the Mason family to end that terminal tile at their property line so that they only have to maintain and repair what runs through their acreage to the Birk Ditch. The other two landowners that did not respond to the description of repair, let them

maintain their waterflow to the closer access which is the Billman which is more than 50% of their acreage already uses for their outlet.

Marcel Lebbin: The Birk is a private association.

Tom Fox: The Birk was not a private association until 2011.

Marcel Lebbin: Right now, it is. You're asking the Board, which has no jurisdiction over the Birk, to give the Mason family permission or not permission to do something, but we don't have any jurisdiction over the Mason drains anymore. It's the Association that has the jurisdiction. If the Association would like to take over the Mason's tile, they can do that. If they don't and it's on the Masons, that's fine. That's a conversation between the Association and the property owners because it has all been handed over. I don't have enough information to tell you if Mr. Mason's tile is private or not. Just because it was an open ditch doesn't necessarily mean it was the County. I don't have the maps for the information. We both know as far as going to the Bellman or the Birk, that's a topography issue as much as it is a proximity issue. There's a lot of factors that come into play. Who put the tile in and what it was meant to drain and who did it originally, I don't know as I don't have the information. What I can tell you is from our perspective right now that was handed over decades ago and it is on the Association and Mr. Mason to figure out. We don't have any jurisdiction over it anymore since the Birk was taken over by the private association.

Tom Fox: In your estimation as the St. Joseph County Drainage Board, this reverts to the Association and the Association can vote and make a decision whether that closed tile can be cut off at that property line so that the Mason family would be the only family to use it?

Marcel Lebbin: I don't know if it was part of the Association or if it's private right now. Like I said, I don't have enough information. What I do know is that the Association can't haphazardly make decisions on what can be closed and what can't be closed. You guys have the responsibility to make sure that all the land drains as it has been draining so it drains properly. Whatever decisions you guys make, you need to make sure that all the property owners around are draining properly. If you close something and it messes something up that you guys are responsible for, then you're liable. You guys have your own attorney. You can talk to him about that and you can sort it.

Tom Fox: The thought is that we run an estimation that that was a closed tile grandfathered in.

Marcel Lebbin: What do you mean grandfathered in? When you took over the ditch, you took over all the laterals.

Tom Fox: Before 1884, it was an open ditch in St. Joseph County. If it was closed...

Marcel Lebbin: It doesn't matter. When the Association took over the ditch, that includes all the laterals and closed ditches. Closed tile is part of the drainage system just like open ditches. Closed or open, it makes no difference. Closed or open doesn't necessarily mean that it's private or public either. There are farmers that have drainage tile that they installed and put in to drain

their land and it's all private. The County also does it if necessary to assist some ditches. Once again, it's a question between the Association and Mr. Mason.

Tom Fox: We're trying to figure a way to either get some cost sharing into that closed ditch or find a way that responsibility is only on the back of the Masons for all the damages they've had to incur on this for the last sixty years.

Marcel Lebbin: I read the letter and part of the question is what all drains into that tile system. You have your own attorney and he set up the private association for you guys. He can walk you through some of the historical stuff and figure out what the Association is and is not liable for and how much actually drains into there.

Tom Fox: When the Association was set up, it was set up to handle the Birk 2 open ditch.

Marcel Lebbin: You took all of the laterals, open and closed. The drainage systems do not just comprise of open. You have open and closed.

Tom Fox: So, it becomes part of the Association.

Marcel Lebbin: The County is not liable for one small, closed lateral when you took the rest of the system. If you took the system...yes, it's the Association's or it's Mr. Mason's. Once again, I don't have enough information to tell you if it's private or the Association. I don't know.

Tom Fox: His least cost route would be to use a shallower, smaller diameter tile to handle his property.

Marcel Lebbin: That is once again not this Board's...

Tom Fox: If it's a private tile then it isn't your responsibility. Is that what you're saying?

Marcel Lebbin: If it's Association tile, it's not our responsibility. If it's private or part of the Association, I don't know.

Tom Fox: So, you have a meeting and let all their participants that had water going into that Association have a decision...

Marcel Lebbin: Specifically, those folks that are draining into that tile system.

Robert Kruszynski: As Mr. Lebbin said earlier, the key is, whatever you do, you don't want to damage anybody else that's feeding into that. You don't want to cause problems to the others.

Tom Fox: The problem has been caused. It's never been shared.

Marcel Lebbin: The Association has the mechanism to share it.

Tom Fox: Since 2011.

Marcel Lebbin: You guys can hold a meeting, talk to your attorney, get the landowners involved.

Tom Fox: At least we know where to go.

John Linn: Isn't there an option too for them to petition the Drainage Board for us to take over all those drains?

Marcel Lebbin: They could petition for us to take back the Birk.

John Linn: It might not save you any money right now, but...

Thomas Schlarb: When it's brought up on specifications.

Marcel Lebbin: It has to be brought up to specifications.

John Linn: I was going to say it won't save you any money, but at least going forward after the improvements are there, it's clearly on the County Drainage Board to take care of it forever then.

Tom Fox: How do you determine if it's a private tile?

Marcel Lebbin: You're going to have to talk to the Association about that.

Thomas Schlarb: Jim would've paid the assessment on it, so therefore it's not privatized. It's an Association tile. The only assessment that comes to us is for you to run that tile into our main open ditch on the southside of Pierce Road in the outlet. That's where you're paying to run that tile into our legal ditch. That was the minimum. If Jim was paying assessment to your association, therefore it's not a private tile, it's a total Association tile.

Marcel Lebbin: In which case you can share the cost of repair and replacement.

Clyde Selby (12300 Osborne Road): I don't have much to add, but I'm in favor of it. It does cut through the corner of my property. When I bought the property, I did not know that. It opens the door for me on my property.

Thomas Schlarb: I think that would be a thing now to address with your Association how you want to proceed with this. We don't have any jurisdiction over that.

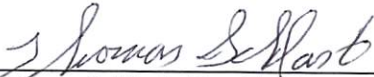
Clyde Selby: I just wanted to state that I'm in favor of what was proposed here.

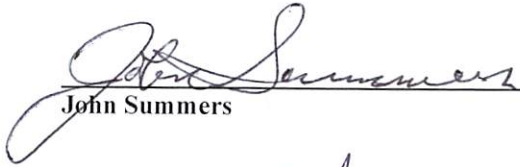
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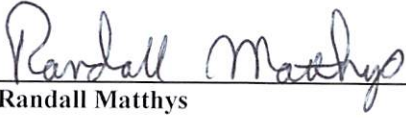
(Audio Position 00:25:16)

Mr. Randall Matthys made a motion to adjourn the meeting at 8:54 a.m. being seconded by Mr. John Summers, and the motion was unanimously carried, 5-0.

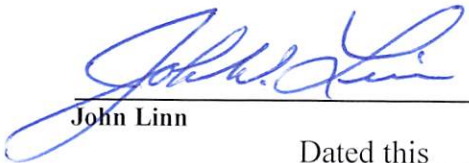
St. Joseph County Drainage Board


Thomas Schlarb, President


John Summers


Randall Matthys


Derek D. Dieter, County Commissioner


John Linn

Dated this _____ day of _____, _____.