

DEKALB COUNTY DRAINAGE BOARD MEETING

September 9, 2021

Drainage Commissioners Present:

Randall J. Deetz, Chairman
Michael E. Krehl, Vice Chairman
William L. Hartman, Member
Michael V. Watson, Member
Bruce Bell II, Member

Others Present:

Nathan Frye, First Deputy Surveyor
Michelle Lassiter, Secr. /Drainage Board Admin. Asst.
Shannon Kruse, Attorney

Guests:

Erin Swihart
Jamie Freeze
Joe Herendeen
Jacob Walker
Bob Walker
Herman Schiffli

Absent:

Michael C. Kline, County Surveyor

Chairman Randall J. Deetz called the regular meeting of the DeKalb County Drainage Board to order at 8:30 a.m.

APPROVAL OF MINUTES

A motion was made by Mike Krehl to approve the Minutes of August 26, 2021 as the standard minutes of the DeKalb County Drainage Board. The motion was seconded by Mike Watson, the motion carried.

DRAINAGE BOARD SCHEDULE OF CLAIMS

Mrs. Lassiter presented the Drainage Board schedule of claims for September 13, 2021.

Contractual	Shannon	Contractual Services	
Services	Kruse	August	\$1,295.00

Total **\$ 1,295.00**

A motion was made by Bill Hartman to approve the Drainage Board schedule of claims as presented. The motion was seconded by Bruce Bell, II, the motion carried.

SURVEYOR'S REPORT

Mr. Deetz asked for the Surveyor's Report and Mr. Frye presented the following:

Indiana Michigan Power Company: *James Goings Drain No. 113-00-0; Henry Beams Lateral 2 Drain No. 205-02-0; Henry Beams Lateral 3 Drain No. 205-03-0; and Henry Beams Lateral 3 Spur 1 Drain No. 205-03-1:* Indiana Michigan Power was reconstructing their utility along County Road 68 between County Road 51 and Front Street in Spencerville, all work would be above ground replacing poles and wire. Mike Watson moved to approve the IMP Utility Permit request for County Road 68 between County Road 51 and Front Street in Spencerville. Mike Krehl seconded the motion, motion carried.

NIPSCO: *John Cool Tile Drain No. 371-00-0:* NIPSCO would be providing service to 2822 County Road 56, with a portion of the line and work being located within the right-of-way easement of the *John Cool Tile Drain No. 317-00-0.* Bill Hartman moved to approve the NIPSCO Utility Permit request for service to 2822 County Road 56. Mike Krehl seconded the motion, motion carried.

AT&T: James Ferguson Open Drain No. 86-00-0: AT&T requested a utility permit for work along the new County Road 62 to County Road 31, a portion of which would cross and be located within the right-of-easement of the *James Ferguson Open Drain No. 86-00-0*. Mike Watson moved to approve the AT&T Utility Permit request for new County Road 62 and County Road 31. Bruce Bell, II seconded the motion, motion carried.

ELIAS SCHOPF DRAIN NO. 242-00-0: Countryside Estates Association – fence in right-of-way easement request. Jamie Freeze (Association Secretary) and Erin Swihart presented a request for the Association to be able to install a six foot privacy fence with cemented posts within 12 feet of the *Elias Schopf Tile Drain No. 242-00-0* to block the view of a neighboring property that was not well maintained. Mr. Frye informed the Board the drain was a 24 inch tile that had been recently reconstructed. Mr. Deetz informed Ms. Freeze and Ms. Swihart that the Association would be responsible for the cost of removal of the fence and the cost of installation should the Board approve the variance and the drain later need maintenance. Mr. Deetz also informed Ms. Freeze and Ms. Swihart the Association would be responsible for ensuring the location of the property line prior to the fence installation. Ms. Kruse stated that the Association President would need to sign the variance agreement. Mr. Deetz asked the Surveyor's Office to type the Variance Agreement and bring it back to the Board for approval.

PLAN COMMISSION PLAT DRAINAGE PLAN: Joe Herendeen of Sauer Land Surveying presented the drainage plan for a one lot, 2.026 acre subdivision Freedom Estates located on County Road 73, in the Northwest Quarter of Section 7, Township 35 North, Range 15 East, Troy Civil Township. Mr. Frye stated this proposed subdivision was unique, as it was not located within a county regulated drain's watershed. This proposed subdivision was located within the watershed of the unregulated, natural drain Fish Creek, with the proposed construction site the parcel's high ground in the southwest corner. The Board accepted the Surveyor's Drainage Report, which stated "The plat does not appear to exceed the threshold set by the Drainage Board for additional drainage improvements. This development shall not block off-site drainage across the site. Storm water from this lot shall be directed onto the parent tract and not onto adjoining tracts. This report is subject to any additional information submitted at the Plan Commission hearing."

Mike Watson moved to approve the Drainage Plan dated 08.26.2021 for the Plat of the Freedom Estates subdivision as presented, with the Surveyor's recommendations, and a letter of approval to be sent to the DeKalb County Plan Commission. The motion was seconded by Bruce Bell, II, motion carried.

BREAK 8:55 A.M.: At this point Mr. Deetz called for a five minute break prior to beginning the Public Hearing for reconstruction of the George Matson Lateral 11 Drain No. 73-11-0.

PUBLIC HEARING: GEORGE MATSON LATERAL 11 DRAIN NO. 73-11-0 RECONSTRUCTION

Mr. Deetz called the Public Hearing for reconstruction of the *George Matson Lateral 11 Drain No. 73-11-0* to order at 9:00 a.m.

The landowners were notified via first class mail on August 3, 2021, with a corrected notice being sent out via first class mail on August 5, 2021, both sent in five-day return envelopes. A legal notice was published in The Star newspaper on August 13, 2021.

Mr. Frye presented the written Surveyor's Report: Mr. Rory Walker submitted a petition on 05.02.2016. The drain's location was in township 34 North, Range 13 East, Grant Township, Section 1, and Township 35 North, Range 13 East, Smithfield Township, Section 36.

The drain was established as a regulated drain in 1921, prior to that it was an unregulated private drain. The drain contained 804 linear feet of 22 inch tile, and 1,140 linear feet of 24 inch tile, and laid within a 1,016.1 acre watershed. The drain fund balance was \$52,674.53, and last collected \$8,453.36 in 2020 at a rate of \$8.00 per acre for agricultural use, \$16.00 an acre for residential use, \$24.00 an acre for commercial use, with a \$10.00 minimum per parcel. Engineer's cost estimates were: \$147,120.00; and cost per acre \$144.79. The watershed was 96.17% agricultural use, 3.78% residential use, and 0.04% commercial/road right-of-way use. Mr. Frye also presented the proposed assessment roll. Mr. Frye stated state code allowed for 75% of the existing fund balance to be used for the reconstruction, which would reduce the assessments.

The drain tile was undersized, resulting in flooding and poor drainage, resulting in the lower portion of the system having several blowouts requiring regular and reoccurring maintenance. Mr. Frye noted the soil types involved with the reconstruction were Bob, GnB2, Pe, RaB, Wt, Re – Rensselaer loam, Se – Sebewa sandy loam, BaB2, MoC2, MrC3, Wa, Hw, and HaA.

Mr. Frye stated the Surveyor's Office was recommending the lower end of the drain be reconstructed by upsizing the tile to 36 inch, and lowering the outlet of the drain maintaining at least three feet of cover.

Mr. Deetz asked Mr. Frye if all lands within the watershed had been assessed, if all benefits assessed were not excessive, and if costs, damages, and expenses of the reconstruction were less than the benefits accruing to the landowners benefited by the reconstruction. To which Mr. Frye responded yes, to all.

Information that came out of the technical question portion of the hearing were:

- The maintenance fund was specific to the drain lateral.
- Jacob Walker and Bob Walker asked how the drain would be billed. Mr. Frye explained that the general fund is used to pay for the project during the construction. When the project was completed, the total cost, minus 75% of the maintenance fund, would be divide per acre and billed to the landowners. The Surveyor's Office would begin construction in October / November after the harvest, finishing in December / January and assessments being sent to the Auditor's Office for billing. Any balance remaining after one year would be assessed a 10% interest rate. Landowners could take up to five years to pay the assessment, however the balance in years two through five would be assessed 10% interest. The final assessment would show up on the landowner's tax statement.

Mr. Jacob Walker stated he was happy with the proposed reconstruction plans, but disappointed with the timing and cost increases. Mr. Walker asked if there was enough cushion in the estimated costs given the volatility of the market. Mr. Frye explained that the project could not go over 10% of the estimated costs per state code. If the project were to go over the 10%, then either the scope of the project would have to be reduced or another public hearing would have to be held.

Mr. Walker stated that if the project scope were reduced and did not reach the second "tee" then the project should be scrapped, as it would not fix the drain issues. Mr. Walker explained that his family had terraced the farm to slow the overland water flow, but there were still large blowouts that would swallow irrigators.

There being no one to speak against the reconstruction, no objection letters having been received, and no additional evidence being requested by Board members, Mr. Deetz asked Attorney Kruse to read the Findings of Fact.

DEKALB COUNTY DRAINAGE BOARD FINDINGS OF FACT

NAME OF DRAIN: GEORGE MATSON LATERAL 11

NUMBER: 73-11-0

THE BOARD MAKES THE FOLLOWING FINDINGS OF FACT FOR THE RECONSTRUCTION OF A DRAIN:

These are the proposed findings, which are not final until adopted by the Board:

1. The public hearing has been and is being recorded in digital form.
2. The petition previously filed for this drain is admitted into evidence.
3. The drain has been classified and previously placed on the priority list of the long-range plan of the Board.
4. There are no damages to any landowner.
5. None of the benefit factors of Section 112 of the Indiana County Drainage Board Code are excluded.
6. All landowners, sent notices of the proposed assessment, have lands within the watershed.
7. Notices by mail and by newspaper have been properly and timely made as required by the Indiana County Drainage Board Code for public hearing.
8. That any and all assessments are paid at the same base rate per acre with a reconstruction.
9. That the Surveyor's report with maps and drawings to the Board is received as evidence and approved by the Board, and the facts therein are found to be true with date correct to 09.09.2021.
10. That all lands included in the watershed are assessed.
11. That no lands outside the watershed are assessed.
12. That none of the benefits assessed against any landowner are excessively applied.
13. That no further evidence is required for the Board to make a decision.
14. That all persons desiring to speak, in person or by counsel, have been permitted to present their evidence orally or in writing.
15. That all timely objections, if any, have been heard, discussed, replied to by the Surveyor, and ruled on by the Board. No Objections have been filed.
16. That all persons present have been given adequate opportunity to ask questions of the Surveyor, the Board, or any other persons present.
17. That no person has objected to the procedure of the Board during the public hearing.
18. That the Board has jurisdiction of this drain under the Indiana County Drainage Board Code.
19. That the drain is in need of periodic maintenance after the reconstruction and maintenance assessment rates remain the same.
20. That any drains combined into one unit in the public hearing are done so in accordance with the following requirements:
 - (a) One or more other regulated drains in the same watershed are in need of reconstruction.
 - (b) The Board finds that no substantial injustice will result from treating the drains as a single drain.
 - (c) Notice has been given of this hearing to the landowners of land affected by the combination.

- (d) The Board or a landowner has initiated a proceeding to reconstruct one or more of the regulated drains in the combination and recommended by the Surveyor.
21. That the drain can be made to perform the function for which it was designed and constructed and can be made to properly drain all affected land with the reconstruction.
22. That the work proposed by the Surveyor to be performed on this drain do the following: (Check the items that apply)
- A. ☐ Converts all or part of an open drain to a tiled drain.
 - B. ☐ Converts all or part of a tiled drain to an open drain.
 - C. ☐ Adds an open drain to a tile drain.
 - D. ☐ Adds a tiled drain to an open drain.
 - E. ☒ Increases the size of a tile, if any.
 - F. ☒ Increases the cover over the drain.
 - G. ☐ Deepens an open drain, if any.
 - H. ☐ Widens an open drain, if any.
 - I. ☐ Extends the length of the drain.
 - J. ☐ Changes the course of the drain.
 - K. ☐ Includes construction of a drainage detention basin.
 - L. ☐ Includes construction of a drainage control dam.
 - M. ☐ Provides for an erosion control structure.
 - N. ☐ Provides for grade stabilization structure, and;
 - O. ☐ Makes any major changes to a drainage system that would be of public utility.
23. That there has been no credible evidence presented to the Board to vacate the drain.
24. That the proposed improvement will result in the benefits to the watershed in excess of the costs of reconstruction in that it will:
- (a) Result in increased safety on public highways in or near said watershed.
 - (b) Result in longer life and fewer repairs of public highways in or near said watershed.
 - (c) Decrease the threat of insects, pests and their related diseases.
 - (d) Increase yields of farm crops from land within the watershed.
 - (e) Increase the values of land within the watershed.
 - (f) Reduce damage from flooding.
25. That there has been no evidence that the drain has been abandoned by the Board.
26. That all relevant documentation in the files of the Surveyor and the Board regarding this drain are received into evidence by the Board.
27. That the schedule of assessments as originally filed are adopted by the Board.
28. That the Administrative Assistant of the Board shall publish notice of the Board's Final Order as required by the Indiana Drainage Board Code.
29. That the Final Order form of the Board is approved for this drain, and is adopted to the extent it can be made consistent with these Findings and the Final Order of the Board.
30. The costs, damages, and expenses of the reconstruction do not exceed the benefits that result to the owners of all land benefited.
31. The damages assessed by the Board, if any, are adequate.
32. The damages assessed by the Board, if any, are only against land in the watershed.
33. The costs, damages and expenses of the reconstruction are less than the benefits accruing to the owners of the land benefited by the reconstruction.
- William L. Hartman moved that the Board accept the Surveyor's Report with date amended to 09.09.2021 as presented and approve the Findings of Fact, numbers 1 through 33, as submitted,

seconded by Michael E. Krehl. Mr. Deetz asked all in favor to say Aye, all members present responded, motion carried.

Motion was then made by William L. Hartman to adopt the Petition for Reconstruction of said drain, seconded by Michael V. Watson. Mr. Deetz asked all in favor to say Aye, all members present responded, motion carried.

**FINAL ORDER OF RECONSTRUCTION OF THE
GEORGE MATSON LATERAL 11 DRAIN NUMBER 73-11-0**

The DeKalb County, Indiana Drainage Board (hereinafter referred to as "Board") now renders its Final Order for construction of the George Matson Lateral 11 Drain, the same being Number 73-11-0 in the records of the Surveyor of DeKalb County, Indiana.

1. Date of Filing. This drain was petitioned on 05.02.2016. The Surveyor of DeKalb County (hereinafter referred to as "Surveyor") while preparing reports in reconstruction for the receiving drain, proceeded to prepare the reconstruction report for this drain on or about November 2020.
2. Jurisdiction. That the existing drain is a regulated drain and within the jurisdiction of this Board, pursuant to I.C. 36-9-27-15.
3. Report of Surveyor. That the Board referred the George Matson Lateral 11 Drain herein to the Surveyor to prepare a report pursuant to I.C. 36-9-22(c), which report was filed and presented to this Board on September 9, 2021, in the Commissioner's Court, Courthouse, Auburn, Indiana.
4. Schedule of Assessments. That the Board then prepared a schedule of assessments and damages pursuant to I.C. 36-9-27-50, naming each landowner benefited or damages, his/her address, percent of total cost to be assessed against each tract of land based upon benefit received, showing the amount of each assessment based on the total estimated cost of improvement, and showing the amount of each owner's annual assessment based on the total estimated cost of periodically maintaining said improvement.
5. Legal Notice of Hearing. Legal notice of hearing was published pursuant to I.C. 36-9-27-52(a) as follows:
 - a. In the Star, a newspaper of general circulation in DeKalb County, Indiana.
 - b. On August 12 2021, which date was not less than ten (10) days before the date of said hearing.
6. Mailed Notice of Hearing. Notice of hearing was sent on August 3, 2021, with a corrected notice being sent on August 5, 2021 by First Class United States mail in a five-day return envelope to each owner named in the schedule of damages and assessments as filed with the Surveyor's report herein, which notice was mailed not less than thirty (30) days, nor more than forty (40) days, prior to said hearing date, all in accordance with I.C. 36-9-27-52(a).
7. Department of Natural Resources Notice. That since the improvement proposed does not involve the construction or reconstruction of a regulated open drain, notice of said hearing was not sent to the Indiana Department of Natural Resources.
8. Objections Filed. At least five (5) days prior to said hearing; the following objections to the proposed improvements were received.

OBJECTOR

None

OBJECTION FILED

Non-Applicable

And that failure of any landowner to object five (5) days prior to said hearing to said petition, report, or schedules, thereby waived any other objections pursuant to I.C. 36-9-27-52(b).

9. Evidence Concerning Objections. Pursuant to I.C. 36-9-27-52(f) on or before the final hearing the Surveyor caused written evidence to be filed concerning the objections timely filed herein, which evidence is on file in the office of the Surveyor.
9. Evidence Concerning Objections. Letter on file.
10. Hearing. A hearing in connection with said improvement was held on September 9, 2021 at 9:00 a.m., in the Derald D. Kruse Commissioner's Court, 2nd Floor DeKalb County Courthouse, Auburn, Indiana, at which hearing the objects to said petition were heard and discussed, evidence was had and considered, the proposed improvement was explained, and certain landowners were present.
11. Disposition of Objection.


OBJECTOR	DISPOSITION
None	Non-Applicable
12. Amendments to Surveyor's Report. Upon the record developed, no amendments were made by the Board to the report of the Surveyor.
13. Periodic Maintenance. That said improvement will be in need of periodic maintenance and the cost of periodically maintaining the proposed improvement is \$8.00 per acre for agricultural land use, \$16.00 per acre for residential land use, and \$24.00 per acre for commercial land use per year, with a minimum of \$10.00 per parcel.
14. Reconstruction. That the present drain is in need of reconstruction.
15. Type of Improvement. That the proposed improvement is a reconstruction within the meaning of I.C. 36-9-27-34(a) in that: (include only those appropriate)
 - A. It no longer can perform the function for which it was designed and constructed.
 - B. Topographical or other changes have rendered the drain inadequate to properly drain the lands affected without extensive repair or changes.
 - C. It involves increasing the size of tile.
 - D. It involves major changes to a drainage system that would be of public utility.
16. Improvement Justification. Pursuant to I.C. 36-9-27-52(i), the Board finds that the proposed improvement will result in benefits to the watershed in excess of the costs of reconstruction in that it will:
 - A. Result in reclamation of approximately no acres of agricultural land.
 - B. Result in increased safety on public highways in or near said watershed.
 - B. Result in longer life and fewer repairs of public highways in or near said watershed.
 - C. Decrease the threat of insects, pests and their related diseases.
 - D. Increase yields of farm crops from land within the watershed.
 - E. Increase the values of land within the watershed.
 - F. Reduce damage from flooding.
17. Special Assessments. That no landowners will be specifically benefited by said improvement in excess of the benefit received by other landowners generally.
18. Damage Awards. That no landowners will be specially damaged as a result of said improvement.
19. Reduced Benefits. That no landowners who are within the watershed of the proposed improvement obtain no benefit or less benefit than other landowners.
20. Findings of Fact. After hearing all the evidence presented at the hearing for and against, the Board made the following FINDINGS:
 Findings of Fact as adopted in the Minutes Book on Page 161 in the Drainage Board Minute Book Number 16.

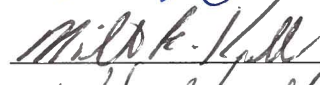
NOW THEREFORE, IT IS ORDERED by the Drainage Board of DeKalb County, that:


- A. The Findings of Fact are adopted by the Board as true and accurate for this proceeding.
- B. The report of the Surveyor and the schedules filed herein shall be adopted and the improvement established. Copies of same shall be attached hereto and made a part hereof by this reference; and
- C. A periodic maintenance fund be established for the periodic maintenance of the improvement under the terms and conditions set forth in the report of the Surveyor; and
- D. Public announcement of said order is hereby made at the said hearing on this improvement; and
- E. The Administrative Assistant of the Board is directed to cause notice of this action to be published immediately in a newspaper of general circulation throughout DeKalb County, Indiana, which notice shall identify the drainage proceedings and state that the Findings and Order of the Board have been filed and are available for inspection in the office of the Surveyor of DeKalb County, all in accordance with and pursuant to I.C. 36-9-27-52(i); and
- F. If judicial review of Findings or Order of the Board is not requested pursuant to I.C. 36-9-27-106(a) through 36-9-27-109(a) within twenty (20) days from the date of publication of the aforesaid notice, the Findings and Order shall become conclusive and the Surveyor shall proceed to reconstruct the improvement according to law.


Dated at Auburn, Indiana this 9th day of September 2021


DEKALB COUNTY DRAINAGE BOARD

 Randall J. Deetz, Chairman


 Michael E. Krehl, Vice-Chairman


 William Hartman, Member

 Michael V. Watson, Member

 Bruce Bell II,

There being no further business, the public hearing adjourned at 9:28 a.m.

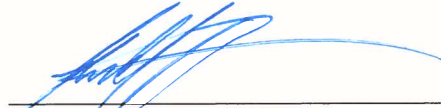
 Randall J. Deetz, Chairman

 Michelle L. Lassiter, Administrative Assistant

INFORMATION

Mr. Deetz asked Mr. Frye if he had anything additional to discuss. Mr. Frye stated that he had been working on items for the *Paul Funk Drain No. 3-00-0* informational meeting to be held on September 16, 2021, and on maintenance issues for other drains. Mr. Frye further explained that he would be sending out requests for quotes for reconstruction projects approved for after harvest. Mr. Frye would ask for the quotes to stand for four weeks.

There being no further business, meeting adjourned at 9:32 a.m.



Randall J. Deetz, Chairman

Michelle Lassiter, Administrative Assistant

