

Northern Ozaukee School Board decides not to bar Thistle from closed session on court strategy

Stormwater runoff, legal liability and a question of conflict of interest have combined to create a sticky situation for the Northern Ozaukee School District.

Last year, the Northern Ozaukee School Board agreed to pay \$7,500 to drain a three-quarter-acre pond that had formed on land the district owns north of Ozaukee Elementary School.

According to district officials, the drainage pond was created when neighbor Kendall Thistle — a longtime member of the School Board — built an earthen berm to protect his property on the west side of Highway 57 from flooding coming from the nearby Village Green subdivision.

The berm blocked a drainage ditch intended to handle storm runoff from the sprawling development.

After wrangling over responsibility, the district chose to pay to drain the pond, removing the potential hazard from the attention of curious school children.

Now, the district is prepared to take the matter to court, seeking reimbursement for their expenses and assurances that the drainage way leading from the pond to the roadside ditch will be maintained.

The suit seeks financial relief from Thistle and the subdivision developer, MasterCraft Builders.

The matter has also spurred two legal letters and an e-mail from the school district's attorney, John Haase.

In the first letter, Haase said the litigation is likely to be more costly than officials had anticipated. He warned that pursuing legal action could cost more than \$35,000.

"Although one can never predict the outcome of litigation, the district's case to recover its costs appears fairly strong," Haase said.

"However, the expenses of litigating the claim could be quite high relative to the potential recovery."

The second legal opinion dealt with Thistle's role in considering legal options in the matter.

Thistle has abstained from previous votes on the pond dispute, but he resisted a request that he recuse himself from board discussion of the legal strategy to be followed in the drainage suit.

Haase was asked for a legal opinion on whether Thistle's attendance at a proposed closed session would be a conflict of interest.

Legal questions dog drainage case

Written by Mark Jaeger

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The attorney said he could find no precedent for the situation, but said the fact the case could have a financial impact on Thistle should be seen as a clear conflict of interest.

“(Thistle) may argue that, although he wants to attend the closed meeting, he will not ‘vote’ or participate in the decision. However, even if (he) chooses to sit silently and not vote, it would not cure the conflict of interest problem,” Haase wrote.

“As a member of the School Board, he would still be ‘authorized’ to vote on the matter of which he has a direct pecuniary interest.”

Haase speculated that “the only purpose in attending the closed session ... would be to learn the NOSD’s legal strategy or influence its by his presence or vote.”

By participating in the closed session, he said Thistle would “taint the outcome” of the deliberations.

“The NOSD board cannot develop a legal strategy regarding this issue with the potential adverse party learning the specifics of such strategy,” Haase wrote.

Haase said intentionally violating the state law regulating conflicts of interest by public officials would be a felony punishable by a fine of as much as \$10,000.

He said ignoring the prohibition from attending the legal session could also be a violation of the state’s Public Ethics Law.

But an e-mail from Haase this week agreed with Thistle’s contention that he could not be excluded from a board session if he refused to voluntarily stay away from the meeting.

With that latest opinion, officials decided to cancel the closed session planned for next week. Instead, the court matter will be discussed as part of the board’s Sept. 13 meeting.

Board President Paul Krause said the matter has taken the board’s focus away from pressing educational matters.

“Kendall Thistle is an elected official who wants to serve the residents of the district, but I wish we didn’t have to deal with these kinds of distractions,” he said.