

# DEKALB COUNTY DRAINAGE BOARD MEETING

September 23, 2021

## Drainage Commissioners Present:

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

## Others Present:

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

## Guests:

Michael Gensic  
Jerry Teders

## Absent:

Michael C. Kline, County Surveyor  
Michael V. Watson, Member

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 Bruce Bell, II to approve the Minutes of September 16, 2021 as the standard minutes of the DeKalb County Drainage Board. The motion was seconded by Bill Hartman, the motion carried.

**PLAN COMMISSION PLAT DRAINAGE PLANS:** Jerry Teders of Tri-County Land Surveying presented the drainage plan for a one lot, 2.37 net acre subdivision the Replat of Lot 2 Sunset Acres Section II located on County Road 66, in the Southwest Quarter of Section 26, Township 33 North, Range 12 East, Butler Township and within the watershed of the *Cedar Creek Regulated Drain No. 470-00-0*. 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."

Bill Hartman moved to approve the Drainage Plan dated 09.13.2021 for the Plat of the Replat of Lot 2 Sunset Acres Section II 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 Mike Krehl, motion carried.

Mr. Teders then presented the drainage plan for a one lot, 2.88 net acre subdivision Greg's Place, located on County Road 22 in the Southwest Quarter of Section 31, Township 35 North, Range 14 East, Franklin Township and within the watersheds of the *George Matson Lateral 12 Regulated Tile Drain No. 73-12-0* and *George Matson Lateral 9 Spur 2 Branch 1 Regulated Tile Drain No. 73-9-2*. 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 Krehl moved to approve the Drainage Plan dated 09.14.2021 for the Plat of the Greg's Place 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.

Mr. Teders then presented the drainage plan for a one lot, 5.62 net acre subdivision Schlemmer Addition, located on County Road 11A south of County Road 64, in Northeast Quarter of Section 27, Township 33 North, Range 12 East, Butler Township and within the watershed of the *George Reever Regulated Tile Drain No. 329-00-0*. The wooded area on the property were designated as potential wetlands on the GIS maps. There had been no complaints regarding tile system to the north. However, south of County Road 66 the portion of drain in the woods and railroad right-of-way was in need of future reconstruction. Mr. Teders stated Mr. Schlemmer had owned the property since the 1980s and was aware of the issues in the area. 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 Krehl moved to approve the Drainage Plan dated 09.14.2021 for the Plat of the Schlemmer Addition 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.

### **BID OPENINGS**

#### **ENGINEERING BIDS – LEVI O. DENNISON DRAIN NO. 317-00-0**

Mrs. Lassiter opened and read the bids from Gensic Engineering, Inc. and Engineering Vision, Inc. The bid from Gensic Engineering was a total base price of \$47,200.00 with additional hourly fees listed for any required additional services.

- Engineer/Principal      \$85.00
- Registered Engineer    \$80.00
- Engineer                    \$75.00
- Draftsman                 \$70.00
- Drafts/Sec                 \$60.00
- 2-Man Survey             \$130.00
- 3-Man Survey             \$165.00

Mr. Michael Gensic was present. He stated that he was not sure per project bidding was adequate for the type of project involved. He stated he realized it was the Board's first time bidding out for drain reconstruction and assumed there would be a give and take throughout the process, which the Board concurred. Mr. Gensic questioned including the administrative side of the project in the bidding process. Mr. Deetz explained the Board was working to relieve the Surveyor's Office of the work given the number of drains in need of reconstruction.

The bid from Engineering Vision was for a total of \$48,800.00.

Bill Hartman motioned to place the bids under Board review for one week. Bruce Bell, II seconded the motion, motion carried.

#### **CONTRACTOR BIDS – C.B. KAGEY DRAIN NO. 225-00-0**

Mr. Frye opened and read the contractor bids from Crawford Excavating and Knott Drainage & Excavating. Mr. Frye noted that an error was found on the original bid request document. Originally it listed the 18" HDPE on line B. as 2717 linear feet. It should have read 1917 linear feet. An email was sent out to all contractors detailing the mistake. Mr. Frye went on to explain Crawford Excavating's bid listed the incorrect length, but since they listed the per foot cost, Mr. Frye had

made the correction to their bid amount. Crawford Excavating total submitted was \$76,868.00, corrected total was \$60,860.00. Knott Drainage & Excavating's total bid amount was \$34,463.48. Mr. Frye noted there were three other contractors who received a request for bid that did not respond, Tri-County Excavating of Ossian, Owens Excavation of Kendallville, and Pankop Drainage & Excavating of Churubusco.

Information that came from the project discussion were there should not be future issues with Knott Excavating similar to ones that transpired with the reconstruction of the *Guy Platter Drain No. 112-00-0*. A conversation with the principals was had, and there verbiage changes had been made to the contract to address similar items and situations. The reconstruction plans routed the drain outside of the tree driplines, and there was only a small amount of brush clearing needed along the drain's top-of-bank. The Board decided to table the discussion and take it back up at the next meeting.

Mr. Frye then open and read the material bids received from Hixson Sand & Gravel and Baughman Tile Company. Mr. Frye had sent the tile and stone out as one bid. Hixson's was a provider for both and had bid as such. Baughman's only provided tile, so had only bid on the tile portion. The Board discussed whether the tile could be purchased from one supplier and the stone from another supplier. The Board then decided to table the discussion and take it back up at the next meeting.

### **SURVEYOR'S REPORT**

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

#### **CEDAR CREEK DRAIN NO. 470-00-0:**

**VARIANCE AGREEMENT – LOT 10 SAN GIOVANNI ESTATES – REQUEST HOUSE IN EASEMENT RIGHT-OF-WAY.**

Nathan revisited the site, took pictures and measured distances. The property pin was further into the drain easement than originally presented by Terry Weimer at the September 16, 2021 Board meeting. The placement is in an area with a drop off steeper than 45° and only 25 feet to the water. He would put the top-of-bank 2 -3 feet inside the lot line from the property pin. Mr. Frye felt the bank was not very stable, as there was evidence of a fresh landslide that had taken place in the last 2-3 years. There was a tree shown in the pictures that had broken loose and was hanging at a 45° angle. Mr. Frye wanted to provide the Board with the updated information before they committed to signing the Variance Agreement. The bank was not as stable as the petitioner presented at the September 16, 2021 meeting.

Mike Krehl asked Mr. Frye if he was comfortable with a variance granting a building (home) being built within 40 feet of the top-of-bank, given what Mr. Frye had seen at the site. Mr. Frye stated he thought 40 feet was workable, but it would shrink over time through erosion. If a major tree were to go down into the creek the Surveyor's Office would be working in the area with very large equipment. Mr. Frye stated there was a 3 foot diameter oak tree 5 feet from where he took the pictures. Depending on weather and erosion patterns, the tree may come down at any time. Mr. Frye state the 40 feet was fine for the near future, but if he were spending the money to build a house, he would not build in that location.

Mr. Deetz stated that at the September 16, 2021 Board meeting it was made clear to the petitioner that should the variance be granted, it would be at their own risk, the Board did not recommend, did not encourage building in that location.

Bruce Bell, II asked if the Board was to look out for the petitioner, the Board, or both. Mr. Deetz stated it was the Board's place to lookout for DeKalb County, that the County was not put in harm's

way. As far as looking out for the petitioner, the Board could share their concerns, which they did at the previous meeting.

Mr. Deetz asked Ms. Kruse who owned the top-of-bank and creek. Ms. Kruse stated the property owner did, but a right of entry lay over the property for the Drainage Board and County Surveyor.

Mr. Nathan stated he had a plat of the subdivision. Per the plat, in this case the area is a common area for the subdivision owned by the developer who has purchased the subdivision. The developer owns to what the plat shows as the current waterline. The plat was drawn by Mike Kline when he was in private practice in 2006 and shows the 75 foot easement from top-of-bank, which is where Mr. Frye also has determined the top-of-bank and easement. Mr. Frye stated this information was not new information and was legally created when the plat was recorded 17 years ago. We are not doing anything new, we are changing anything after the fact. We can work in 40 feet without major problems.

Mr. Deetz stated that he felt either the variance needed to be approved or the petitioners needed to be called back into a meeting to discuss the issue further, as the Board alluded to the fact they were ok with the 40 foot from top-of-bank variance agreement at the previous meeting. The petitioners deserved the right to come back and defend themselves if the Board didn't want to approve the variance based on the new information.

Ms. Kruse advised the Board that legally she felt the Board needed to look at whether the 40 feet would give the Surveyor enough room to work in for maintenance of the creek. The Board was not responsible for the landowner's choice of where he places things on his property. The attorney for the petitioner sent an email to Ms. Kruse stating that he also believed this to be true. Ms. Kruse also stated she would like this section of the minutes to be almost per verbatim. She wanted the discussion in the minutes so that if in 20 years anyone were to look at the minutes they would see the discussion that took place. Legally speaking if the Board feels the Surveyor's Office can clean the drain within the 40 feet, then that is the decision to be made.

Bruce Bell, II asked for clarification on the 75 foot easement. Mr. Frye stated it was 75 feet from top-of-bank. The top-of-bank was 3 feet inside the lot line at the south end of the lot. The bank drops off very quickly from that point. The top-of-bank followed the lot line pretty much the whole length of the property. The exhibit for the variance document showed the contours and how tight they were with the lot line. Mr. Frye brought the GIS maps up to show the contours to the Board.

Mr. Krehl stated he was having issue between professional and personal opinion with this request. He understood that they should only look at whether the 40 feet would give the Surveyor's Office adequate room to work on the drain, but given that in the future erosion would bring the structure closer to the drain and cause issues, he was having difficulty with the decision.

Mr. Deetz state the petitioner was told previously, but it still held true, if in the course of conduction maintenance on the creek there was additional cost for the maintenance due to the location of the structure within the easement, then the property owner would be responsible for the additional cost.

Mr. Deetz asked Mr. Frye to go out and flag the top-of-bank on the property so there was no confusion as to where it was located, should the variance be approved.

Mr. Krehl asked Ms. Kruse where the Board would stand if they approved the variance and the petitioner and his attorney came back and wanted to appeal the decision. Ms. Kruse stated that she felt the Board was performing their due diligence and should have no issues. She stated the Board

was not required to give a variance. The Board could take the stance that the petitioner needed to stay outside of the 75 foot easement. The Board had granted variances in the past as a courtesy to landowners as the Board's opinion was they would like to see landowners use their property as much as possible in the manner the landowner wanted to use the land.

Bruce Bell, II asked how the Surveyor's Office determines top-of-bank. Mr. Frye stated they look at where the break occurs. If there was a slope where the water comes up and then it flattens out, that is where they usually determine the top-of-bank to be located. With Cedar Creek there were two banks, the fluvial corridor top-of-bank, which is where the creek wanders over thousands of years, which is a wider channel. Then there is a narrow channel, which is where the creek is right now. In this case, on this lot the fluvial corridor and the current creek location is one and the same. The highest elevation in this case is where the top-of-bank is located. Mr. Deetz stated that as long as that is where the top-of-bank was located and it was flagged by the Surveyor's Office it was what it was.

Bill Hartman asked where the development was located. Mr. Frye stated on County Road 17, just north of County Road 66.

Bruce Bell, II made a motion to approve the variance for Custom Vintage Homes, to construct a building (home) on Lot 10 in San Giovanni Estates no closer than 40 feet to the top-of-bank of *Cedar Creek Drain No. 470-00-0* as determined by the Surveyor's Office. The variance does not hold the Board responsible for any bank stabilization or for the house location. The variance makes the incurrence of additional cost for cleanup or maintenance of the creek the landowner's responsibility. Bill Hartman seconded the motion. Motion carried with a three to one vote, Mike Krehl voting in opposition.

Ms. Kruse read Section 33 of the State Code. The Code stated the Board *may* allow someone to put a permanent structure within the 75 foot easement, not that the Board shall or must.

#### VARIANCE AGREEMENT – CITY OF AUBURN – ASPHALT PARKING SPACES AND CONCRETE SIDEWALK IN EASEMENT RIGHT-OF-WAY.

Mr. Frye stated this was one presented by the City of Auburn at the previous meeting. The parking lot was to be temporary. It would be asphalt grinding on the southern section with 5 asphalt parking spaces, 3 of which would be handicap parking with associated spacing, and an associated concrete sidewalk. Mr. Frye brought up the maps showing the area, the closest space would be 45 feet from top-of-building. Mr. Frye stated the review the Department of Natural Resources put the plan through is far more thorough than what the Surveyor's Office uses to determine maintenance access. The variance included the parking and the sidewalk.

Mike Krehl made a motion to approve the variance for the City of Auburn to install 5 asphalt parking space, associated space in between, and concrete sidewalk no closer than 40 feet to the top-of-bank of *Cedar Creek Drain No. 470-00-0*. Bill Hartman seconded the motion, motion carried.

#### CONSENT AND WAIVER – FRED GROSCUP JR DRAIN NO. 335-00-0

Mr. Frye stated the Consent and Waiver for the *Fred Groscup Jr Drain No. 355-00-0* was prepared and read for signatures. Mr. Frye asked Bill Hartman if he would like the Consent and Waiver presented at the Monday, September 27, 2021 meeting for signatures. Mr. Hartman responded in the affirmative. The Commissioners would meet in the afternoon after the County Council meeting. The Drainage Board did not need to sign the Consent and Waiver. The Board only needed to sign the Intergovernmental Agreement that was attached as supporting documentation to the Consent and Waiver. The landowners needed to sign the Consent and Waiver, which is the Commissioners and

the Leins. The Drainage Board will need to accept the Consent and Waiver at a future meeting and issue a Final Order for reconstruction to be published in the newspaper.

**FRED GROSCUP NORTH DRAIN NO. 352-00-0**

Mr. Frye informed the Board that Mossberg Industries in Garrett were looking to constructed a building addition on the east side of their building. The *Fred Groscup North Drain No. 352-00-0* runs through the property. Mossberg wants to relocate the drain. Mossberg wanted to move the drain to the east using several 95 degree turns. Mr. Frye stated he did not like the plan, but was going to send it to County Surveyor Mike Kline for his review. Mr. Deetz stated he would be hard pressed to approve a reconstruction not approve by the County Surveyor. Mr. Deetz asked that information be shared with Mossberg.


**INFORMATION**

**GARRETT CITY DRAIN NO. 44-00-00**

Mrs. Lassiter informed the Board a letter from Indiana Department of Transportation addressed to the Drainage Board was received giving notice of repair of the *Garrett City Drain No. 444-00-0* culvert under I69 by inserting a steel liner inside the existing galvanized culvert.

Mr. Deetz asked if anyone had checked the culvert for the *George Shull Drain No. 33-00-0* under County Road 11A that INDOT repaired approximately five years ago. Mr. Frye stated he didn't believe it had settled any, but he would check it.

There being no further business, meeting adjourned at 10:00 a.m.

  
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Randall J. Deetz, Chairman

  
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Michelle Lassiter, Administrative Assistant