

August 11, 2009

RESOLUTION NO. 2009-45

RESOLUTION BY THE EXECUTIVE COMMITTEE EXPRESSING OPPOSITION TO THE PETITION OF RACINE COUNTY BOARD OF DRAINAGE COMMISSIONERS TO ANNEX LANDS INTO NORWAY/DOVER DRAINAGE DISTRICT

To the Honorable Members of the Racine County Board of Supervisors:

WHEREAS, on July 16, 2009, the Racine County Planning and Development Department received from the Racine County Board of Drainage Commissioners (hereinafter "Drainage Board"), a Notice of Public Hearing of Proposed Annexation of Lands into the Norway/Dover Drainage District, with attached Petition of John S. Ingersoll, Jr., dated April 15, 2009, to annex 3,109 additional parcels, including land owned by Racine County, into the Drainage District, and assess benefits and costs as it does for other lands already in the Drainage District; an Order of the Board, also dated April 15, 2009, scheduling a hearing on the Petition for August 12, 2009, at 6:00 p.m., and a Racine County Farm Drainage Norway-Dover Mapping & Benefit Assessment Project Report (hereinafter "Engineering Report") dated February 9, 2009, prepared by Griswold Engineering;

WHEREAS, the Petition effectively increases the land subject to the jurisdiction of the Drainage District from 18,879 acres to 33,306 acres, and the affected parcels from 1,868 to 4,977, and results in a significant assessment for taxpayers to be annexed to the Drainage District, including \$23,680.47 on lands owned by the County;

WHEREAS, the Petition alleges that the land proposed to be annexed receives benefits of the Drainage District from the maintenance and improvement of the drainage canal and field tile for the drainage of water or protection of land from water, and that these benefits were not evident or were inadvertently overlooked at the time the Drainage District was organized in 1908;

WHEREAS, although the Engineering Report was completed on February 9, 2009, and was acted on by the Drainage Board on April 15, 2009, the County did not receive notice of the report until July 16, 2009, despite §88.16, Wis.Stats., requiring that the County receive written notice of the hiring of an engineer to conduct a study related to the operation of a drain or a district, "as soon as possible", and further receive written notice, "as soon as possible", of the report's completion and where to review it;

WHEREAS, the Drainage Board failed to obtain a report from the state drainage engineer employed by the Department of Agriculture, Trade and Consumer Protection (DATCP) before proposing to add territory to the Drainage District, as provided in §88.11(3), Wis.Stats.; and according to DATCP, has failed to seek approval and adopt complete specifications for the Drainage District as of December 31, 2000, as required by ATCP 48.20, Wis.Adm.Code;

WHEREAS, it does not appear that the Drainage Board provided proper notice of the August 12, 2009 hearing to the County, as it failed to publish a class 3 notice as required by §88.05(3)(b), Wis.Stats.;

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4 **WHEREAS**, the Petition fails to show that the affected areas were unintentionally
5 omitted at the time the Drainage District was created, and it only later became apparent
6 that such lands were directly affected; the report fails to show the lands proposed to be
7 annexed are benefited by district drains, and further fails to show a change in runoff
8 from the property proposed to be annexed, as required by ATCP 48.06, et.seq.;

9 **WHEREAS**, the proposed annexation violates equal protection of the law
10 guaranteed by the state and federal constitutions, and allows for the piecemeal
11 additions to the Drainage District, as it appears that areas to the north of the properties
12 proposed to be annexed, namely lands in Waukesha County, are no less benefited by
13 district drains than the proposed areas in Racine County;

14 **WHEREAS**, delays and defects in notice as set forth above, most particularly the
15 lack of information regarding the Engineering Report, and the failure of the Drainage
16 Board to complete the required Drainage District specifications and to obtain the input of
17 the state drainage engineer, impairs the ability of the County to prepare an adequate
18 response to the petition, including hiring its own engineers to evaluate the claims made
19 by the Drainage Board engineers, on or before the August 12, 2009 hearing date;

20 **WHEREAS**, the Racine County Board of Supervisors expresses its opposition to
21 the Petition to annex property to the Drainage District, resulting in significant
22 assessments for County and other property owners in the proposed annexed area, and
23 objects to the Drainage Board taking any further action on this Petition, until the County
24 is provided adequate opportunity to review the Engineering Report and all relevant
25 documents, to determine whether its properties benefit from the district drain, and until
26 the Drainage Board follows proper statutory and administrative procedural requirements
27 in proposing to expand the Drainage District;

28 **NOW, THEREFORE, BE IT RESOLVED** that the Racine County Board of
29 Supervisors expresses its opposition to the Petition for Annexation of Lands into the
30 Norway/Dover Farm Drainage District, including land owned by Racine County; and

31 **BE IT FURTHER RESOLVED** that the Racine County Board of Supervisors
32 expresses its opposition to the Drainage Board conducting a hearing on the Petition as
33 proposed on August 12, 2009, and issuing any order thereto, until the County is
34 provided proper notice of the hearing and of the Engineering Report, and is provided an
35 adequate opportunity to respond to the Petition and the Report, and potentially conduct
36 its own engineering study, and to have the benefit of the required Drainage District
37 specifications and a report by state drainage engineer;

38 **BE IT FURTHER RESOLVED** that the Office of the Corporation Counsel is authorized
39 to execute any documents necessary to carry out the intent of this resolution;

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1st Reading _____

2nd Reading _____

BOARD ACTION

Adopted _____

For _____

Against _____

Absent _____

VOTE REQUIRED: Majority

Prepared by:
Corporation Counsel

Respectfully submitted,

EXECUTIVE COMMITTEE

Peter L. Hansen, Chairman

Robert N. Miller, Vice-Chairman

Karen A. Nelson, Secretary

Joseph F. Bellante, Jr.

Robert D. Grove

Jeff Halbach

Michael J. Miklasevich

Dan F. Sharkozy

Van H. Wanggaard

Pamela Zenner-Richards

**The foregoing legislation adopted by the County Board of Supervisors of
Racine County, Wisconsin, is hereby:**

Approved: _____

Vetoed: _____

Date: _____,

William L. McReynolds, County Executive