



EVAN N. PRATT, P.E.

WATER RESOURCES COMMISSIONER
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MEGHAN BONFIGLIO
Chief Deputy Water Resources Commissioner

HARRY SHEEHAN
Deputy Water Resources Commissioner

Telephone 734.222.6860
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May 4, 2017

Supervisor Chockley
Northfield Township
8350 Main St.
Whitmore Lake, MI 48189

Dear Supervisor Chockley

Thank you for taking the time to meet with the Road Commission (WCRC) and this office regarding the options for replacing the culvert on 6-mile road, on the Catholic Church–Horseshoe Lake Drain. We apologize that this culvert was recently posted with a weight limit and are willing to work with the Township and the Road Commission to address the public safety issues you mentioned as quickly as practical.

This correspondence is to provide background and options available to you at this time. In summary, we have provided a draft resolution for the fastest path by way of a Cost Share Agreement between my office, the County Road Commission and the Township. This would require the Township agree to pay 33.33% of the total cost while absorbing costs for property owner benefit. This option would take approximately 2.5 months.

An alternative option is also possible with the Township paying 16.5% and property owners paying 16.5% by submitting a Township resolution authorizing us to exceed the annual allowable maintenance spending limit.

The latter option would delay the culvert replacement by approximately 2 months (taking up to 4.5 months) due to the need to follow legal procedures to notify all residents of their assessment as well as the legal process to allow residents to challenge their assessment. The former option with the Township absorbing resident costs is more expedient and would not require notification and ensuing feedback from residents either by telephone, in person during the day or at a Board meeting.

The following provides additional background on these options if this is helpful to Board members.

As we discussed we are willing to look at these type of situations on case-by-case basis as to whether the Special Assessment nature of the Drain Code would be an appropriate funding mechanism for these unexpected situations, having recently changed a long-standing policy which previously placed the financial responsibility for road crossings on the road agency. And as explained by WCRC, their normal policy has been to split the costs for local road culverts 50-50 with the Township like other local road investments. It is notable that this was driven by the policy of WCRC being responsible for road crossings of streams on their roads due to a longstanding past policy of WCRC to take ownership of culverts in their Right-Of-Way rather than grant that authority and responsibility to this office.

As we have shared with the previous Township Board, there are 3 main sources of funds for the Special Assessment process allowed by the state's Drain Code (PA 40 of 1956), which require this office to determine that there is benefit. One source is all of the transportation agencies (road and railroad agencies), the second is the Township's general fund, and the third are the property owners whose property drains toward the County Drain.

As the WCRC has completed these major (5' diameter and larger) culvert inspections in the past 2-3 years, starting late last year, we have been involved in two other situations where the Townships have paid a 1/3 share instead of their normal 1/2 share by using the legal authority of this office on legally established County Drains. The remaining 2/3 has been paid by the County, split between the WCRC and the County general fund (GF) based on a longstanding policy that the WCRC share is split with the County GF.

Office Open Week Days From 8:30 A.M. to 5:00 P.M.

Therefore, we are providing you with a resolution and an alternative for the Township Board's consideration in funding. While we understand that any decision making entity would prefer to commit to a fixed cost rather than a proportionate share, there are two wrinkles in the Drain Code that do not allow us to work on other than a percentage basis, particularly for this type of agreement. First, we are required to set an assessment roll that divides up the 100% cost into a percentage share for all parties that are determined to benefit. Secondly, we are required to make this determination prior to taking bids for a project which of course is a more accurate figure than the estimates we are currently providing. We must demonstrate where 100% of the funds will come from regardless of cost. Thirdly, we are required by law to include a contingency in our cost estimate, because it is true that unknown conditions may lie underground. We do not normally encounter final costs and therefore actual assessments that exceed our estimates – they are conservative, so while we would not expect an increase over the proposed 1/3 share of our estimate, we do want to make sure this point is clear.

And as we discussed, due to the nature of this particular crossing, it is reasonable to see benefit to the property owners, though it is legal for a community to pay the property owners' share. Some communities do this routinely for all work, and some only do in special situations like this. So our office would be willing to consider a share to be paid by the property owners of up to 16.5% in the drainage district of the Catholic Church-Horseshoe Lake Drain if the Township is not interested in absorbing the entire 1/3 in lieu of charging property owners.

We have provided you an example assessment roll that would have the property owners collectively paying 16.5% of the total – as a reference point, for past work on this Drain, the property owners would normally be paying 64% of the total cost, so each individual would be paying about 1/5 of the percentage they would owe if we were doing routine maintenance – though this is a much larger project, so still a dollar amount that would be more than recent assessments to the property owner. The basis of benefit to property owners is in both the continued flow of the drain which facilitates use of properties, as well as the need for emergency vehicle access via Six Mile Road across this culvert for most if not all of the property owners in this drainage district.

We also note for reference that the Township's normal share for routine maintenance or other projects on this drain has historically been 30% of total costs.

So in summary, while this may be difficult to follow and more information than necessary for a decision, we again are providing a resolution that provides for the Township paying 33% of total project costs, leaving the County at 67%.

As an alternative for your consideration, we have provided an example roll showing percentage impacts to property owners (all well under 1%) in a situation where property owners would pay 16.5% of the 100% total, in which case you could simply modify the amount noted in the draft resolution to have the Township pay 16.5% of the 100% total.

As noted above, the latter option would delay the culvert replacement due to the need to follow legal procedures to notify all residents of their assessment as well as the legal process to allow residents to challenge their assessment. The former option with the Township absorbing resident costs is more expedient and would not require notification and ensuing feedback from residents either by telephone, in person during the day or at a Board meeting. Either option is legal and acceptable from this office's viewpoint.

We do not currently have an exact schedule in mind, but are proceeding with the drawings and submittals needed to proceed as quickly as possible once this key step to finalize the funding issue is resolved. We are currently working with legal counsel on what process we might use to work directly with Dan's Excavating since they are in the area and need to utilize this crossing for summer construction work that is currently targeted for mid-June. We will provide more information on timing when it is available.

Thank you for your consideration.



Evan Pratt
Water Resources Commissioner

Cc: Roy Townsend

**AGREEMENT
CATHOLIC CHURCH HORSESHOE LAKE DRAIN**

THIS AGREEMENT, made and entered into this _____ day of _____ 2017, by and between the Catholic Church Horseshoe Lake Drain Drainage District (“Drainage District”), a public corporation, by and through the Washtenaw County Water Resources Commissioner (“Commissioner”), whose address is 705 N. Zeeb Rd., Ann Arbor, MI 48103, Northfield Township, a public corporation, whose address is 8350 Main Street, Whitmore Lake, MI 48189 (“Township”), and the Washtenaw County Road Commission, whose address is 555 N. Zeeb Rd., Ann Arbor, MI 48103 (“Road Commission”).

WITNESSETH:

WHEREAS, the Catholic Church Horseshoe Lake Drain (“Drain”) is a county drain established pursuant to Act 40 of the Public Acts of 1956 (“Drain Code”), as amended; and

WHEREAS, the Road Commission and Township have requested that certain work be performed on the Drain (“Work”), with proposed plans of the Work prepared by the Drainage District depicted in the attached Exhibit A (“Work Plans”); and

WHEREAS, the Road Commission and Township have agreed to pay for all costs relating to the Work performed on the Drain by the Drainage District.

NOW THEREFORE, the parties agree as follows:

1. The Work will be performed consistent with best management practices, including for soil erosion and sedimentation control. The Drainage District shall perform the inspections of the Work during construction. The contractor utilized by the Drainage District to perform the Work shall meet the Road Commission’s insurance requirements.
2. The Drainage District has the permission of the Road Commission to perform the Work within any affected road right-of-way.
3. The Road Commission and the Township shall pay all related costs incurred by the Drainage District, including all engineering, inspection, easement acquisition, recording, permitting, legal and administrative expenses and costs attendant to this Agreement.
4. The Township shall pay 33 1/3% of the total cost, and the Road Commission shall pay 66 2/3%. Payment of the Township’s and the Road Commission’s share of the total costs of the Work shall be due to the Drainage District upon receipt of invoices.
In the event that the Road Commission and/or the Township request in writing that the total costs be paid over more than one year, the date each payment is

due, the amount of each payment, and the total amount of interest to be paid by the Road Commission and/or the Township is outlined in Exhibit B (“Payment Schedule”).)

5. Each party hereto represents and warrants to the other that it has full power and authority to enter into this Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

WASHTENAW COUNTY ROAD COMMISSION

By: Roy Townsend
Its: Managing Director

NORTHFIELD TOWNSHIP

By: Marlene Chockley
Its: Supervisor

**CATHOLIC CHURCH HORSESHOE LAKE DRAIN
DRAINAGE DISTRICT**

Evan N. Pratt
Washtenaw County Water Resources Commissioner

STATE OF MICHIGAN)
)ss.
COUNTY OF)

On this _____ day of _____, 2017, before me, a Notary Public, personally appeared Roy Townsend on behalf of the Washtenaw County Road Commission, to me known to be the person described in and who executed the foregoing instrument and acknowledged the same to be his free act and deed.

_____) Notary Public
State of Michigan, County of _____
My Commission Expires: _____
Acting in the County of _____

STATE OF MICHIGAN)
)ss.
COUNTY OF)

On this _____ day of _____, 2017, before me, a Notary Public, personally appeared Marlene Chockley on behalf of Northfield Township, to me known to be the person described in and who executed the foregoing instrument and acknowledged the same to be his free act and deed.

_____) Notary Public
State of Michigan, County of _____
My Commission Expires: _____
Acting in the County of _____

STATE OF MICHIGAN)
)ss.
COUNTY OF MONROE)

On this _____ day of _____, 2017, before me, a Notary Public in and for said County, personally appeared Evan N. Pratt, Washtenaw County Water Resources Commissioner, on behalf of the Catholic Church Horseshoe Lake Drain Drainage District, to me known to be the person described in and who executed the foregoing instrument and acknowledged the same to be his free act and deed.

_____) Notary Public
State of Michigan, County of _____
My Commission Expires: _____
Acting in the County of _____

**RESOLUTION FOR
425 AGREEMENT FOR IMPROVEMENT OF A DRAIN
NORTHFIELD TOWNSHIP**

CATHOLIC CHURCH HORSESHOE LAKE DRAIN

At a meeting of the Northfield Township Board, held in Washtenaw County, State of Michigan on the ____ day of _____, 20____, at _____ a.m./p.m.

PRESENT: _____

ABSENT: _____

The following resolution was offered by _____ and seconded by _____
_____.

WHEREAS, the Township requests the improvement of a drain, located in Washtenaw County, pursuant to Chapter 18 of Public Act 40 of 1956, as amended; and

WHEREAS, the Township has determined that the improvement of the drain is necessary for the public health in the Township; and

WHEREAS, the Township will be liable for 1/3 of the cost relating to the Work performed on the Drain by the Drainage District.

NOW, THEREFORE BE IT RESOLVED THAT, the Township Board does authorize the filing of a 425 Agreement for improvement of the drain.

BE IT FURTHER RESOLVED THAT the Supervisor is authorized to execute the agreement for improvement of the drain.

BE IT FURTHER RESOLVED that the Clerk shall forward to the Washtenaw County Water Resources Commissioner a copy of this Resolution for the 425 Agreement for improvement of the drain.

NORTHFIELD TOWNSHIP

Dated: _____

By: Marlene Chockley
Its: Supervisor

**RESOLUTION AUTHORIZING THE WATER RESOURCES
COMMISSIONER TO EXCEED THE STATUORY SPENDING AND
ASSESSMENT LIMIT OF TWENTY FIVE THOUSAND DOLLARS
(\$25,000.00) PER YEAR FOR THE MAINTENANCE AND REPAIR OF
THE CATHOLIC CHURCH HORSESHOE LAKE DRAIN.**

WHEREAS, the Catholic Church Horseshoe Lake Drain is a drain located in the municipality of _____, which drain was constructed in accordance with the Drain Code of 1956; and

WHEREAS, the Water Resources Commissioner is entrusted with the responsibility of ensuring proper maintenance and repairs are made to said drain; and

WHEREAS, the Water Resources Commissioner, pursuant to statute, has inspected the drain which inspection revealed that repair work is necessary inasmuch as said inspection identified _____; and

WHEREAS, the Water Resources Commissioner of Washtenaw County has estimated that the repair of the drain will be approximately \$ _____; and

WHEREAS, pursuant to the Drain Code of 1956, the Water Resources Commissioner cannot exceed the statutory spending limit of \$25,000 for the maintenance and repair of the drain unless approved by a resolution of the Township Board; and

WHEREAS, the Water Resources Commissioner has requested the Township Board to pass such resolution authoring the office of the Water Resources Commissioner to exceed the statutory spending limit allowed on the Catholic Church Horseshoe Lake Drain, to wit: \$ _____ per year, so as to allow repair of said drain.

NOW THEREFORE, BE IT RESOLVED, that the Northfield Township Board of Trustees for the municipality of Northfield Township hereby approved and authorizes the office of the Water Resources Commissioner to exceed the statutory spending limit of \$25,000 per year for the repair of the Catholic Church Horseshoe Lake Drain in the exceeded amount of \$ _____.

Yeas:
Nays:
Abstain:
Absent:

Resolution No.

I, the undersigned, being duly qualified and acting Clerk of Northfield Township, do hereby certify that the foregoing is a true and complete copy of certain proceedings taken by the Township Board for the Township of Northfield at a regular meeting held on the ____ day of _____, 20__ and that notice of said meeting was given in accordance with the Open Meetings Act.

_____, Clerk
Northfield Township

Date