

MINUTES
OUTAGAMIE COUNTY DRAINAGE BOARD MEETING
TUESDAY, SEPTEMBER 3, 2024

The meeting was called to order by President Kramer at 8:30 a.m.

Members present: Kramer, Nettekoven, Van Eperen, Van Asten, Vander Heiden

Others Present: Nancy Christensen, Administrative Assistant; Greg Baneck, OC Land Conservation; Justin Keen, Cedar Corporation; Al Timm, Town of Osborn; Harlan Volkman; Bob Fox; Alexa Wild, Matt Wild; J. Fred Husman; Randy Schmidt, Kyle Schmidt, Clark Schabo, Gary Weihing, Ben Schabo, Kevin Schabo, Jo Schmidt, Dale Hintz, Ron Gady, Ray Nelson, Wayne DeBruin, Robert Poch, Steve Frassetto, Ron Kemp, Chris Price, Bruce Fredricks, Greg Stingle, Randy Hooyman

Review and approval of the minutes August 6, 2024 of meeting. Van Asten moved, seconded by Vander Heiden to approved the minutes of July 2, 2024 as presented. Roll call: 5 aye. Motion carried.

Public participation/comments – none

Van Asten moved, seconded by Nettekoven to move New Business #1 on the Agenda at the beginning of the meeting. Roll call: 5 aye. Motion carried.

New Business - Request for variance of corridor setback – Vanderbroek Drainage District – 1439 Haen Drive, Matthew and Alexa Wild – Requesting a setback of 25 feet to place a chain link fence.

The applicants would like a variance setback of 25' to install a chain link fence to utilize their backyard to its fullest and protect their young children from the creek and those that walk by their house along with keeping their dogs in the yard. The chain link fence would allow the flow of water and wildlife. The setback, as it is, does not allow them to do anything with their back yard past the patio, rendering roughly 40% of the yard unusable. Discussion was held as to the existing setback violations of surrounding neighbors and the concerns of access to the drainage ditch for maintenance purposes. Board members will do an on-site visit of the lot and meet with the Wilds to discuss possible options. The Board will take action after a site visit is done and options are evaluated.

Land Conservation Department Report –

Greg Baneck, Land Conservation, reported on the following:

AOC funding Freedom District, Lateral 3 – Verhasel Rd and N – the archaeological study is done. EPA letters were forward to the Oneida Tribe who have 30 days to respond. The project has gone out for bids.

North Liberty lateral survey was complete. Working on design. Extension on EE - Volkman/Stephani extension is also being worked on

Met with John Schmidt on the lateral from Paltzer's to Hofacker's woods design. The ditch is deep but dry most of the year. Schmidt would like to see a grass waterway. Tile will be fixed and will remain private. Water way would be maintained and mowed. Recommends crossing be moved from the east field to west field closer to Hofacker's woods. Crossing would be a drive through, rock crossing. John Schmidt and Harland Volkman were in favor of the plan. The extension would be a new lateral and need to be approved through DATCP, requiring a public hearing. Baneck will have his staff start working on the design.

Cross sections are done from Freedom District Annexation (Main Ditch) "J" to Farrell. Need to review them, a public hearing is required prior to DATCP review.

President Kramer advised anyone wishing to speak at the Public Hearing has to sign the "Request to Speak" sheet.

Reports on Districts - Districts/Projects and work in progress reports

Vandenbroek District - Nettekoven reported Van Asten, Kramer and himself did a site visit on the tree removal site previously completed on JJ and Maloney. The weeds are not that bad but the brush is coming back and needs to be sprayed. Also wood chips need to be cleaned up. The chips can be moved down site.

Van Asten reported the grinding recently completed on Emery Lane looked good.

North Liberty – Survey done from Hooyman Road to the gate by Obermeier's. There is about a 1 ½ foot of sediment in the ditch.

9:00 A.M. - PUBLIC HEARING TO CONSIDER A CORRECTION TO THE CENTER VALLEY DRAINAGE DISTRICT MAP AND REVISED PLAN SPECIFICATIONS FOR LATERAL 1.

President Kramer read the Notice of Public Hearing. The notice was published August 12, 22, 30, 2024 in the Appleton Post Crescent.

President Kramer stated the District started in 1914 and was the 2nd district in the county. Districts were started to make sure everyone in the watershed had drainage. In the late 1970's the Drainage Board with a Court order to reset the culvert in Center Valley Road and put erosion control structure at the start of Lateral 1. Around 2000 State of Wisconsin required profiles and specifications for all legal drains. Outagamie County Drainage Board (OCDB) hired BT² to do that. When they mapped Lateral 1 it did not follow the contour of the land. In late 2023, OCDB received a notice from the State Drainage Engineer that Lateral 1 in Center Valley Drainage District was not in compliance and we should look at the alignment of the drain also. In July, 2024 we had a meeting property owners and the Board. It was decided to have Cedar Corporation survey and design the correct location of the lateral. There are copies here, everyone should have copies of this. This lateral starts, there is over 100 acres of land that drains into this lateral. The original marked map from BT was 2050 feet long and would take a 10' cut through a hill and would reck probably 4 acres of farmland. The new by Cedar Corp the drainage ditch would be about 1720 feet long and disrupt about 2 acres of land. The drainage Board has proposed this shorter option because it works with the lay of land and wouldn't cut through the original hill. The Drainage Board also a policy in place for any legal drains with violations in the lateral buffers is 10 times the acres of parcel. This has not been done on this parcel as yet.

President Kramer stated individuals wishing to speak needed state their name and address. Persons will be allowed 3 minutes to speak, uninterrupted. This is not a question and answer session. The Board has the right to ask a question to clarify something that is being said.

Ray Nelson, 4150 W Earthrock Road, Appleton – I have a copy of a letter of January 12, 2024 (*a copy of the letter is attached to the 9-3-24 minutes*) from Mr. Chapman, state drainage engineer. I'd like to read that letter he says that the lateral that we are referring to does not exist per state records per the letter he received. DATCP has reviewed the June 14, 2011 letter (*a copy of the letter is attached to the 9-3-24 minutes*) from the State Drainage Engineer to the Board Chair. In the letter, the State Engineer states that there is no evidence in the historic record that a ditch was ever constructed that conforms to the approved alignment of Lateral No. 1. That's what they are referring to. The State Drainage Engineer also states that the approved alignment would not function as it would require water in the ditch to run up hill. You know how water runs, not up hill. These statements were made with regard to the historic record on file with DATCP and field observations made on June 9, 2011. The district drains were surveyed by a licensed surveyor and the specifications were submitted by a licensed engineer in 2001. While there is no direct evidence that lateral existed at the time the District specifications were approved, there is also photographic evidence that a drainage feature in the approved lateral never existed. Those statements made by the State Engineer I'm not sure we should even be acting on this. I make a motion that this whole lateral discussion

President Kramer stated he could not make a motion, this a public hearing for information no motion can be made.

Mr Nelson asked who votes on this?

President Kramer: This isn't a question and answer session, I'm going to stop it right there. If you have a point, make it. This is open for 30 days for written comments and then the Board takes action on it. This is for public comment. This is not up for vote right now. The Board takes action.

Nelson: The Board only votes on it?

Kramer: Yes

Randy Schmidt: They are suppose to be here representing the drainage district

Kramer: Hold on only one person speaks at a time and everyone gets to speak and gets their time

Nelson: If the Board is the only one that decides on this, I think legally it should be the property owners in the drainage district voting on it per the parcels they own.

Kramer: We are open to public comment. That's 3 minutes, I'll move on to the next person.

Randy Schmidt, N4236 Meade Street, Appleton: To answer your question if the property owners in the drainage district ain't happy the way the drainage district is run, you can actually sign and get rid of the drainage district. It was done Waushara on the same kind of grounds because my crop consultant they were actually paying surveyors for survey stuff instead of spending the money cleaning the main drains and doing things they should be doing and spending the money wrongly so then you can get rid of the drainage district. That's how you clarify that. But the letter in 2023, the story keeps changing all the time, you are saying the state is making you do it. When we had the meeting at the courthouse my son asked Bart Chapman about that, the only reason why is because Carl Anthony didn't do what he was instructed to do. He is working with what he has. Because now we have a new drainage board and you're the only one benefitting from this. I don't know where you are getting 100 acres that this is going to drain. 100 acres, that's going to benefit from the lateral where is that. Gary Weihing said you're going to benefit. Your water comes over on to Clark's through his woods from the back, no I'm talking about Lateral 1 through a culvert from Kramer's. I know it comes from down through the ditch that goes no where, yes it's another issue, you already recked the man's property with all the trees that went down whose going to pay for them some day. If we are going by the state statutes, its suppose to benefit the people in the legal drain. The way it looks to me you're the only one its going to benefit Al. You could take your tile and go the other direction and you already have permission to put a pump on your side of the road. Yes you can take it that way, you could put a secondary pump or something I've seen people, John Paltzer showed me a picture on some of his ground, Darrin dug down through a hill 16' to put in tile. You can't say you can't do it, it just benefits you and it's just going to cost you money but it screws everybody else up whose in the legal drain and they have to pay for it. How I understand it to move a legal drain you have to pay and compensate Clark money for that property so than everyone in the legal drain is going to have to pay Clark. If you look at Brian Knaack's that was never taken care of never maintained, and we got scolded for working through a legal drain what about that, you guys never took care of that. Everybody is for themselves, that becomes a politician, this is so damn political, you should think about that Al.

Clark Schabo, W5562 Center Valley Road, Black Creek: When the culvert was lowered and the State Engineer came up to correct it because of the washout gullies. He said who allowed this to happen? Manley said we had a court order. I was in by the judge. The order wasn't even signed yet. The Judge said sign up we need people like you on the drainage board, I told him to stick it. For one reason, where the culvert was laid was on virgin ground and it sloped back into your field. It was high ground there. After they lowered it they sloped it so it ran over to my side, so they had to dig it out 2 – 3 feet and put stone in and make a water way on my side. We never had a problem there. My father-in-law had that, I helped him farm it for years, I'm 81 years old. There never was a ditch on that land, we never had a trouble with water until you lowered the culvert. Now you want to make it a lateral. You were told before that was never such a thing. But you still want to make it a lateral. Now you want to go across my property again. That's good farm property. Randy rents it from me. When I'm not getting rent an individual said if the road wasn't there the water would run over on my side, that's a bunch of bull that's high ground there. We have a former town chairman here that can verify the culvert was on virgin ground, it was a high spot, you made it come this way. All because of one person, it all started with your dad and now it's you.

Ben Schabo, N4554 Hample Road, Black Creek: I don't understand, last time I was at a Drainage Board meeting it was explained to us that if the water was going south you need to start on the south end and work your way north otherwise the water is going to dead head some where. This makes no sense. How can this be considered when nothing has been cleaned out to where that ditch is going to end. And second thing, I don't understand how the Board put a value on someone's farm land and take away plantable acres from one farm to give it to another without that farmer's permission. I don't think that right.

Kevin Schabo, 1116 Maple Street, Neenah: no comment

Steve Frassetto: My name is Steve Frassetto, and I am an attorney with the Menn Law Firm in Appleton, Wisconsin located at 2501 E. Enterprise Drive. I am here this morning representing the Schabo Family Irrevocable Trust, which is the owner of Tax Parcels 040012801 and 040013000, which are impacted by the Drainage District proposal to correct Lateral 1, within the Center Valley District. My client objects to the proposed correction of Lateral 1 as set forth on the Cedar Corp. plans, for the following reasons:

First, the proposal incorporates a portion of the mapped Lateral 1 that in fact does not exist, as determined by the state drainage engineer in 2011;

The proposal would create a new drainage swale that bisects my clients property on a diagonal creating two smaller triangular pieces of land, which would basically make them unusable, and significantly impact the ability to farm the property;

Third, it appears that the proposal does not benefit the district as a whole, but is intended to benefit a specific land owner. And it should not be a district project that would send more water onto my client's property at a faster rate in a higher volume.

Fourth, the cost of the project is suppose to be estimated per Section 88.71(2). I didn't seen anything in the materials of the costs that would tell the district members of the cost what will be assessed to them in the future. Based on my general understanding of what it will cost to construct a swale like this project, the cost would seem to outweigh the benefits to the district as a whole.

Finally, when you bisect the property the statutes does require to assess damages to my client's property and as indicated even though it only effects 2 acres of raw land the impact of the section as a whole will be substantial, and those damages will have to be assessed and picked up by all the other district owners in that year.

In conclusion, we don't believe this project works Chapter 88, should not be approved when it does come forward and it does believe the costs to my client will have to be adequately addressed. Thank you.

Anyone else wishing to speak?

Wayne DeBruin, N3592 Hamble Road, Black Creek – 1977 your dad hired me to bury the fence line in the two fields. He had me push the dirt to drain the water to the north. The water went to the south. If you look at the lay of the land the water is suppose to go to the south. When we built Hamble Road, that little knob in there, he wanted me to dig the ditch 4 1/2 feet deeper to make that water go to the south. I said why don't you cut a waterway around your field, but that he didn't want that at all. But that water slopes to the south. But now you want to take water with a pumping station and pump that water north when it should go to the south. Look at the lay of the land. I was involved with this 50 years ago. You were a kid with diapers on then but I knew where water went though. When I went down there the water was 50 feet from Center Valley Road. Clarence Brownson says you always put the culvert back at the same height it was suppose to be. I dug miles for the Drainage Board. The original culvert was put at the original height. They took it down.

Kramer: Ray you already spoke, we are not doing rebuttals.

Anyone else wishing to speak? Anyone else wishing to speak? Anyone else wishing to speak

Nettekoven moved, seconded by Van Asten to close the Public Hearing at 9:23 a.m. Roll call: 5 aye, 0 nay. Motion carried.

Kramer: The Public Hearing will be held open for 30 days for written comments.

Discussion was held on the process of the review and decision of Lateral 1. Kramer explained by State Statute the Public Hearing is held open for 30 days for written comments. After that the Board will review any written comments received and other information obtained during the public hearing and other data. The Board will discuss and act on the issue during an open meeting of the Board.

Reports on Districts - Districts/Projects and work in progress reports – continued

Kramer reported that in the future we need to notify the municipality when we go in to work on a project. There was a property owner in Grand Chute concerned about work being done and had contacted Grand Chute and they didn't know what was being done. They had been notified but need to follow up more

Center Grand Chute District – Dale Figlinski property needs to get done.

Vandenbroek District – Mike and Greg went out on JJ/Maloney. Needs to be sprayed. Some wood chips need to removed. Grinding was done through Emery Lane, area looks good.

A culvert was installed in the corridor for a crossing. Nettekoven moved, seconded by VanderHeiden to reimburse Van Asten \$100 for the cost of the culvert. Roll call: 5 aye, 0 nay. Motion carried.

North Liberty – Survey done from Hooyman Rd to Obermeier's, sediment is 1 ½ feet in ditch. Needs to be dug out and sprayed.

Center Valley - Lateral trees were removed along railroad tracks. Darrin Stingle is working in there. We won't have to cross tracks to get to the area in the future.

Duck Creek District - Meeting coming up with DNR/state regarding Doxby drainage issue. Trying to get an in-person meeting. State representatives have been invited. Meeting will also discuss DNR issues.

Jason Van Eperen was contacted by a resident from the McCarthy/Casaloma area with the suggestion when we are doing tree removal to offer a voucher for tree replacements through the LCD tree program.

OLD BUSINES

1. Duck Creek Annexation –Plans/profiles submitted to DATCP for review/approval on July 24, 2020 Center-Grand Chute District – DATCP approval received 8-1-24; Public Hearing scheduled Sept 25; Board approval required
2. Big Ring Storage – As-builts received, slope of site drainage – Justin spoke with Colin @ GC
3. Center-Grand Chute Reassessment Study Update
4. James VanCamp property – Property owner's Attorney contacted Kramer to discuss issues – nothing new
5. USDA Grant Application Status Report – NRCS/DATCP is reviewing data they have received which will take 2 – 3 months to review for the next phase to begin, work in progress – in Washington this week for approval for next phase
6. Freedom Drainage District – Extension of legal drain from County Road J to Farrell Road – Public hearing scheduled for plans and specs at annual meeting October 3.
7. Andy Parker – Duck Creek Drainage District – Request for variance to allow planting of trees within 75' corridor setback – variance denied 5-7-24. Mr. Parker contacted Nettekoven on 8-6-24 he will move trees when weather permits. Vander Heiden moved, seconded by Van Asten to send a letter to Mr. Parker have trees removed by November 1, 2024. Roll call: 5 aye, 0 Nay. Motion carried.
8. Freedom Drainage District – Changes or modifications to a formally established cross-section, grade profile or alignment of a district drain, Lateral 3, north of Greiner Road, west of State Rd 55 and east of State Rd 55, south of Co Road UU in the Town of Freedom. Public Hearing held June 4 – Board & DATCP approval pending, submitted 7-26-24 –approval for archeological study was received, waiting for Oneida Tribe response – going out for bids

NEW BUSINESS

1. Request for variance of corridor setback – Vanderbroek Drainage District – 1439 Haen Drive, Matthew and Alexa Wild – see above at beginning of meeting
2. Discussion of 2024 district inspection reports & items for annual meetings

The following items were discussed:

North Liberty – Cost for dredging; cost for pump replacement

Black Creek/Bovina – cost for grinding

Duck Creek – Culverts on LaFont Road; PP to Jochman Road; John Schmidt S to Woods; Culbertson to French Dredging; tree removal – Jerry Maas

Vandenbroek – CC to pine trees; warehouse/RR – jetting out culvert 70'

Center Valley – Knaack to rr; CV Road to S ok, but could be cleaned

Duck Creek – east of Meade Street – culvert is gone;

Center-Grand Chute – Rose Tree/Meade Street – tree removal Lateral 3 – 1500'

Mackville – clean up for access to drain

The Board reviewed the 2024 buffer violation maps. Warning letters will be sent to the following: Parcel # 020040900 – James Coe; 090068600 – Gary Kortz; 180021400 – Robin Mooren; 090065201, 090065300, 090065000 – MS Real Estate Holdings LLC; 130000500 - Neighborhood Dairy LLC; 040095600 - Schabo Family Farm LLC; 090070200 – Vande Hey Development LLC.

Review of Invoices/Financial Report – Reports were reviewed.

The next meeting will be Tuesday, October 1, 2024 at 8:30 a.m. at the Town of Osborn. Judge McGinnis may attend the meeting which may adjust the starting time of the meeting.

Legal Drain Connection Applications Received: none

Nettekoven moved, seconded by Van Asten to adjourn at 10:45 a.m.

Respectfully submitted,

Nancy J. Christensen
Administrative Assistant



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Secretary Randy Romanski

January 12, 2024

Al Kramer Jr.
Chairperson, Outagamie County Drainage Board
W5569 Center Valley Road
Black Creek, WI 54106

RE: Center Valley Drainage District
Lateral No. 1 - Status

Mr. Kramer:

The Department of Agriculture, Trade and Consumer Protection (DATCP) has received an inquiry from the Outagamie County Drainage Board (Board) asking for clarification on the status of Lateral No. 1 in the Center Valley Drainage District (District). The Board also has asked for clarification of the June 14, 2011 letter from State Drainage Engineer, Seth McClure to the Board Chairperson, Carl Anthony.

The District specifications were approved by DATCP on October 24, 2002. The approved specifications includes the alignment, profile and cross-sectional dimensions for Lateral No. 1. DATCP does not have any additional information regarding changes to the approved District specifications or modifications to Lateral No. 1. Therefore, DATCP considers the alignment, profile and cross-sectional dimensions as identified in the approved specifications to be valid and current.

DATCP has reviewed the June 14, 2011 letter from the State Drainage Engineer to the Board Chairperson. In the letter, the State Drainage Engineer states that there is no evidence in the historic record that a ditch was ever constructed that conforms to the approved alignment of Lateral No. 1. The State Drainage Engineer also states that the approved alignment would not function as it would require water in the ditch to run uphill. These statements were made with regard to the historic record on file with DATCP and field observations made on June 9, 2011.

The District drains were surveyed by a licensed surveyor and the specifications were submitted by a licensed engineer in 2001. While there is no direct evidence that Lateral No. 1 existed at the time the District specifications were approved, there is photographic evidence that a drainage feature in the approved alignment of Lateral No. 1 existed in 1992, prior to the Board submitting the District specifications for approval. The four figures in Appendix A shows the general location of Lateral No. 1 near the intersection of Hample Road and Center Valley Road.

- Figure 1 shows the alignment of Lateral No. 1 from the approved specifications.
- Figure 2 is a 1992 U.S. Geological Survey air photo. This photo shows a drainage feature in the same alignment of Lateral No. 1 as surveyed and depicted in the approved District specifications.

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- Figure 3 is a 2005 U.S. Geological Survey air photo. This photo shows that the 1992 drainage feature located in the alignment of Lateral No. 1 has been filled in and removed at two locations. Figure 3 shows Lateral No. 1 originating at the 24-inch CMP at Center Valley Road. It runs due north for approximately 200-feet and terminates. Lateral No. 1 remains intact near the center of the field and runs due east for approximately 300-feet and terminates.
- Figure 4 is a 2021 U.S. Geological Survey air photo. This photo shows Lateral No. 1 in the same condition as the 2005 air photo.

In the 2011 letter, the State Drainage Engineer recommended that the Board change the alignment of the District drains to reflect the ground conditions as observed on June 9, 2011. DATCP has no record of any Board action regarding the recommendation, nor has DATCP received an application for any modification to Lateral No. 1. DATCP considers the alignment, profile and cross-sectional dimensions as identified in the approved specifications to be valid and current. If the Board decides to change the District specifications, the Board will need to follow the procedures described in ch. ATCP 48, Wis. Admin. Code.

Please note, any issues that have come about due to the current condition of the alignment, profile, cross-sections or corridors of Lateral No. 1 should be referred to the Board's attorney. If you have any questions regarding the Department's review process or if anything in this letter is unclear, please feel free to call me at (608) 224-4608 or you can email me at Barton.Chapman@Wisconsin.gov.

Sincerely,

Barton T. Chapman, PE Digitally signed by Barton T. Chapman, PE
Date: 2024.01.12 11:02:45 -06'00'

Barton T. Chapman, P.E.
State Drainage Engineer

cc: Matt Woodrow, P.E., Section Manager DATCP (via email)

Appendix A

Figure 1: Lateral No. 1 Alignment from Approved District Specifications

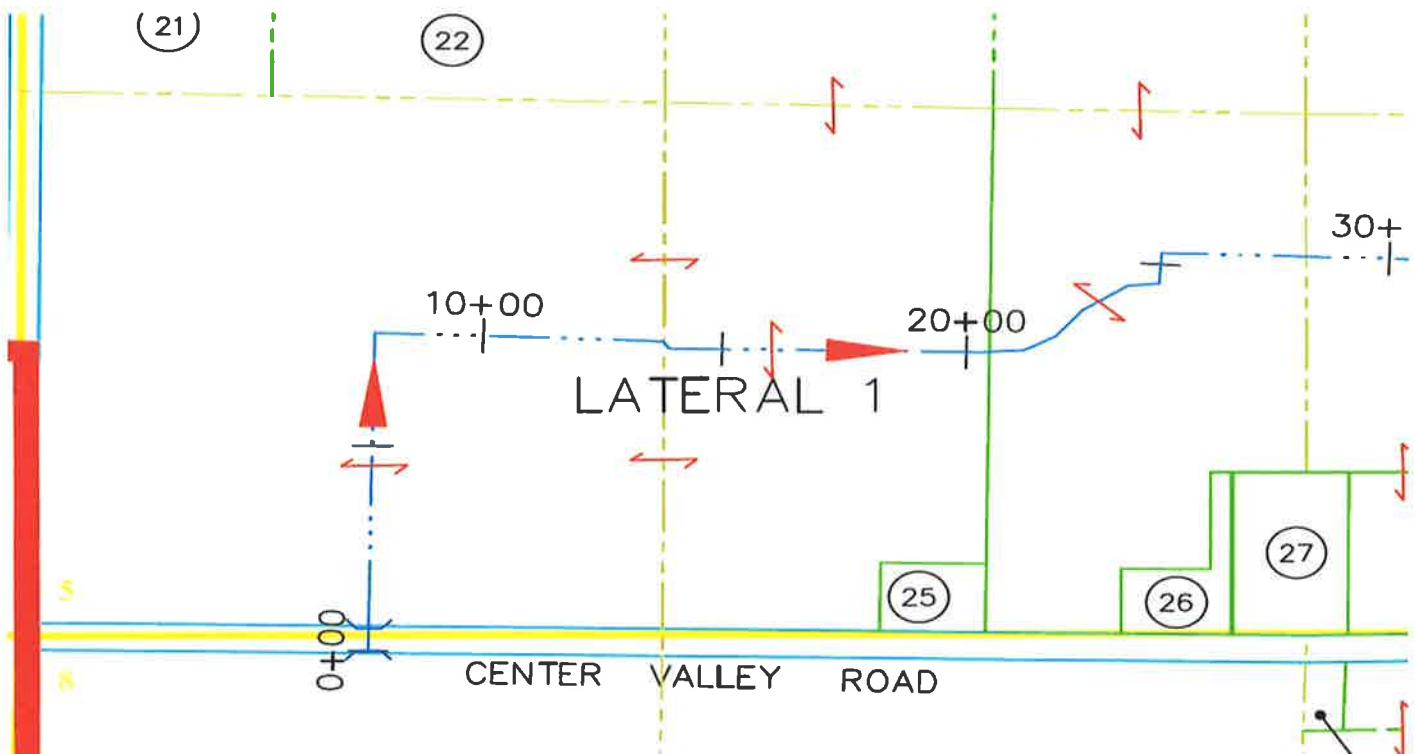


Figure 2: Drainage Feature in Alignment with Lateral No. 1



Figure 3: Lateral No. 1 - 2005



Figure 4: Lateral No. 1 - 2021





State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

June 14, 2011

Carl Anthony
Outagamie County Drainage Board
PO Box 6
Shiocton, WI 54170

Re: Center Valley Drainage District

Mr. Anthony:

On Thursday, June 9th, 2011 I visited the Center Valley Drainage District in Outagamie County. At issue was a district drain shown on the official specifications of the district that, in fact, does not exist.

Lateral 1 (please see attached map) was included in the district's official specifications as surveyed by BT² and adopted by the Outagamie County Drainage Board in 2001. However, there is no evidence in the historic record that a ditch was ever constructed that conforms to that alignment. In fact, the alignment shown on the official specifications would not function as it would require water in the ditch to run uphill. Furthermore, it is not evident either from my field visit or an examination of the soils in that part of the district that a ditch would be of any benefit.

Therefore it is my recommendation that the drainage board change the alignments of the district drains to reflect the non-existence of the ditch. Because no new construction would be required, nor new lands brought into the district and no additional maintenance corridors created, the process for changing the alignments would be relatively straightforward. Per ATCP 48.21(4), the drainage board would simply need to seek the approval of DATCP and to notify the county zoning administrator and register of deeds. Finally, the drainage board would need to submit the modified drainage district map to DATCP that reflects the change to the drain's alignment.

If you have any further questions, please contact me at the number below.

Best regards,

Seth McClure
State Drainage Engineer
(608) 224 - 4627

Cc: Greg Baneck, OCLCD
Encl: Center Valley Drainage District Map

Agriculture generates \$59 billion for Wisconsin