

## APRIL 1, 2009 WHEATLAND SPECIAL TOWN BOARD MEETING

Meeting was called to order by Chairman Butler at 7:30 p.m. at the Town Hall in New Munster and opened with the *Pledge of Allegiance*.

Town Board members present – Chairman Jeffrey Butler, and Supervisors Andrew Lois and Robert Herda.

Others present: Clerk Sheila Siegler, Constable Bob Haas, Town Attorney John Hotvedt, Town Engineer Len Roecker, Kenosha County Conservation Planner Dan Treloar, USDA Natural Resources Conservationist Jerry Hebard, Ed & Lisa Duvall, Dennis & Joyce Kertz, Stephen & Lori Deutscher, Tim & Sheree Pfeuffer, Bob Santelli, Derek Temple, and Tim & Cindy Lois.

Notices were posted in five public areas and the town website and the *Kenosha News* and *Westosha Report* were notified. Individuals who have requested meeting notices by e-mail were also sent agendas as required by state law and property owners of Sarti Hills Subdivision, Lots 1 – 5, were notified by First Class Mail.

Chairman said the meeting was called to address drainage problems occurring along the south side of Sarti Hills Subdivision. The town attorney, town engineer, county conservation planner and USDA conservationist were all asked to attend this meeting to present all the information as a group. Lot owners of 1 – 5 (Koch, Deutscher, Temple, Devall, and Kertz) and the neighboring landowners Tim and Cindy Lois, were also asked to attend.

Town Engineer Len Roecker presented an overview of the development of Sarti Hills Subdivision. The drainage issues came to a head last summer because of exceptionally heavy rain after a period of high rainfall and thus, saturated farm fields. Some of this group did meet on site at that time.

Two issues need some type of resolution:

1. How to control agricultural runoff into people's back yards, and
2. The amount of water eventually going to KD and washing out farm field on east side of KD.

Roecker looked at documents from when Sarti Hills was developed. He did a survey of existing conditions today to compare and answer the question of whether they are functioning as designed.

In November, Jerry Hebard, USDA and Dan Treloar, county conservation planner worked with Lois to plan a grass swale waterway system to control and intercept some of the water coming from the farm field.

In the event this is built, the grass swale would be beneficial to the south side lot owners. The original intention of the engineering was to direct storm water to the infiltration trenches located in the 30 ft. easement which runs east and west along the south side of Lots 1 – 5.

Roecker felt some of stone material in those trenches has been choked with sediment. He would recommend the trenches be cleaned out and the large rock particles replaced. Two small depressions in the engineering design were placed there to puddle the storm water so it will infiltrate the drainage system before running off.

There needs to be a small amount of excavation (1 – 2 feet) needed in a few areas to dish the area and to direct the water as it was originally designed.

Working in conjunction, the grass waterway farm field and trench and excavation work in the subdivision will be mutually beneficial if each does their part. Part of the grass waterway project requires the ongoing spring water generated from the hills on Lois farm (currently keeps the soil saturated and not able to absorb storm water) requires a low flow base tile to tie into the drainage easement in the subdivision.

Dan Treloar added this would be a completely perforated tile which will lose some water in the Lois field as it flows to the drainage easement.

Roecker said the grass swale waterway can be done without the connection to the subdivision drainage easement but it will not be as beneficial.

Jerry Hebard said his USDA department works with agricultural producers only. They had to stop at Sarti Hills lot line. They looked at surface water and sub-surface water. He showed the grass swale design and said everything in red captures surface water. They need to capture the base flow.

Yellow shows the tile that needs to connect to the easement. They are relying on an

outlet to the Sarti drain.

Dan Treloar said the water inlet pickup area needs to be fenced off at the corner – no animals can be in the area all the way down to the fence row. They don't want the water flowing into groundwater to be contaminated. 70% funding will be available for the grass waterway. Lois can "hay" the area but no animals.

Ed Duvall, Lot 4 owner, said this discussion is missing the effects of springtime rains on Lot 5 to the west. He disagreed with the drains being clogged with dirt and said there is an area on his lot about 100 ft. round, maybe 1 ft. in the center, and when it is full of water it does drain completely away in about three hours after a very heavy rain. The ground is so porous; it just sucks up the water.

Duvall said he feels the subdivision was engineered incorrectly. He has checked aerial maps from 1995 (Sari Hills was a farm field and not a subdivision) and they clearly show washouts in the farm field on the east side of "KD." The subdivision has not caused that washout problem.

If we allow the drain into the easement, there is still going to be problem sediment from the farm field. He said there was supposed to be a silt fence along the south property line and that wasn't installed. That sediment could have entered the filtration trenches. There is an unbelievable amount of water that comes off the hill from the west and then into the natural drainage area (subdivision low area) thru Lot 5 (Kurtz). Water is not the problem; it is the sediment.

Lisa Duvall said this plan shows a swale on their property and there was none there before. They will be giving up land. The drainage trenches were supposed to be temporary. There is a raging rapids going thru constantly, when it rains heavy.

Dennis Kertz said it comes into his property on the southeast side. Kertz showed photos of how the water goes thru his property.

Derek Temple, Lot 3 owner, said he has video of January 2009 snow melt showing water running (over frozen ground) into Lot 4, then to his lot and back into the Lois farm field. The video shows the water going under "KD" to the east. It was a regular jet of water going under "KD."

He has video of the water in the subdivision going toward the drainage easement. He said the infiltration trenches were to catch silt when the subdivision was developed, not to capture water. They were supposed to be temporary. He does not agree with this on his property and would like to see it gone. Once there was grass in the subdivision, the trenches should have been removed. He does agree that something needs to be done because there is an erosion problem but he doesn't agree with creating an underground tunnel into Sarti Hills Subdivision. He doesn't agree with the engineering design at all. Is there another solution?

Lisa Devall asked who is going to pay for this. There is a subdivision architectural committee but there is no homeowners association to address subdivision easement maintenance costs. She checked the records and there was a referral to a developer's agreement but there are no recorded subdivision restrictions.

Town Attorney John Hotvedt said he was requested by the town to check the subdivision documents. He agreed there is no subdivision association with a clear responsibility to do anything. From the town's perspective, he does not see this as a town financial responsibility for the cost. This is a civil drainage dispute between private landowners.

Attorney Hotvedt further stated there is a 30 ft. drainage easement running east and west on the recorded Final Plat of the subdivision; in this area over Lots 1 – 3. There is no separate drainage easement agreement that defines the rights and responsibilities of the lot owners involved. Wisconsin Statutes Chapter 236 says those easements issued as condition of approval are for the benefit of the town and the benefit of the subdivision lot owners, not for the benefit of the adjoining property owners. The issue of whether there is an obligation to maintain the ditch line for the benefit of the property owner to the south, clearly there is not. There is an obligation of the property owners to maintain the easement for the benefit of the subdivision.

If the easement is choked with sediment which comes from the neighboring property owner, Hotvedt said he fails to see how you can hold the subdivision owners to the cost. A court would take all these factors into consideration in a negligence issue. But the town has no financial responsibility unless there is something he is not aware of.

Chairman said Farris, Hansen & Associates, the engineer for the developer, designed the subdivision with the rules that were in place in 1999. These rules changed considerably between 2002 and 2004. Everything was done with approval needed at that time. He doesn't know if the silt fence was a requirement at that time.

Len Roecker stated the issue needs clarification. It is not the responsibility of the farmer to keep soil disturbed in agricultural practices and the water out of Sarti Hills. The sediment is the real problem. The proposed grass swale will intercept 35 drainage acres and will go down the farm field to the east and not into Sarti Hills. What Jerry & Dan are proposing here will have an effect on a significant amount of water.

The drainage area 15 – 20 acres in size that runs into the Kertz yard will not be affected by the proposed grass swale. Hay crop cover would provide much less sediment.

Roecker further commented that the "Temporary" infiltration trenches and "not to catch water" comments are wrong. The square, larger areas upstream were the temporary filtrations. The existing infiltration trenches were placed to capture water and do require periodic maintenance. When we have 100 year rains (as in 2008), it is going to be wet everywhere.

Whose responsibility is it to pay? That is always the difficult question. Are there are other, more elaborate, solutions? Yes, there are but they are about five-fold the cost. This is a workable solution that doesn't break the bank.

Joyce Kertz, said it was stated that the storm water has not gotten to their basement. That is true but it has been very close. We don't want to wait until the basements get flooded.

Derek Temple said the whole subdivision is on wells. It will be a Dept. of Health issue if we allow this water tile from the Lois field to connect to the subdivision drainage easement.

Tim Pfeuffer, said there is a cost affiliated with the maintenance. Do you have a figure? Roecker said they do not.

Steve Deutscher, Lot 2 owner, noted the storm water seems to drain. He questions that it is clogged and wonders if you will get the results you're looking for.

Len Roecker said a typical storm water trench may need maintenance every 5 - 10 years. There was visible sediment there last fall that may have worked thru.

Attorney John Hotvedt cautioned the board they are not arbitrators and cannot start assessing costs and it is not their position to figure out who will fix it. A drainage maintenance agreement and cost-sharing is needed between the lots owners of 1 – 5 or 6.

Mrs. Deutscher asked to whom the costs apply. Are all the costs on us? They are willing to share the cost with others.

Hotvedt said there is an easement on your property. A long term solution is needed. He is advising the town that this is a negotiation between private property owners.

Joyce Kertz said the other, smaller drain area will still be coming thru. This won't help.

Jerry Hebard said that area is different. It does not have the base flow from the springs. You get a flush drainage but you don't have the constant flow from the springs.

Len Roecker pointed out the road reservation that is platted between Lots 3 & 4. If development happened on the Lois property, that water would need to be intercepted on that property. It is a consideration that will help in the future.

Temple said the proposed road easement is in the exact spot as the drainage easement. Roecker said there are drainage ditches along roads and that would all need to be calculated in any future development. It can easily be handled in that road right-of-way.

Temple said basically that trench was installed to handle water from Sarti Hills Sub. It was not to handle water from outside sources. This would be introducing a lot of water into the Sarti Hills drainage from an outside source. It was never designed to handle that. He acknowledged that Lois has erosion problems but felt that before the subdivision existed, water from the natural spring had a larger area in which to dissipate. He doesn't see how an underground tile system that will plug itself is going to solve the problem. A grass runway to catch silt will definitely help.

Devall pointed out that the heavy rain doesn't even hit the easement area. It is back in the Lois field before it gets there. He said a silt trap to catch the sediment for Lot 5 is needed.

Treloar and Roecker both stated that would require a lot of maintenance and a very large sediment trap.

Devall said the 1995 topo shows this was a problem well before the subdivision. Natural

water wasn't being caught in 1995. Sediment is the real issue.

Chairman Butler said the town has spent money on engineering and legal and will have more costs from tonight's meeting. This meeting was to present the facts and to try to get all parties together to try to facilitate some kind of agreement between the landowners. The town cannot go any further.

Devall stated again that something is needed to help the Lot 5 owners (Kertz).

Supervisor Andrew Lois said spring water is clean water so that shouldn't be an issue. He said he understood the drainage issues and had seen the effects of the heavy rain and the plowed field, erosion, and the Sarti Hills lot owners yards after a storm.

He suggested they get together with Tim Lois. This is something that he hasn't discussed with Lois but knowing the situation, he said that if Lois would keep about three acres in pasture or alfalfa in the area that drains into Lot 5 ("other" drainage area) and keep that drainage water free of soil sediment, it would help a lot. He suggested if the lot owners could get together and all put in a little money to pay Lois each year, maybe they can work out an agreement with Tim Lois to keep this in permanent seeding and not plant a row crop. Paying Lois something would only be fair because there is more money in corn or soybeans than in alfalfa.

Derek Temple asked, "what's next?"

Chairman Butler said the town paid for the engineering to get the ball rolling. You will have to decide between you what to do next. The Town Hall is available with no charge if you want to set up a place to meet.

Tim Pfeuffer said they appreciate what's been done. He asked if there was any kind of government funding for Lois to keep the "other drainage" area that drains to Lot 5, in a permanent seeding.

Jerry Hebard said there is only funding for the grass swale waterway. There is no funding for a permanent set-aside program.

Dan Treloar said Supervisor Lois makes a good point with the buffer. It would help greatly. The 200 ft. grass waterway being planned will also help. They do need to have that base flow from the springs flow out to the drainage easement to keep the soil dry to absorb more storm water when it does come. Responding to a question, he said there is a fiber sock over the tile to keep the sediment from clogging the tile. The sock is projected to last a minimum of 20 years.

Tim Lois asked if he heard correctly – that whatever Sarti Hills generates, Sarti Hills will hold. Chairman said "yes."

- **Alcoholic Beverage Operator (Bartender) Original License applications:** Original – Rhonda L. Rhyner, P.O. Box 313, Pell Lake - *Wheatland Convenience Cntr.* Alcohol beverage server certification was furnished and background check was clear.

Andrew Lois moved approval of a license for Rhonda L. Rhyner. Jeffrey Butler seconded. Motion carried.

- **Resolution No. 1 – 2009 – Resolution to oppose changes to prevailing wage law and to reducing threshold to \$2,000.**

Andrew Lois moved to approve Resolution No. 1-2009. Robert Herda seconded the motion. Motion carried. Copies will be mailed to area legislators.

- Public Comments - none
- **Announcement -**
  - A. **SPRING ELECTION – Tuesday, April 7, 2009** - Polls open 7 a.m. – 8 p.m. - Town Hall
  - B. **ANNUAL TOWN MEETING – Tuesday, April 14, 2009** – 7 p.m. – Town Hall
- **Review draft of annual report for April 14 meeting.**  
Board reviewed and signed copy for presentation at Annual Meeting.
- **Adjournment –**

Andrew Lois moved to adjourn at 8:55 p.m. Robert Herda seconded. Motion carried.

Respectfully submitted,

Sheila M. Siegler, Town Clerk