

**Lake Sinissippi Improvement District
PO Box 89
Hustisford, WI 53034**

October 22, 2012

VIA CERTIFIED MAIL

Robert Goetsch, Chairman
Dodge County Drainage Board
N6485 High Point Road
Juneau, WI 53039

Re: Dodge County Drainage District No. 88

Dear Mr. Goetsch:

We have reviewed the *Drainage District 88 Sec. 88.35 Assessment Report* (the "Report") prepared by the Dodge County Drainage Board and dated August 18, 2012.

Please be advised that Lake Sinissippi Improvement District objects to the Report on grounds that it conflicts in material ways with the terms of the 2011 *Dodge County Drainage District 88 Settlement Agreement* between the Board, the Petitioners, and the parties objecting to the formation of the District (the "Stipulation"), which was incorporated as part of Judge Bauer's Order of Formation of Drainage District 88 dated October 17, 2011 (copy enclosed).

Under the terms of the parties' Stipulation, the Drainage Board and Petitioners stipulated that the statutory standard set forth in Wis. Stat. §88.35(2) was met by the layout and design of District drain and associated facilities detailed in the Water Quality Management Plan (the "M/S Plan") prepared for the Drainage Board by its technical experts, Montgomery Associates and SetterTech LLC.

In particular, paragraph 1.A.1. of the Agreement states:

Notwithstanding Wis. Stats. §88.35(2), drainage ditches, tile lines and grassed waterways shall be laid out as proposed in Figure 1 of the Montgomery/Settersten Plan, copy attached, and constructed to ATCP 48 and NRCS standards. The Drainage Board and Petitioners hereby acknowledge and agree that laying out the District drains and associated facilities according to the Montgomery/Settersten Plan will best promote the public health and welfare and drain and protect lands of the interested parties with the least damage and greatest benefit to all of the affect[ed] lands.

Paragraph 1.B.1 of the Agreement further provides:

The Drainage Board shall ensure that proposed grassed waterways and critical area stabilization practices are constructed as proposed in Figure 1 [of Montgomery/Settersten Plan], attached, subject to final design according to NRCS and state standards.

Although the Drainage Board signed off on the Stipulation, the Report proposes a revised layout of District drains and associated facilities that does not conform to the M/S Plan and is therefore a violation of the Order granting the petition for the formation of Drainage District 88.

An example of nonconformity of drain layout is the tile run across CTH I to the Meylink land.

The original drainage plan dated August 10, 2010 proposed 1,320 linear feet of 10-inch tile and 50 linear feet of 10-inch bore under CTH I to connect lands of Woock, Schmitz and Pittman.

The M/S Plan rejected that proposal, presumably as being unsuitable for water quality management, and specified a grassed waterway and critical erosion stabilization for that area.

The Report discards the design of the M/S Plan and, instead, proposes the installation of a sealed pipe a third of a mile in length to convey field runoff without the water quality functionality of surface flow over a grassed waterway.

Another example of nonconformity is the proposed installation of a surface drain at the NE quadrant of the intersection of CTHs B and I, a drain facility that is not included in the M/S Plan. Notwithstanding the consequences of increased storm water flow and the additive effect to discharge through the District drain, a surface drain located in a road ditch will receive pollutants not normally found in agricultural field runoff, such as high sodium and chloride concentrations from road salt deicers, petroleum derivatives from motor vehicles and road runoff, herbicides from weed spraying in ditches, etc. This proposal not only conflicts with terms of the court-ordered Stipulation, but also is contrary to best management practices for protection of surface water.

The Drainage Board hired Montgomery Resources and SetterTech as its technical experts to address shortcomings of the original drainage plan and design a water quality management plan for Drainage District 88. The Drainage Board proffered the M/S Plan as the basis for withdrawal of objections to the original plan and as the substance of a proposed settlement agreement among the parties.

The Stipulation and Order of the Court do not provide the Drainage Board with discretion to vary the terms of the M/S Plan with respect to the facilities identified in Figure 1. Moreover, the Petitioners specifically stipulated to the Plan layout and private or District-owned designation of those facilities, and have thus waived any objection that their parcel is "not benefitted by direct access to a District drain."

Because the stipulated Plan is the basis for the Order for the formation of District 88, we conclude that any variance to the facilities and layout designated in the Plan requires court approval according to the procedure set forth in Wis. Stat. § 88.06.

Robert Goetsch, Chairman
October 22, 2012
Page 3 of 3

If there are valid technical reasons for the Drainage Board to modify a drainage design element specified in the M/S Plan, then the burden rests with the Board to obtain an opinion from its experts that the proposed modification will "provide improved runoff water quality compared to existing conditions at the District outlet to the Giese property as well as streams, marshes and lakes downstream." (Referenced on page 9, M/S Plan, June 29, 2011)

The Lake Sinissippi Improvement District is prepared to take all necessary steps to enforce the Stipulation as ordered, or, at minimum, to ensure that any variance to the Stipulation will not negatively impact water quality functionality of Drainage District 88.

Sincerely,

For the Board of Commissioners,

A handwritten signature in black ink, appearing to read "Gregory M. Farnham". The signature is fluid and cursive, with a large initial "G" and "M".

Gregory M. Farnham
Commissioner

Enclosure as noted

Cc: Attorney Mary Beth Peranteau
Attorney Joseph Sciascia