

Mark B. Hazelbaker



Kimberly Carter,  
Paralegal/Office Manager

October 18, 2012

Attorney Joseph Sciascia  
Sciascia Law Offices  
218 East Oak Street  
Juneau, WI 53039-0136

Re: *Dodge County Drainage District No. 88*  
Our Ref. No.: 614-5

Dear Attorney Sciascia:

I continue to represent Dennis Giese in the matter of the Dodge County Drainage Board's plans for District Number 88. I recently received a copy of Greg Farnham's correspondence to you pointing out the differences between the August 12, 2012 plan prepared by Dan Prunuske and the terms of the stipulation which led Mr. Giese and the Lake Sinnissippi Improvement District to withdraw their objections to formation of the District. Mr. Giese joins in Mr. Farnham's concerns and has some additional issues which relate specifically to his interests.

The August 12th Plan clearly envisions conveying water that would be collected by District drains. The very purpose of a Drainage District is to change the flow of water from the pre-existing natural condition. Constructed features which will be upstream from Mr. Giese's property will undoubtedly do exactly that.

The District proposal would utilize the property Mr. Giese owns south of Highway B to convey water from the farmlands (south of Highway B) under Highway B. We expect that the construction of the drains would be for the explicit purpose of increasing the peak flow, shortening time to peak concentration, and increasing the total volume of water that would flow across Mr. Giese's property. All of these changes in the water flow shall cause extreme erosion of his property and destroy it as useful cropland.

The proposal being advanced in the August 12th Plan would result in physical invasion of Mr. Giese's property by a significant increase in the flow of water. As such, construction of the drainage features would result in the taking of Mr. Giese's property south of Highway B with no exercise of eminent domain. Because the District's actions would result in physical occupation of Mr. Giese's property, it will be at least a partial taking. However, since the resulting parcel would be untillable, it is our position that the property would be rendered useless. We also question whether the house located on the parcel would be habitable given that the increased flow of water may cause flooding in the basement, as well as other undesirable impacts.

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The August 12th Plan quite candidly states that no provision has been made to address erosion which would result from the outfall of water at the end of the District. By now, everyone is well aware that water flow into the system of clear water ponds owned by Mr. Giese has caused eutrophication and sedimentation. The additional flow of water the Drainage District's plan would produce would only exacerbate that. Again, to the extent that the District's Plan would direct more water onto Mr. Giese's property than ever flowed naturally, the District is confiscating Mr. Giese's property without paying just compensation.

Under the August 12th Plan, the resulting increase in the flow of surface water would cause a taking of private property without the payment of just compensation or the exercise of the power of condemnation. Upon adoption of the August 12th Plan, Mr. Giese will file a notice of claim against the District as a condition precedent to filing an inverse condemnation action. It will be our position that the property south of Highway B is likely to be rendered completely useless for agricultural purposes. We reserve the right to claim that the residential use of the property will also be impaired.

With respect to the Springbrook property, the District's actions would constitute seizure of an expanded drainage-way across Mr. Giese's property without the exercise of the power of condemnation. We will be able to prove that the ponds are not just a part of the real estate, but the largest contributor to its value at its current use, which is as a bed-and-breakfast and hospitality business.

The assertions that I am making are not novel. I succeeded in establishing that diversion of surface water onto private property in excess of its natural water flow constituted a taking in a comparable case against the Village of Little Chute in 1995. Further, if the August 12th Plan is adopted, given the deviation from what was represented at the time we entered into the stipulation, we will ask that the order creating the District be reopened and the District be dissolved.

We will be presenting these matters in more detail at the October 25, 2012 hearing.

Thank you for your attention to this letter.

Very truly yours,



Mark B. Hazelbaker

Cc: Dennis Giese  
Attorney Mary Beth Peranteau  
Attorney Edwina Kavanaugh