

## South Bar Lake Drainage District Board of Determination

Organizational Session – Thursday, October 22, 2020, 6:00 p.m.

### Tentative Minutes – Meeting recorded

<https://www.leelanau.gov/meetingdetails.asp?MAId=2013#video>

*Via Zoom due to Covid and in-person at the  
Leelanau County Government Center, 8527 E. Government Dr., Suttons Bay, Michigan*

The meeting was called to order by Drain Commissioner Steve Christensen at 6:05 p.m.

The Pledge of Allegiance to the Flag of the United States of America was led by Christensen.

<u>Roll Call:</u>	Robert Hawley	PRESENT
	Richard Bahle	PRESENT
	Gary Fredrickson	PRESENT
	Rob Chapman, <i>alternate, also present</i>	

Guests present.

#### Welcome and Introductions –

##### Board of Determination Members:

Robert Hawley, Glen Arbor Township

Rich Bahle, Suttons Bay Township

Gary Fredrickson, Leelanau Township

##### Also present:

- Steve Christensen, Leelanau County Drain Commissioner
- Brian Cenci, P.E., GEI Consultants, Inc., engineer on this project

#### Opening of the Board of Determination Meeting –

Oath of Office – read by Christensen and attested by all members, including alternate Chapman

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[https://www.leelanau.gov/downloads/south\\_bar\\_lake\\_bod\\_oath\\_read\\_by\\_dc\\_give\\_to\\_bod\\_members\\_final.pdf](https://www.leelanau.gov/downloads/south_bar_lake_bod_oath_read_by_dc_give_to_bod_members_final.pdf)

#### Election of Chairperson:

Christensen called for a motion to elect a chairperson.

**Motion by Hawley that Richard Bahle serve as Chairperson of the South Bar Lake Drain Board of Determination. Seconded by Fredrickson.**

Discussion – none.

**Ayes – 3 (Hawley, Bahle, Fredrickson)**

**NO – 0**

**MOTION CARRIED.**

Christensen then turned over the meeting to Chairman Bahle.

**Chairman Bahle asked for a consensus to approve the agenda as presented. Seconded by Hawley.**

Discussion – none.

**Ayes – 3 (Hawley, Bahle, Fredrickson)**

**No – 0**

**MOTION CARRIED.**

Chairman Bahle asked for a motion to elect a Secretary.

**Motion by Hawley that Gary Fredrickson serve as Secretary of the South Bar Lake Drain Board of Determination. Seconded by Bahle.**

Discussion – none.

**Ayes – 3 (Hawley, Bahle, Fredrickson)**

**No – 0**

**MOTION CARRIED.**

**Motion by Hawley that public comment should be limited to three (3) minutes per person. Seconded by Fredrickson.**

Discussion – none.

**Ayes – 3 (Hawley, Bahle, Fredrickson)**

**No – 0**

**MOTION CARRIED.**

Brief discussion ensued with Christensen and a caller.

Roles, Duties and Function of the Board:

Christensen then reviewed the roles and duties of the board –

[https://www.leelanau.gov/downloads/south\\_bar\\_lake\\_bod\\_instructions\\_and\\_background\\_info\\_final.pdf](https://www.leelanau.gov/downloads/south_bar_lake_bod_instructions_and_background_info_final.pdf)

Procedural History:

Cenci said essentially, there is one decision this Board will make tonight; as to whether the petition to locate (establish and construct) a new county drain (which is necessary or not to public health, convenience and welfare). There is a two-part process in Michigan to establish a (new) drainage district. The notice and letter that had been sent to everyone, there was mention of a drainage district; we looked at it as a watershed area, or any of the water that could get down to South Bar Lake. The drainage district, as it is established, as he will go over in his presentation, (the Board) does not determine in regards to the district – if you feel you should not be included within the district, there is an appeals process that will take place at a later date, when they review apportionment. This is done at the end of the project, if they determine the project is necessary. What Christensen had just read, there are several times where the Drain Commissioner determines the scope of the project, where it proceeds past this point. The way the law is set up, the Board of Determination members, who cannot own land within the district, or the affected (municipalities), they have no stake in the game as to if something should proceed or not. Cenci said as Christensen stated within the roles and duties of the board, the Drain Code was a law written in 1956 and has been amended frequently throughout the years. However, the process for it has not been amended (<https://www.leelanau.gov/lcdraincomdd.asp>)

Cenci continued; as Christensen stated, there may be a few people affected that are flooding from an issue associated with the drain. The County Drain Commissioner cannot get involved unless it is a legally established county drain. Cenci noted there are potentially four drainage districts currently in process. If there was a question regarding the district, we would rather over-notice at this point to allow people the ability to attend this meeting to provide public comment or testimony to the Board in regard to the necessity of the petition. The law requires us to notice everyone who may potentially be (benefitted by the proposed new County Drain). Changes can be made at a later date, and if we had not noticed you, we could not make that change. The boundary is probably more inclusive than it will end up being. The cost (or scope of the project or potential solutions) – this Board doesn't consider as there is no project at this point. We are doing the procedural things required by the law to get to this Board of Determination. There isn't a project or solution we are proposing to vote on. We do not have a solution, because if you spend any money, any spent on that, if the Board determines it isn't necessary, that would be for naught.

Cenci noted the Drain Commissioner is an elected official, with the law stating he determines the scope of the project. For the scope meeting, we will outline more details of what the cost and perhaps options with costs for each of those options, at that scope meeting to obtain public comment on what people think with an approximate assessment, based on for example, size of the property, or average per acre. There will be several different solutions with a variety of costs. That really determines the size and any assessments associated for the project. All to be presented at a later date.

#### Engineer's Presentation:

Cenci presented a PowerPoint –

[https://www.leelanau.gov/downloads/2003339\\_south\\_bar\\_lake\\_drain\\_bod\\_presentation\\_final\\_102220.pdf](https://www.leelanau.gov/downloads/2003339_south_bar_lake_drain_bod_presentation_final_102220.pdf). Cenci stated that in many cases, for a new drain, 10 people liable for an

assessment can file an application, or any municipal corporation – the Village prepared the application, which established the district or land area. Once that is done, the second item or, or drain petition, is to locate establish and construct the drain. The petition at that point is a route or alignment for the drain that could fix the overall issue as presented in the petition.

Cenci said he will review the work we have done, which has been outlined in the Drain Code.

The drain, a few issues, and let the petitioner, or the village, review the issues. Cenci continued to review his PowerPoint, which included the following points –

- Purpose of the Engineering Review
- Work Performed
- Proposed Drainage District Boundary
- Proposed Route and Course
- Existing Infrastructure
- Drainage Issue, purpose of Petition

There are about 820 property owners notified in this district, with some owning multiple lands; as well as federal lands. The federal lands can't be assessed. You can assess DNR public boat launches through the DNR. He outlined the existing route for the proposed drain. He then explained the problems encountered with heavy wave action events and the high-water levels.

Cenci noted the Village has an easement over the two proposed properties; the S. Lake Michigan Drive is a private easement. This has not gone through a legal, lake level process. Which is a big thing in regards to establishing if it is necessary to fix. In general, he doesn't like dealing with lake levels, in finding everyone to agree on a common level. If that is something that people around the land want to do, there is a separate process for that.

Cenci asked for comment from the Board – none received.

Public Comment:

Chairperson Bahle noted the Board has received a number of written comments – to be attached to the minutes including letters from –

- **John and Valeen Dalton, Empire,**  
[https://www.leelanau.gov/downloads/pc\\_sbldd\\_dalton.pdf](https://www.leelanau.gov/downloads/pc_sbldd_dalton.pdf)
- **Richard Grodek, Empire Hills Subdivision,**  
[https://www.leelanau.gov/downloads/pc\\_sbldd\\_grodek.pdf](https://www.leelanau.gov/downloads/pc_sbldd_grodek.pdf)
- **Jo and Tara Bolton,** [https://www.leelanau.gov/downloads/pc\\_sbldd\\_bolton.pdf](https://www.leelanau.gov/downloads/pc_sbldd_bolton.pdf)
- **John Friend,** [https://www.leelanau.gov/downloads/pc\\_sbldd\\_friend.pdf](https://www.leelanau.gov/downloads/pc_sbldd_friend.pdf)
- **Bronwyn Jones,**  
[https://www.leelanau.gov/downloads/pc\\_sbldd\\_jones\\_bronwyn\\_10222020.pdf](https://www.leelanau.gov/downloads/pc_sbldd_jones_bronwyn_10222020.pdf)
- **John Collins, South Bar Lake Association (SBLA),**  
[https://www.leelanau.gov/downloads/sbldd\\_pc\\_sbla\\_10222020.pdf](https://www.leelanau.gov/downloads/sbldd_pc_sbla_10222020.pdf)

Bahle noted the comments will be reviewed by the Board and attached to the official record. He added that Empire Village was asked to provide its presentation.

- **Soni Aylsworth, Empire Village President.** Aylsworth provided a PowerPoint –  
<https://www.leelanau.gov/downloads/villempresentation101920f2pdf.pdf>
- **John Collins, President of the SBLA, PO Box 351, Empire.** Collins noted they had forwarded a letter (link embedded above). Collins read from his letter.

Clerk repeated the number to call in to provide public comment.

- **John Rupp, Jr., 10655 S. Fredrickson Rd.** Rupp stated in reading the district rules, it is up to the landowners and 50% of the landowners in a district, or (a municipality) if it is necessary for public health. Could someone expand on the public health need relating to a drain district? Cenci said in the Drain Code, it asks the Board – the necessity is based

on public health, convenience, or welfare. Rupp replied it doesn't say that for a township solely on its own. Cenci clarified that is in terms of public health and necessity; it used to be the Board would vote on determination of the public health of the township as a second vote at these meetings. The law was changed a few years ago, in which the drain commissioner makes that determination if any of the at-large entities, which in this case, is the village or township, have public health benefits with the particular drain. Rupp said he understands that – can someone expand on the public health aspect, as it was a single entity request. Cenci said there isn't a need, a determination as to each item in terms of public health, convenience or welfare. In terms of public health in the roles and duties of the board, we give some examples, such as – community health; free from contaminated water; free flooded land on properties; basement flooding; toilet backups because septic systems cannot function due to the presence of standing water; areas free from flooded roadways; stagnant water; diseases; septic overflows; allowing safe passage of emergency vehicles on roads; mosquitoes; sanitation problems. These are examples of public health.

Rupp continued, with taxation; once (the district) is established, he understands the initial aspect and the need. He is one of the property owners "on the edge". He understands the initial assessments. He is concerned about ongoing cross-assessments. When he reads the Drain Code, it reads to him the Board of Determination can make a determination and there is no recourse for residents within the assessment area as to how much money can be assessed year to year. Cenci responded there are two things; petition-related laws, which this is under, and there are assessments for maintenance. In the drain code, any drain commissioner on any established county drain, can expend \$5,000.00 per mile per year in maintenance monies without having to receive a petition. Sometimes petitions are necessary if the drain commissioner needs to expend more money in order to fix a maintenance issue. So, the drain commissioners are limited on how much they can spend in a year. That is \$5,000.00 per mile per year in construction costs. There may not be an improvement issue on the drain, but the drain commissioner wants to fix a maintenance issue. It used to be they counted everything, such as time, stamps on envelopes; it is now physical in the field work. Every drain commissioner he has known works on the basis of they will not spend money unless there is an item or an issue they are fixing. These assessments work in arears.

Cenci said there is no cap on the costs, in regards to the cost that petitions can be. He has worked on petitions as small as \$60,000.00, and he is working on one for a \$37 million bond in Lansing. The size and scope of the work is based on the drain commissioner, as they can assess and tax residents in the state. That is why the position is elected. More comments followed.

- **Wyman and Maureen Bolton, 11295 Lake Michigan Drive, Empire.** Bolton said he appreciates the concern the SBLA has, but why isn't this just a village problem and why is it also a township problem? If (the village) works 250 to 300+ hours a year to keep the outlet open, which if it costs \$20 to \$40/hour or \$5,000.00 to \$10,000.00 a year, it seems like a nominal cost for the Village to bear. Bolton said he has property is both the

village and township. We in the village should pay that cost, and not put that cost on to the township. He said what he can see happening is a drain commission being developed, and then we have to hire a drain commissioner and then we develop a whole new bureaucracy, not just on Village but Township taxpayers.

Bolton continued; secondly, how do we as taxpayers get a say on if this drain district ultimately decides to assess the parcels in the township? How do we get a say in approving this? He doesn't think it is necessary, it's a nominal cost. He has property on South Bar Lake and would rather be taxed for his problem in the Village and not put the cost onto the Township. Cenci said regarding the tax approval, the purpose of this meeting as outlined in the public notice, it is for land which may be liable for an assessment. This just puts you on notice that there may be an assessment associated with the petition, which is why everyone is present tonight. What we have said is that if the Board proceeds past this point, they will conduct a scope meeting for costs and solutions for this particular issue and then present them in a public meeting, where we can get into more particulars, such as this is "Fix A", and this is how it would look for your particular property and what you would expect in costs for the village or the township. The at-large entities, such as the Village and township pay a percentage. The Village is currently paying 100% of the costs now; in the future, Christensen could hire the Village to go out and clean out the drain in the future, but instead of 100% of the costs going to the village, the costs will be paid by the drain commissioner and it might be (the Village is responsible for) 10% of the costs.

Cenci continued – in regards to the Village cleaning (out the drain) and doing the work, the requirement for the Village to do so, is legally a question mark as to whether they have to do so, because a lake level wasn't formally established. For the tax approval, a scope meeting will be conducted followed by a day of apportionment. When they get to that point, they will bid out the project and then based on the lowest priced contractor who can do the work, put together a computation of costs – a balance sheet of everything that has been expended on the drain and the costs for setting it up, including any fees for the notices of the Board of Determination; the mailing out; any construction time; a 15% contingency, and then manage the costs that are assessed out. During the day of review of apportionment, the drain commissioner has a percent associated with you the landowner for that particular overall cost of the drain. The idea is you might not be on the lake and be impacted, but you might contribute some of the water that gets to the lake that now someone else has to deal with and pay for. If you are a small component or percentage of that water or low benefit, you will pay very low compared to others who might receive a greater benefit. The day of apportionment is your legal time. They get 10 days to make a change and you have 10 days to appeal after that point.

Bolton said the taxpayer doesn't get a vote; ultimately it is the drain commissioner determining who has to pay what. Cenci affirmed; the drain commissioner has no determination, and no authority in this Board of Determination meeting. That is why the

members of the Board of Determination have no stake in the game. This is also your opportunity to voice your concerns and public comment.

Bolton said if there is an appeal process and the drain commissioner makes a determination that the taxpayer and landowner thinks it is averse to his position, is there an opportunity to appeal that? What is the process? Cenci responded at the end of the apportionment there is a 10-day appeal limit, to the Circuit Court judge, who would then appoint three disinterested property owners that live in the County and do not have a stake in the game to hear whether there is an inequality or manifest error in the assessment roll the drain commissioner prepared. You typically have to get a bond with the court in regards to that, because those costs are additional. You would make your appeal to those three people. He added he has been to those boards of review and they are usually very lenient to landowners. Typically, most drain commissioners work it out, because they have 10 days after to make changes to the roll they feel are needed.

- **Andrew Lawrence, 10135 W Salisbury Dr., Empire.** Lawrence stated that with the flooding on the road along the beach, he understands Empire (Village) doesn't have a sewage system. Does this put an impact on the septic systems of homes, and does the flooding impact water quality along South Bar Lake/Lake Michigan? Does it make septic systems inoperable? Chairperson Bahle remarked if a garage is full of water and there is a septic field. You can well imagine it is probably washing into South Bar Lake and then into Lake Michigan. Lawrence asked if the lake level of South Bar Lake goes down, will that affect the groundwater levels in the area, which have been high in Empire? Bahle responded any decrease in the lake level would actually make it easier to keep the drain open. Lawrence clarified – if the drain is cleared, by fixing the drain or putting one in that is more effective than then brings down the South Bar Lake, would that reduce the groundwater levels? If a permanent solution is found, it would seem that the lake levels of South Bar Lake will go down. Chairperson Bahle responded absolutely. Lawrence added, wouldn't that then impact the groundwater levels? Cenci said it might affect the local water table a bit, but not much.

The Clerk repeated the phone number to call in for public comment for any YouTube viewers.

Cenci asked and Chairperson Bahle affirmed that the six written submissions have been reviewed by all three Board of Determination members, and all submitters were afforded the opportunity to speak.

**Motion by Hawley to close public comment. Seconded by Fredrickson.**

Discussion – none.

**Ayes – 3 (Hawley, Bahle, Fredrickson)**

**No – 0**

**MOTION CARRIED.**

Decision of Board of Determination:

**Motion by Hawley that the proposed locating, establishing, and constructing of the South Bar Lake Drain as petitioned on June 11, 2020, is necessary and conducive to the public health, convenience, or welfare. Seconded by Bahle.**

Discussion – Chairperson Bahle said they saw clear information from the village; it seems to be quite evident there is an ongoing problem there, which is really outside of the village’s sole responsibility. Fredrickson remarked something needs to be done there, and this makes the most sense to spread the cost of the project over as many people as possible. There is definitely an issue there, and he had visited the site yesterday. There is no (municipal) sewer in Empire. This is definitely a groundwater situation with septic systems. Bahle added the goal here isn’t just to spread the costs, rather it is to spread the costs over those parcels contributing – it is driven by where the water comes from. Hawley said our charge is to either establish or not establish that constructing a drain is necessary and conducive to the public health, convenience or welfare. All we need to see is some evidence that a problem exists; beyond that, our charge doesn’t go any further. That is our charge, and I saw evidence. Fredrickson concurred.

**Ayes – 3 (Hawley, Bahle, Fredrickson)**

**No – 0**

**MOTION CARRIED.**

Appeals Process:

Cenci read from the Drain Code, that if anyone who disagrees with the decision of this Board, to determine the necessity of the petition for the public health, convenience or welfare, can appeal the decision within 10 days, and the appeal must be filed with Leelanau County Circuit Court (full text of the code - <https://www.leelanau.gov/lcdraincomdd.asp>) . The Circuit Court review is limited to whether the Board’s actions are authorized by law, and whether the Board’s findings of fact are supported by materials, substantial, competent evidence on the whole record; whether they were presented testimony or information upon which they based their decision. The Order of Necessity will be available at the Drain Commissioner’s Office tomorrow morning, of which you will need a copy in order to appeal. Any questions, you can call the Drain Commissioner.

Adjournment:

Meeting adjourned by Chairperson Bahle at 7:52 p.m.

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Laurel S. Evans  
Recording Secretary Pro Tem