

**MILL CREEK WATER RECLAMATION DISTRICT
KANE COUNTY, ILLINOIS**

ORDINANCE NO. 2018-02

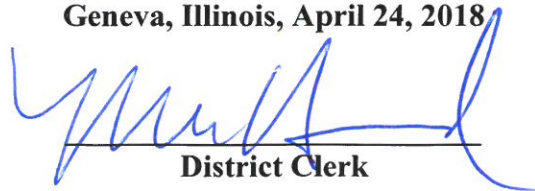
**AN ORDINANCE AUTHORIZING THE MILL CREEK WATER RECLAMATION
DISTRICT TO ACQUIRE CERTAIN REAL PROPERTIES BY EMINENT DOMAIN**

Adopted by the

**The Board of Trustees of the
Mill Creek Water Reclamation District**

April 24, 2018

**Published in pamphlet form by
authority of the Board of Trustees
of the Mill Creek Water Reclamation District,
Geneva, Illinois, April 24, 2018**


District Clerk

ORDINANCE NO.: 2018-02

AN ORDINANCE AUTHORIZING THE MILL CREEK WATER RECLAMATION DISTRICT TO ACQUIRE CERTAIN REAL PROPERTIES BY EMINENT DOMAIN

WHEREAS, the Mill Creek Water Reclamation District, a body politic and corporate (sometimes referred to as “MCWRD” or “District”) is organized and incorporated pursuant to an Order Confirming Incorporation of Sanitary District entered on November 23, 1992 in a cause filed in the Circuit Court of Kane County, Illinois entitled “In Re: Petition for Formation of a Sanitary District Pursuant to Ill. Rev. Stat. Ch. 42 Section 412 to be known as the ‘Mill Creek Water Reclamation District’” Case No. MC 92 0004 and operating and existing under Illinois Sanitary District Act of 1936 (70 ILCS 2805/0.1 *et. seq.*) (sometimes referred to as “Act”) with its corporate limits lying within Blackberry Township and Geneva Township, Kane County, Illinois; and

WHEREAS, as one of its primary governmental functions, the District owns, operates and maintains a wastewater treatment system and facilities (sometimes referred to as “District Facilities”) that provide for the collection, processing and treatment of sewage generated within the District at the District’s wastewater treatment plant generally located along and within the westerly border of the Mill Creek Planned Unit Development. The reclaimed water end product of the facilities is distributed from its storage lagoons and is currently used to irrigate the golf courses which are part of the Mill Creek Planned Unit Development; and

WHEREAS, the District’s Facilities are operated under an Illinois Environmental Protection Agency permit. Its Facilities serve and provide wastewater treatment for the approximately 1,729 acre Mill Creek Planned Unit Development in Blackberry and Geneva Townships, Kane County, Illinois containing approximately 2,188 single-family homes occupied by some 7,600 residents. In addition, the District’s facilities also serve Geneva School District No. 304’s Mill Creek Elementary School, 0N900 Brundige Drive, Geneva, Illinois, its Fabyan Elementary School, 0S350 Grengs Lane, Geneva, Illinois, and also its Transportation Complex located at 38W700 Keslinger Road, Geneva, Illinois and The Greenfields of Geneva, a senior lifestyle community located at 0N801 Friendship Way, Geneva, Illinois, and Marklund, a facility serving profoundly disabled adults, 1S450 Wyatt Dr., Geneva, Illinois; and

WHEREAS, the District’s wastewater treatment process basically consists of:

- 1) A sewage collection system, including sanitary sewers located throughout the residential areas of the Mill Creek Planned Unit Development.
- 2) A treatment plant consisting of two (2) treatment lagoons and two (2) storage lagoons located along the westerly border of the Mill Creek Planned Unit Development.
- 3) An underground distribution line which connects and pipes reclaimed water from the District’s two (2) storage lagoons to the land application irrigation system

which applies the reclaimed water on the Mill Creek Golf Club and the Tanna Farms Golf Club located within the Mill Creek Planned Unit Development (collectively sometimes referred to as “Golf Courses”).

WHEREAS, a land application irrigation component of the overall waste treatment process is integral to the District’s Facilities’ design and operation, as well as its safe, effective, regulatory compliant, efficient and financially viable operation, and is mandatory under the District’s IEPA permit. It currently consists of the application of about 175,000,000 gallons of reclaimed water annually generated by the District’s Facilities. The Facilities have an IEPA permitted capacity of 237,250,000 gallons of reclaimed water per year with a daily capacity of 650,000 gallons per day. From its inception, the District has disposed of its reclaimed water by applying it on the Golf Courses located within the Mill Creek Planned Unit Development using the Courses’ irrigation systems.

WHEREAS, The Mill Creek Planned Unit Development Developer and the Owners/Operators of the Golf Courses have filed suit against the District on various issues, including the District’s right to apply the reclaimed water on the Mill Creek Planned Unit Development Golf Courses, the ownership/use of the golf course irrigation systems for its application, and a claim that the District is trespassing on Golf Course property. This suit was filed and is pending in the Circuit Court of the Sixteenth Judicial Circuit, Kane County, Illinois under the style and description of Kent W. Shodeen, as Trustee of the Kent W. Shodeen Trust Number 1, Tanna Farms, LLC and Mill Creek Country Club, Inc. v. Mill Creek Water Reclamation District, a body politic, Case No: 15 L 293; and

WHEREAS, the Board of Trustees of the District find and determine that the current status of using the Mill Creek Planned Unit Development Golf Courses for the land application of reclaimed water and that any leasehold, easement, or license interest in property allowing the land application of the reclaimed water is too uncertain, problematic, inadequate and insufficient to protect the District, its residents and consumers from issues which could affect the safe, sanitary, stable, cost effective, IEPA permit compliance, and short and long term operation of the District’s Facilities. These issues include but are not limited to:

- The aforementioned lawsuit Case No. 15 L 293 with the allegations thereunder, in Kane County, Illinois, as well as certain other pending litigation in the 16th Judicial Circuit, Kane County, Illinois captioned, Mill Creek Water Reclamation District v. Kent W. Shodeen, et. al., 14 MR 1234 and Kent W. Shodeen as Trustee, et. al. v. Mill Creek Water Reclamation District, 15 L 293.
- Restrictions upon the amount of reclaimed water which may be applied on the Golf Courses
- Hours of application Ownership, maintenance and repair of irrigation facilities
- Disruption of the application of reclaimed water on the Golf Courses by an owner or other tenants
- Restriction or prohibition of access to the Golf Courses to facilitate the application
- Uncertainty of the availability of other suitable sites and relocation-related expenses

- Uncertainties associated with the District not owning real property for the application of reclaimed water
- The uncertainties associated with the District's continued use of the Golf Courses for irrigation and the District's ability to use these properties in the future.
- Operational efficiencies and costs if the District owned and controlled real property for the public purpose of maintaining its wastewater disposal system
- Public and District benefit for the District to own real property proximate to its Facilities which is necessary for the District to operate its Facilities as designed and permitted
- Compliance with IEPA permits

WHEREAS, the District has directed its consulting engineer to study, consider options, examine the fiscal and operational implications associated with identifying alternative locations for the application of the District's reclaimed water; and

WHEREAS, the District Engineer has determined that the District requires approximately 200 acres of land for the application of reclaimed water generated from its Facilities to suitably and safely operate its Facility within the scope of its IEPA permit; and

WHEREAS, the District's Engineer has given its report and recommendations to the District's Board of Trustees; and

WHEREAS, the District Engineer recommends that the District Board of Trustees purchase the land described in this Ordinance located generally west and/or south of and either adjacent or in close proximity to the District's Facilities so that the District can construct and maintain an irrigation system to apply reclaimed water generated from its Facilities; and

WHEREAS, the Board of Trustees of the District finds and determines:

- 1) The land application of water reclaimed after processing in the District's Facilities is essential, critical and mandatory for the proper operation of the Facilities and is required under the District's IEPA permit.
- 2) It is detrimental to the operation of the District's Facilities that the District is subject to uncertainties associated with not owning real property proximate to its Facilities to apply the reclaimed water which is a product of its treatment Facilities.
- 3) It is necessary for a public purpose, advantageous to and in the best interest of the District, its residents, the public it is required to serve, and the operation of its Facilities that the District acquire fee simple interest in and own real property proximate to the District's facilities to be used for the land application for reclaimed water generated for the District's wastewater treatment facilities. The benefits to the District include, but are not limited to:

- a) Limiting or eliminating the necessity of the District acquiring easement rights to pipe reclaimed water to properties not proximate to its facilities;
- b) Centralization of District operations;
- c) Reduction in sizing of pumping and length of piping required for land application;
- d) Reduction of repair and maintenance costs generally experienced with geographically proximate operations;
- e) Operational and cost efficiencies for District Facilities;
- f) Current availability of adequate land proximate to District Facilities for the District's necessary and public purposes;
- g) District ownership of real property for application of its Facilities' reclaimed water significantly reduces the uncertainties associated with leasing, securing an "easement" in, or licensing property for that purpose;
- h) The acquisition of fee simple ownership in private property proximate to the District's Facilities for the land application of its reclaimed water produced from its Facilities is an improvement necessary to benefit the District and the public and is a public purpose;
- i) The District's acquisition of property is necessary for the operation of its Facilities and is of public benefit;
- j) The District's acquisition of this property is a necessary public benefit and its public corporate purpose since it facilitates the District's operation of its Facilities in conformance with its governmental permits.

4) The District will own and control the property authorized to be acquired by this Ordinance.

WHEREAS, the Board of Trustees of the District finds and determines it is necessary for a public purpose, required for the District's corporate purposes, is cost effective, useful and in the best interest of the District, its residents, taxpayers and Facilities customers that the District acquire fee simple title in each of the following properties which are proximate to existing District Facilities which properties would be owned and used by the District for its corporate purposes including to apply on it, by an irrigation system, reclaimed water generated from its Facilities. The properties to be acquired by the District are identified as follows and more particularly described by each Property's legal description contained in Exhibits 1 and 2 which are attached and by reference specifically incorporated in this Ordinance.

- a) Exhibit 1: Schingoethe Property (Parcel 1)

PIN: 11-14-200-016 (Affects Part of Parcel 1) and 11-11-400-002 (Affects Part of Parcel 1)

- b) Exhibit 2: Wennlund Property(Parcel 2)
PIN: 11-14-200-014 (Affects Part of Parcel 2) and 11-11-400-004
(Affects Part of Parcel 2)

WHEREAS, the acquisition of Schingoethe Property (Exhibit 1) and Wennlund Property (Exhibit 2) by the District for its corporate purposes including using both the Schingoethe Property (Exhibit 1) and the Wennlund Property (Exhibit 2) use as part of its wastewater treatment facilities is a public benefit to the District, the residents residing within it, its customers, owners of property within it and the public at large; and

WHEREAS, in mid-2015, the District initially contacted the Owners/Representatives of the Schingoethe Property (Exhibit 1) and Wennlund Property (Exhibit 2) in writing to begin good faith negotiations to acquire each of those properties. For approximately 2 years, the District negotiated with the Property Owners/Representatives to either purchase or enter into a lease for each of those properties. The District's 2015 offers to purchase fee simple interest in the Schingoethe Property and the Wennlund Property were based upon separate appraisals for each Property made by a Certified General Real Estate Appraiser and Member of the Appraisal Institute. Although the District offered to pay each of the Property Owners the appraisal value of the property, the District could not reach an agreement with the Owners/Representatives to purchase either property. The District then considered the possibility of leasing each of the Properties. However, the District determined it will not be able to come to an agreement with the Owners/Representatives to lease either of these properties.

WHEREAS, in mid-2017, the District retained the services of appraiser, Dale Kleszynski, MAI, SRA, of the firm of Associated Property Counselors, Ltd., who is a State of Illinois certified general appraiser and a Member of the Appraisal Institute to separately appraise and determine the market value of the Schingoethe Property (Exhibit 1) and the Wennlund Property (Exhibit 2) both of which are described in this Ordinance. The District made a written offer to both the Owner/Representatives of the Schingoethe Property (Exhibit 1) and Wennlund Property (Exhibit 2) to purchase fee simple title in each Property for Kleszynski's appraised market value, free and clear of all claims of other parties, liens, taxes and encumbrances and suitable environmental report consistent with normal agricultural use of the property and included with the District's offer, a Real Estate Purchase and Sale Contract, a copy of the Kleszynski appraisal, and the District's transmittal letter advised the Owners/Representatives of both Properties of its willingness to negotiate. The District has been unable to reach an agreement with the Owners/Representatives of the Schingoethe Property (Exhibit 1) and the Wennlund Property (Exhibit 2) to purchase either Property and believes further efforts are futile.

WHEREAS, the Board of Trustees finds it made a good faith offer to purchase the Schingoethe Property (Exhibit 1) and the Wennlund Property (Exhibit 2) described in this Ordinance and a good faith request to attempt to negotiate the purchase of each of those properties described in this Ordinance; and

WHEREAS, Section 2805/10 of the Sanitary District Act of 1936 entitles the District to acquire by purchase, condemnation or otherwise all real and personal property, right of way and privilege, either within or without its corporate limits that may be required for its corporate purposes (70 ILCS 2805/10); and

WHEREAS, Section 2805/10.5 of the Sanitary District Act of 1936 (70 ILCS 2805/10.5) provides any power of eminent domain granted to the District shall be exercised in accordance with the Eminent Domain Act (735 ILCS 30/1-1-1 *et. seq.*); and

WHEREAS, pursuant to Section 5-5-5(b) of the Eminent Domain Act (735 ILCS 30/5-5-5(b)), the District's exercise of its eminent domain authority is to acquire the Schingoethe Property and the Wennlund Property identified and described in Exhibit 1 and 2 respectively of this Ordinance for public ownership and control. For the reasons provided in this Ordinance, the acquisition of these properties identified in this Ordinance is necessary for its corporate and public purposes and such properties will be owned and controlled by the District.

NOW THEREFORE be it ordained by the Board of Trustees of the Mill Creek Water Reclamation District as follows:

SECTION 1. INCORPORATION OF PREAMBLE

Each of the foregoing recitals, including, but not limited to the Board's determinations, findings, and authority and power to acquire these properties by eminent domain are integral to this Ordinance and, by reference, specifically incorporated in it.

SECTION 2. ACQUISITION OF PROPERTY BY USE OF EMINENT DOMAIN

The Board of Trustees of the Mill Creek Water Reclamation District authorize the District to exercise and use its eminent domain authority and power granted to it by law to acquire fee simple title ownership in each of the following described properties:

1. Schingoethe Property (Parcel 1) (Exhibit 1)
PIN 11-14-200-016 (Affects part of Parcel 1)
and 11-11-400-002 (Affects part of Parcel 1)
and legally described in the attached Exhibit 1 and by reference specifically incorporated herein
2. Wennlund Property (Parcel 2) (Exhibit 2)
PIN 11-14-200-014 (Affects part of Parcel 2)
and 11-11-400-004 (Affects part of Parcel 2)
and legally described in the attached Exhibit 2 and by reference specifically incorporated herein

The Board of Trustees authorizes and directs the District's attorney and special counsel to file Complaints with Jury Demand on behalf of the Mill Creek Water Reclamation District to acquire by use of eminent domain fee simple title in the Schingoethe Property described in Exhibit 1 and in the Wennlund Property described in Exhibit 2 to this Ordinance.

SECTION 3. EFFECTIVE DATE

This Ordinance is in full force and effect upon its passage as provided by law.

SECTION 4. PUBLICATION

This Ordinance shall be published by the Board of Trustees in pamphlet form with date of passage and publication in such form mentioned in such pamphlet as provided by law.

SECTION 5. SEVERABILITY

If any section, paragraph, clause or provision of this Ordinance is held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

SECTION 6. REPEALER

All ordinances, resolutions, orders or parts thereof, which conflict with the provisions of this Ordinance, is to the extent of such conflict, hereby repealed.

Passed this 24th day of April, 2018 at the regular District meeting by the Board of Trustees of the Mill Creek Water Reclamation District by a vote of 3 ayes, -0- nays, -0- absent and -0- abstaining with the following Trustees voting:

AYE: Dougherty, Hammond, D'Andrea

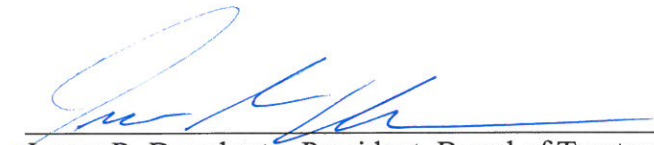
NAY: None

ABSENT: None

ABSTAIN: None

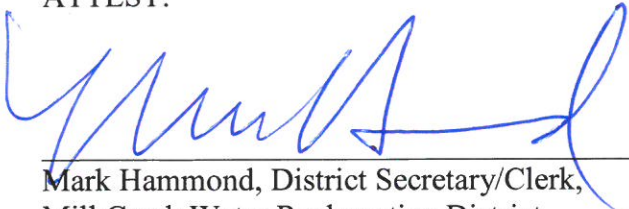
RECORDED and ENTERED in the District Records on this 25th day of April, 2018.

APPROVED:



James R. Dougherty, President, Board of Trustees
Mill Creek Water Reclamation District
Kane County, Illinois

ATTEST:



Mark Hammond, District Secretary/Clerk,
Mill Creek Water Reclamation District
Kane County, Illinois

EXHIBIT 1
(Schingoethe, Parcel 1)

Record Fee Title Owner:

Darlene K. Schingoethe and David J. Schingoethe, as Trustee of the Darlene K. Schingoethe Living Trust dated June 25, 2014

Legal Description of Property:

PARCEL ONE:

THAT PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION ELEVEN, AND PART OF THE NORTHEAST QUARTER OF SECTION FOURTEEN, TOWNSHIP THIRTY-NINE NORTH, RANGE SEVEN EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION ELEVEN; THENCE NORTH ALONG THE WEST LINE OF SAID SOUTHEAST QUARTER 742.50 FEET (11.25 CHAINS); THENCE EASTERLY PARALLEL WITH THE SOUTH LINE OF SAID SOUTHEAST QUARTER 1320.03 FEET TO THE EAST LINE OF THE WEST HALF OF SAID SOUTHEAST QUARTER; THENCE SOUTHERLY ALONG SAID EAST LINE 742.66 FEET TO THE SOUTHEAST CORNER OF SAID WEST HALF; THENCE EAST ALONG THE SECTION LINE 241.56 FEET (3.66 CHAINS); THENCE SOUTHERLY PARALLEL WITH THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION FOURTEEN, A DISTANCE OF 2226.76 FEET TO A POINT IN THE CENTER LINE OF HUGHES ROAD; THENCE WESTERLY ALONG SAID CENTER LINE 1558.12 FEET TO THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION FOURTEEN; THENCE NORTHERLY ALONG SAID WEST LINE OF SAID NORTHEAST QUARTER 2095.06 FEET TO THE POINT OF BEGINNING IN BLACKBERRY TOWNSHIP, KANE COUNTY, ILLINOIS, EXCEPTING THEREFROM THAT PART OF THE NORTHEAST QUARTER OF SECTION FOURTEEN, TOWNSHIP THIRTY-NINE NORTH, RANGE SEVEN EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID NORTHEAST QUARTER; THENCE EASTERLY ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER 1316.29 FEET TO THE SOUTHEAST CORNER OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION ELEVEN, TOWNSHIP AND RANGE AFORESAID; THENCE EASTERLY ALONG SAID NORTH LINE 241.56 FEET (3.66 CHAINS); THENCE SOUTHERLY PARALLEL WITH THE WEST LINE OF SAID NORTHEAST QUARTER 1303.68 FEET FOR A POINT OF BEGINNING; THENCE SOUTHERLY PARALLEL WITH SAID WEST LINE 515.0 FEET; THENCE WESTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE 130.72 FEET; THENCE SOUTHERLY ALONG A LINE WHICH FORMS AN ANGLE OF 97 DEGREES 27 MINUTES 07 SECONDS WITH THE LAST DESCRIBED COURSE, MEASURED CLOCKWISE THEREFROM., 403.74 FEET TO THE CENTER LINE OF HUGHES ROAD; THENCE WESTERLY ALONG SAID CENTER LINE, WHICH FORMS AN ANGLE OF 94 DEGREES 54 MINUTES 36 SECONDS WITH THE LAST DESCRIBED COURSE, MEASURED COUNTERCLOCKWISE THEREFROM 25.09 FEET; THENCE NORTHERLY, PARALLEL WITH THE PENULTIMATE COURSE, FORMING AN ANGLE OF 85 DEGREES 05 MINUTES 24 SECONDS WITH THE LAST DESCRIBED COURSE, MEASURED COUNTERCLOCKWISE 402.62, THENCE WESTERLY PERPENDICULAR TO THE WEST LINE OF SAID NORTHEAST QUARTER 168.07 FEET; THENCE NORTHERLY PARALLEL WITH SAID WEST LINE 515.0 FEET; THENCE EASTERLY, PERPENDICULAR TO SAID WEST LINE 340.0 FEET TO THE POINT OF BEGINNING IN BLACKBERRY TOWNSHIP, KANE COUNTY, ILLINOIS.

PINs: 11-11-400-002 (Affects part of Parcel 1) and 11-14-200-016 (Affects part of Parcel 1)

Common Location: Approximately 95.85+/- acres located on the North side of Hughes Road East of Bunker Road, Elburn, Illinois.

EXHIBIT 2
(Wennlund, Parcel 2)

Record Fee Title Owner:

Ben H. Wennlund, as Trustee under Trust Agreement dated March 2, 1979 and known as Trust Number 101

Legal Description of Property:

PARCEL TWO:
THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 11; THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 14, (EXCEPT THE WEST 3.66 CHAINS OF THAT PART OF SAID EAST HALF LYING NORTH OF THE CENTER OF THE HIGHWAY) ALL IN TOWNSHIP 39 NORTH RANGE 7 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE TOWNSHIP OF BLACKBERRY (ALSO EXCEPT LAND CONVEYED TO ANNE MARIE MCCONNAUGHEY BY DEED DOCUMENTS 2006K118039 AND 2003K105237 AND ALSO EXCEPT LAND CONVEYED TO JOHN JOYNER BY DEED RECORDED AS DOCUMENT 2005K046821) COUNTY OF KANE AND STATE OF ILLINOIS

PINs: 11-11-400-004 (Affects part of Parcel 2) and 11-14-200-014 (Affects part of Parcel 2)

Common Location: Approximately 91.61 acres located on the North Side of Hughes Road, East of Bunker Road, Elburn, Illinois

CERTIFICATE OF PUBLICATION IN PAMPHLET FORM

As District Secretary/Clerk, I caused Ordinance No. 2018-02 entitled: “An Ordinance Authorizing the Mill Creek Water Reclamation District to Acquire Certain Real Properties by Eminent Domain” which was passed at the regular meeting of the District’s Board of Trustees on the 24th day of April, 2018 to be published for the District and under the authority of its Board of Trustees in pamphlet form as provided by law on the 24th day of April, 2018.

Dated at Geneva, Kane County, Illinois, this 24th day of April, 2018.

Mill Creek Water Reclamation District

By: 

Mark Hammond
District Secretary/Clerk