

Controversial drainage repair completed

By Nick Lowrey, Staff Writer

• After 5 years, 2 lawsuits and almost \$1.5 million spent Drainage District 37's major maintenance project is complete

By unanimous vote, trustees of Clay County's Drainage District 37 approved the completion report for major cleanup and repair of its century-old main open drainage ditch on June 6 and marked the end of a five-year-long legal drama.

The trustee's vote came during a special board meeting and after a hearing on the project's completion report presented by Collin Klingbell of Jacobsen-Westergard and Associates, the engineering firm hired to oversee the nearly \$830,000 project. Later, during the board's regular meeting held the same day, the three trustees, Allen McGranahan, Bill Gerdeman, and Rodney Dillard, also voted to settle an unfinished lawsuit related to the project and approved a tax levy of \$843,930.10 to be assessed to Drainage District 37 (DD37) landowners.

The series of votes marked the end of a yearslong saga. It began when a group of local landowners originally filed a lawsuit against the Clay County Board of Supervisors in 2019. In 2018, landowners in DD37 asked Clay County to investigate the tile drainage lines in DD37, located in eastern Clay County about 2.5 miles west of Lost Island Lake. At the time, the County board of supervisors was responsible for maintenance in the district, and the 100-year-old main ditch wasn't draining efficiently.

In 2018, the Clay County Board hired the engineering firm Bolton and Menk LLC to investigate the drainage issues and recommend a potential fix for any problems found in its investigation. Ultimately, Bolton and Menk engineers proposed a \$3.6 million project that would remove trees and other vegetation and deepen and widen the ditch. The project's cost would be covered via a tax levied on landowners in DD37.

The district's landowners, McGranahan, Gerdeman, and Dillard among them, found the project's cost to be too high and the scope of work to be too broad. They filed formal objections to the plan. The County Board of Supervisors held a public hearing about the Bolton and Menk plan on Jan. 14, 2019. They found that the objecting landowners didn't own enough property in DD37 to stop the project under Iowa law and voted to move forward with it. Iowa law requires that at least 50% of landowners owning at least 70% of the property in a drainage district must file objections before a maintenance project can be stopped.

In February 2019, DD37 landowners Robert Swan and David Wyatt, with backing from their neighbors, appealed the board's decision to the Clay County district court. They argued that the county had miscalculated the amount of land they owned and that the project wasn't necessary, desired, or feasible. In a summary judgment dismissing the case, the court ruled against the objecting landowners. The court found that despite some miscalculations on the county board of supervisors' part, not enough landowners had filed objections to the project.

On appeal, the Iowa Court of Appeals found that the objecting landowners didn't own enough land in DD37 to stop the project. However, the appeals court also found that the case shouldn't have been dismissed outright because the objecting landowner's claim that the project wasn't feasible or desired hadn't been answered. That portion of the case was sent back to Clay County's district court.

In May 2019, 75 DD37 landowners signed petitions calling for an election to allow private trustees to take over management of the district. The Clay County Board of Supervisors denied the petition, claiming that some people who signed it only had fractional interests in their land, so they couldn't be considered landowners. The petitioners appealed the county board's decision to the Clay County district court.

The county board's argument didn't hold up. Both the Clay County district court and the Iowa Court of Appeals found that if someone has a fractional interest in a piece of land, they are indeed a landowner and are entitled to the same rights as any other landowner.

Landowners in DD37 held their election, took over management of the district, and elected a three-member board of trustees in 2021. In taking over the district's management, the new board also took on all the costs associated with the Clay County Board of Supervisors' actions on behalf of the district. The costs amounted to about \$600,000 between legal fees and the Bolton and Menk contract. The DD37 board of trustees approved a tax levy to cover the costs and an extra \$50,000 for maintenance in 2023.

In September 2022, the DD37 board of trustees hired Jacobson-Westergard to evaluate the district's main open ditch and devise a less costly maintenance plan. During the June 6 Board of Trustees meeting, McGranahan described the Jacobson-Westergard plan as the bare minimum amount of work needed to ensure the ditch continues to function.

The new plan consisted of removing large trees from the ditch and adding new access lanes for future maintenance. The DD37 trustees accepted a low bid for the new project of \$828,376.50 from Reutzel Excavating Inc. of Burt, Iowa. Reutzel finished its work in April 2024.

All told, DD37 landowners will collectively pay about \$1.49 million, less than half of the original project's \$3.6 million price tag.

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