

Special Meeting
August 13, 2020

Present: Jeanine Kabanuk, Zach Walker, Rod Kremer, Sherry Skees by phone, Dawn Griffis, Patrick Samson, Morgan Glines and Keith Crabb.

Purpose: R. Schloesser Floodplain

Kabanuk called meeting to order and handed it to Samson. Samson explained the Schloesser property is located outside the City of Burlington City Limits by approximately ¼ mile. On January 5, 1998, the City of Burlington extended their zoning authority, power and jurisdiction to the geographic area lying outside of the City to 1 mile from the city limits (Section 18-2901), This places the Schloesser property within the zoning jurisdiction of the City of Burlington.

Past action completed by the City:

- August 6, 2019- Notification from Dionne Haynes of a potential violation. (Kremer asked who Haynes notified and Samson confirmed the City of Burlington was notified)
- August 15, 2019- City letter to Mr. Schloesser serving as notice of a violation and request for a plan of resolution. (Samson, he did not submit one)
- December 12, 2019- Letter from Mr. Samson to Mr. Schloesser documenting fill placed between 2010 and 2019 based on state aerial topography and the request for a plan resolving the issue. Options provided to Mr. Schloesser included the submittal of a floodplain development permit and engineering study showing no rise in the base flood elevation of removal of flood material. The letter was hand delivered on February 24, 2020 (delivered by Chief Crabb). A cease and desist order for the placement of fill was included with the letter.
- Mr. Schloesser verbally noted to Mr. Samson that he could not afford an engineering study documenting a no rise.

Ward County Water Resource Board:

On December 11, 2019, the Ward County Water Resource Board issued a notice to complete removal of obstruction to Mr. Schloesser. Currently, the Board is nearing the completion of what their enforcement will allow (removal of fill within the channel). In July of 2020, they narrowed down the extent of additional material needed to be removed to the embankment near the existing rock dam. Based on an August 10, 2020 site visit, it appears that only was that material not removed but was instead covered with additional fill. At the August 10, 2020 meeting, the Board moved to have the engineer (Mr. Reep) define a scope and approximate volume of material to remove and obtain quotes from contractors to complete the work. The quotes will be reviewed at the September meeting at which time, a decision on further action will be made. The Board also instructed their attorney to coordinate with the City as needed for enforcement action.

Engeldinger Complaint:

On August 5, 2020, Mr. Samson received an e-mail from Mr. Engeldinger noting the import and dumping of additional fill material with documentation.

City of Burlington Zoning Ordinance Article 26:

- 18-2602 IV (5): On or before June 1, 1977, no person may perform or conduct any of the following described operations within the geographic area to which this section applies unless he shall first have obtained a permit from the City Council (unless provision is made elsewhere in the ordinances for the City of Burlington for the issuance of a permit in respect to such operations, in which case such other permit shall apply in lieu of the provisions of this paragraph).
- 18-2602 IV (5) (A): Filling or land fill including the placement of materials associated with other development activities.
- 18-2602 IV (5) (C): All other work in respect to “development” (as defined herein) including but not limited to the laying of sewage water distribution systems; pipe fitting; heating, air-conditioning and other “mechanical” work in respect to structures or construction; excavation and land drainage.
- 18-2604. Restrictions Applicable to Zone “A1-30): The provisions of this section will be applicable to all land within the community, which is shown, on the FIRM as being in the zone designated “A1-30”
 - o Note the definition of A1-30 includes Zone AE

- 18-2604 (1): the restrictions imposed by Section 18-2602 are incorporated herein by reference and shall be considered as part of this section as though set forth fully herein.
- 18-2604 (3): Until such time as a Floodway is established in the City of Burlington, no new construction, substantial improvement, or other development (including fill) upon which work is commenced on or after September 15, 1978, shall be permitted unless the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point. This paragraph shall come null and void upon the effective date of an established Floodway.

Violations:

Based on the effective FIRM panel, the Schloesser property is almost entirely located in the floodplain and there is no mapped Floodway along the Des Lacs River. The import and placement of fill without an approved permit is in violation of the City of Burlington Ordinance as outlined above and in violation of the cease and desist order issued by the City of Burlington.

Corrective measures:

The violation can be corrected by the following activities:

- Permitting the fill which requires a floodplain study showing a rise not greater than 1 foot per the City of Burlington Ordinance 18-2604 (3).
- Removal of fill material to generally conform with the 2010 Aerial Topography. This requires the removal of the fill material along the top of bank being utilized as a ring dike.

Based on Mr. Samson's interpretation of the ordinance and what has been taken place to date. It is for Council to decide the time frame.

Glines asked Samson if most of the Schloesser property is on the floodplain, all but a small piece of property is in flood plain so he is dumping within floodplain. Glines thinks the City of Burlington should take legal action now and not wait until the next city council meeting because that will be a whole month of dumping truck loads of dirt. We could take a 2-prong approach.

The first prong, he has to stop filling by using a temporary restraining order which has to be filed through the District Court. This is a quick turn over accompanied with a complaint. In 21 days, it becomes a preliminary injunction and then later on it becomes a permanent injunction which is a small bench trial. Glines will need Mr. Samson and Mr. Engeldinger for court. Chief Crabb will hand deliver a notice to Mr. Schloesser.

The second prong, City of Burlington needs to enforce its City Ordinance. Chief Crabb would have to write the citation in violation of Ordinance 18-2602 and 18-2604, section 2-111 misdemeanor in City Ordinance \$1500 penalty, no jail unless set by state law. If not paid or hasn't got a permit he can be cited in contempt section 2-112.

Samson, no letters have been sent since February is that going to be an issue.

Walker, can we prove he has raised the base flood elevation more than a foot?

Samson, the requirement is for the person placing the fill to prove to us that they are not going to. We don't have to prove it. He hasn't submitted a complete permit application.

Kabanuk, does the Water Resource Board need to be in the loop on this?

Samson, they are not going to do anything for enforcement. They will try to work in conjunction with us.

Glines, called and left a message with secretary about this special meeting, they really don't have jurisdiction but she said she would keep them in the loop.

Kremer, the Health Department doesn't get involved with this stuff?

Samson, the Department of Health is not involved. The Water Board and Corps are only concerned with the water channel.

We have to be as transparent as possible, so when it comes to the city side of things my contract falls under the retainer that you guys pay, but when it comes to filing with District Court it is my hourly rate.

Kabanuk, which way do we want to go?

Kremer, I agree with the next step.

Kabanuk, you kind of gave us options right.

Glines, I think it should be a 2-prong approach. You need to motion for each one. So, there is the City route where you enforce, and we can fine and hold in contempt. But also, the District Court way actually stops him right then and there in his tracks. I think we should pass both today. The TRO is the one in District Court. That can be filed I'm hoping on Monday and we probably need another special meeting to make sure you agree with

my document before I file them. Once they are filed, they are filed. They will probably call a hearing that week to hopefully stop him in his tracks and so the due process is what I'm most concerned about. The City side is actually fining him. First, his initial appearance, if he pleads not guilty, the second Tuesday in September so he has plenty of due process. It would have to be 2 motions for each route. And another motion to have a Special Meeting as early as Monday to approve the documents for me to file. If that's the route you want to go. Kremer, any other discussion, if not I'll make a motion that we. Which one you want first?

Motion to draft the appropriate documents for the TRO. Kremer moved to approve, Skees second. Motion carried.

Motion to hold a Special Meeting Monday August 17, 2020 at 3 pm to review Glines documents before filing them. Kremer moved to approve, Walker moved to approve. Motion carried.

Motion to file citations through the city ordinances. Kremer moved to approve, Skees second. Motion carried.

Motion to adjourn, Kremer moved to approve, Walker second. Motion carried.

Respectfully Submitted,

Mary Lynn Brooks, Auditor

Jeanine Kabanuk, Mayor