

Thistle drainage suit settlement falls apart

Written by MARK JAEGER
Wednesday, 07 May 2014 17:49

Landowners refuse to accept district terms that would end litigation

A proposed settlement in the ongoing litigation between the Northern Ozaukee School District and neighboring property owners Kendall and Carla Thistle has been rejected.

District officials said the terms of the settlement would not be made public, but an e-mail from Kendall Thistle — who also serves on the School Board — said the matter would continue in the courts.

At the heart of the dispute is a berm the Thistles erected on their property on the west side of Highway 57 to protect it from floodwater flowing off the partially developed Village Green subdivision.

The couple say the drainage problems began seven years ago, when the natural flow of surface water was disrupted by the construction of roads and home sites.

The berm diverted runoff onto the adjacent land owned by the school district, creating a pond that had to be drained.

The district decided in 2011 to file a civil suit against the Thistles to recover the cost of draining water from their land. That bill came to \$8,300.

The legal bills for preparing the lawsuit have topped \$100,000, and Kendall Thistle has routinely objected to paying those bills during School Board meetings.

A motion hearing on the case is scheduled for May 16, and a three-day trial before Circuit Court Judge Paul Malloy has been tentatively set for June 24 to 26.

In an e-mail from Thistle to the district's legal counsel, he said he was turning down an offer to settle the matter.

"Although we agree it would be in the district's best interest to drop the case at this point. The district has that option available and since it was the district that initiated the lawsuit, it would only make sense," Thistle wrote.

"We have made numerous offers to settle and provided the district with many opportunities to resolve this matter in a responsible fashion. The board leadership has consistently refused to represent these offers to settle. At this time we feel there is no counter offer that would have any chance of being presented in an honest light."

In response to Thistle's comments, Supt. Blake Peuse said the heart of the litigation is doing whatever it takes to keep children safe.

"Throughout this process, the Northern Ozaukee School District has been focused on ensuring a safe learning environment for our students, staff and school community. It continues to be our

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position that the 15-foot high berm that the Thistles constructed resulted in the permanent flooding of over an acre of district property,” Peuse said.

“Unfortunately, the Thistles have been unwilling to negotiate and their unreasonableness throughout this process has resulted in higher than expected legal costs for the district. Our many offers to negotiate, mediate and settle this case have been repeatedly rejected.

“While we remain convinced that we have a strong case, the NOSD board has reached a point where we are not willing to spend any further money in our pursuit of fairness. While we will not disclose the specifics of confidential settlement exchanges that have occurred between and among the parties, we continue to explore any means necessary and allowable under the law to resolve this matter.”