

DEKALB COUNTY DRAINAGE BOARD MEETING

September 8, 2022

Drainage Commissioners Present:

Michael V. Watson, Chairman
 Bruce Bell, II, Vice-Chair
 James A. Miller, Member
 Sandra M. Harrison, Member

Guests:

Bob Shearer
 Chuck Knox
 Robert Scribner
 Rebecca Berning
 Steve Palumbo
 Greg & Dorothy Eriean
 Allen Diller
 Saundra Diller
 Lawrence Bak
 Christian York
 Tony Thompson
 Cary Bishop
 Dan Butler

Others Present:

Michael C. Kline, County Surveyor
 Michelle Lassiter, Sec. /Drainage Board Admin. Asst.
 Shannon Kruse, Attorney
 Katie Rutan, Surveyor's Clerk

Absent: William L. Hartman, Member

Chairman Michael Watson 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 August 25, 2022, as presented as the standard minutes of the DeKalb County Drainage Board. The motion was seconded by Sandy Harrison, and the motion carried, with Jim Miller abstaining due to his absence from the August 25, 2022 meeting.

DRAINAGE PLAN

New Millennium Building Systems 2022 Storage Yard Expansion – 6115 County Road 42, Butler:

The Board reviewed the drainage plan for the New Millennium Buildings Systems, LLC 2022 Storage Yard Expansion. The development was located within the watersheds of the John Weicht Regulated Tile Drain No. 42-20-0, the John Weicht Regulated Open Drain No. 42-00-0, and the Solomon Shank Regulated Open Drain No. 28-00-0.

The Board accepted the Surveyor's Drainage Report, which stated "The drainage plan was well designed and the stormwater runoff calculations were good. The release rate from the detention pond into the county-regulated drain would remain the same." The Surveyor recommended approval of the drainage plan drawings dated 08.19.2022 and the Drainage Calculations Report dated 08.22.2022."

Bruce Bell, II moved to approve the drainage plan dated 08.19.2022 and the Drainage Calculations Report dated 08.22.2022 as signed and stamped by Robert J. Shearer of Rowland Associates, Inc., with the Surveyor's recommendations, the motion was seconded by Jim Miller, and the motion carried.

UTILITY PERMITS

INDIANA MICHIGAN POWER (IMP): Mr. Kline informed the Board that Indiana Michigan Power was replacing a lot of poles and lines throughout the county.

1. *MARION HAVERSACK DRAIN NO. 180-00-0*. ✓ Reconstruct approximately 5,036 feet of #4 CU with 556 Al along the west side of CR 61, starting 460 feet south of CR 16 and ending 260 feet south of CR 20. Mr. Kline stated that the reconstruction shouldn't interfere too much with the drain.

Jim Miller moved to approve the IMP utility permit for work within the drainage easement of the *Marion Haversack Drain No. 180-00-0*. Bruce Bell, II seconded the motion, and the motion carried.

2. *W. A. DANNELS DRAIN NO. 174-00-0*. ✓ Reconstruct approximately 6,177 feet of #4 CU with 556 Al along the west side of CR 61 & CR 61A, starting 260 feet south of CR 20 and ending 765 feet south of CR 24. Mr. Kline explained that his permit was an extension of the previous permit approved.

Bruce Bell, II moved to approve the IMP utility permit for work within the drainage easement of the *W. A. Dannels Drain No. 174-00-0*. Jim Miller seconded the motion, and the motion carried.

3. *ALMIRA TEUTSCH DRAIN NO. 177-00-0 AND JACOB FETTERS DRAIN NO. 303-00-0*. ✓ Reconstruct approximately 5,410 feet of #4 CU with 556 Al along the west side of CR 61A & CR 63, starting 770 feet south of CR 24 and ending 940 feet south of Grand Army of the Republic Hwy (US Hwy 6). Mr. Kline explained this permit request was an extension to the previous two permits approved.

Bruce Bell, II moved to approve the IMP utility permit for work within the drainage easement of the *Almira Teutsch Drain No. 177-00-0 and Jacob Feters Drain No. 303-00-0*. Jim Miller seconded the motion, and the motion carried.

Mr. Kline explained that IMP is replacing both the main transmission lines and the distribution lines. Sometimes these lines follow roadways and other times they go cross country. He further explained that the next three permit requests were related and would eventually go to the Hamilton substation.

4. *ALBERT FISHER DRAIN NO. 179-00-0*. ✓ Replace poles and wires crossing the Albert Fisher Regulated Open Drain No. 179-00-0 approximately 720 feet west of County Road 77 at a point approximately 1310 feet north of County Road 4.

Bruce Bell, II moved to approve the IMP utility permit for work within the drainage easement of the *Albert Fisher Drain No. 179-00-0*. Sandy Harrison seconded the motion, and the motion carried.

5. *LAMUEL NELSON TILE DRAIN NO. 128-20-0*. ✓ Replace poles and wires crossing the Lemuel Nelson Regulated Tile Drain No. 128-20-0 approximately 1760 +/- feet east of County Road 63 and 1820 +/- feet southwest of State Road 1.

Jim Miller moved to approve the IMP utility permit for work within the drainage easement of the *Lamuel Nelson Tile Drain No. 128-20-0*. Sandy Harrison seconded the motion, and the motion carried.

6. *EDA WILLENAR TILE DRAIN NO. 472-00-0*. ✓ The crossing of the Eda Willennar Tile Drain No. 472-00-0 is approximately 400 feet from the north end of the said drain and approximately 620 feet east of County Road 61.

Bruce Bell, II moved to approve the IMP utility permit for work that would cross the *Eda Willennar Tile Drain No. 128-20-0*. Sandy Harrison seconded the motion, and the motion carried.

7. *HARVEY GUTHRIE DRAIN NO. 181-00-0* ✓ Upgrading/replacing poles and conductor on the north side of County Road 62 between Old IN-3 and County Road 5.

Sandy Harrison moved to approve the IMP utility permit for work within the drainage easement of the *Harvey Guthrie Drain No. 181-00-0*. Jim Miller seconded the motion, and the motion carried.

PUBLIC HEARING: JAMES FERGUSON LATERAL REGULATED TILE DRAIN NO. 86-53-0 RECONSTRUCTION

Mr. Watson called the Public Hearing for the reconstruction of the *James Ferguson Warner Lateral Regulated Tile Drain No. 86-53-0* to order at 9:00 a.m.

The landowners were notified via first class mail on August 4, 2022, and sent in five-day return envelopes. A legal notice was published in The Star newspaper on August 25, 2022.

Mr. Kline presented the written Surveyor's Report:

The earliest record for this drain is 1890.

Existing tile by record	362 feet of 18-inch diameter
	2000 feet of 16-inch diameter
	600 feet of 14-inch diameter
	<u>700 feet of 12-inch diameter</u>
	3662 total feet of tile

Also 300 ± feet of open drain

Mr. Kline explained that the outlet elevation is almost the same as the tile at County Road 68 because in the late 1800s and early 1900s tile was installed by hand, using those tools it wasn't possible to get the grade.

The drain needs reconstruction in the Surveyor's opinion because;

- (1) It will not perform the function for which it was designed and constructed;
- (2) It no longer conforms to the maps, profiles, and plans prepared at the time when the legal drain was established and;
- (3) Changes have made the drain inadequate to properly drain the lands affected without extensive repairs or changes.

The drain was installed in the late 1800s and early 1900s and was not designed to handle the present amount of drainage from the watershed. With the increased use of the land for residential purposes which brings additional hard surfaces and additional runoff from storm events, with the increase in rainfall due to increased intensity of storm events, the age of the tile and the deterioration of the tile and collapsing due to tile failure, with the poor grade and slope of the tile which decreases the water carrying capacity of the tile, and with the generally poor condition of the tile system, the James Ferguson Warner Lateral drain no. 86-53-00 is in need of reconstruction.

Total acres in the watershed	302.43 acres
Total landowners in watershed	39
Total land parcels in watershed	48

Mr. Kline explained that the watershed was determined by land contours, not the tile location, as the courts wanted to have a reproducible basis. He further explained the State Government flew the State in thirds every three to five years gathering LIDAR data to determine the contours. This was done with a plane using a laser instrument measuring every square meter, with the reading being returned to data measuring instrumentation on

the plane. It would read trees, grass, buildings, driveway, etc. The computer then would take the readings to determine where the water dropped at a certain point and would roll. The only way the contour would change was if an area were bulldozed. Those changes would be picked up on the State's next flight and would be recalculated.

Mr. Kline explained that the federal government had mapped the State using soil types
Predominate soils in the watershed are:

Pe - Pewamo silty clay – very poorly drained soil frequently ponded by surface water runoff.

Hw – Houghton muck – very poorly drained organic soil frequently ponded by surface water runoff.

BaB2 – Blount silt loam, 1 to 4 percent slopes, eroded – somewhat poorly drained soil, permeability is slow.

These soils indicate that good drainage is necessary to control surface ponding, flooding, and wet soils in the watershed.

The proposed reconstructed James Ferguson Warner Lateral drain no. 86-53-00 system would consist of the following:

2240 feet of 24-inch tile

708 feet of 18-inch tile

700 feet of 15-inch tile

3648 feet total of tile with all the fittings and parts necessary for a complete system.

The total engineer's estimate for pipe, fittings, stone, installation, and restoration is \$197,208.81.

Cost per acre is $\frac{\$197,208.81}{302.43 \text{ acres}} = \652.08 per acre

The final cost to the landowners will be determined by the final cost of the project.

Mr. Kline explained the water velocity would need to be two feet per second so the tile size had to be larger due to the lack of fall in the contours and the route would be 18 feet shorter than the existing drain

Bids will be taken for pipe and fittings, stone backfill, installation of pipe and stone, and restoration of the site. The bids for the project cannot exceed the engineer's estimate by more than 10% or the project has to stop and be rebid.

Mr. Kline also explained that he was looking keep stormwater off the roads for transportation safety. Stating the County Highway Department would also be paying assessments for the drain road crossings.

I would respectfully ask the Drainage Board to approve the reconstruction of the James Ferguson Warner Lateral Drain No. 86-53-00.

I would also ask the Drainage Board to maintain the existing maintenance assessments of \$7.00 per acre on agriculture ground, \$14.00 per acre on residential ground, and \$21.00 per acre on commercial ground for future collections for maintenance as necessary to keep the new drain in good repair.

End of Report

There were no technical questions for the County Surveyor.

The County Surveyor stated that all the lands within the watershed had been assessed, that the benefits assessed were not excessive, and that the costs, damages, and expenses of the reconstruction were less than the benefits accruing to the owners of the land benefitted by the reconstruction, and that there were no written objections filed.

PERSONS SPEAKING AGAINST THE PROJECT

Mr. Watson asked if there were anyone in the audience wishing to speak against the project.

Christian York of 2592 County Road 68 stepped forward. Mr. York questioned whether there had been road flooding as he had not seen any in his area in the four years he had lived in his home. However, he had seen flooding on a section of the road further east. Mr. Kline explained to Mr. York that staff from his office had been out to the tile several times due to calls reporting collapses in the tile with large holes in two backyards. There were other areas where the failing tile was causing flooding on several acres of land killing landowners' trees. Mr. Kline explained his reconstruction design went around wetlands due to Army Corps of Engineering and Indiana Department of Environmental Management (IDEM) regulations. There was a minimum of \$86,000 per acre to mitigate a wetland, and he preferred to avoid that as much as possible. Mr. Kline stated he would be putting "T"s in the drain line so flooded landowners could run private drains over to tie in to drain their lands. Mr. Kline stated that the drain needed to be repaired to keep the area flooding from increasing. Mr. Kline explained that under the State Drainage Code the landowners would have up to five years to pay the reconstruction assessments. However, if the full amount wasn't paid in one year, per State Code, there would be a 10% interest charged by the County Auditor's Office for years two through five.

Mr. York asked if the flooded landowners could tap into the drain before it entered other landowners' backyards. Mr. Kline explained the drain failures were upstream from that point. Mr. Kline explained that he would be having the *James Ferguson Regulated Open Drain No. 86-00-0* cleared thirty feet on each side and dipped to get it low enough to give enough fall for the new drain to work. Mr. Kline explained the current tile was too small for the amount of stormwater runoff being produced. When the drain was originally installed the area was all farm fields. Currently, there was more housing development with the hard surfacing. Mr. Kline stated he thought the area would continue to grow and put stress on the undersized, aging system. Mr. Kline stated that seminars he had attended had shared data showing there were fewer rain events with increased amounts of water, requiring that the water gets to the drainage systems more quickly to prevent flooding. Mr. Kline intended to construct a system that would last at least fifty years. Mr. Kline stated that residents would see flooding if the drain experienced additional collapse and couldn't be repaired. Mr. Kline stated there had been a couple of times during the current year when County Road 68 came close to flooding and he wanted to prevent that from happening.

Mr. Watson asked if there were anyone else wishing to speak against the project.

Steve Palumbo of 6644 County Road 68 stepped forward. Mr. Palumbo asked why residents in the Diamond Lake Estates subdivision and owners of other newly constructed homes were not being charged for the drain reconstruction. Mr. Kline explained that those properties were not in the watershed for this drain. Those landowners pay for the stormwater systems that were installed in the subdivision and they pay for the drains into which their stormwater enters. Mr. Kline further explained that landowners with larger amounts of land in the watershed paid more for the use of the watershed. All of the determination was per the State Drainage Code which was adopted in 1965.

Dorothy Eriau of 2653 County Road 68 stepped forward. Mrs. Eriau stated that regardless of whether the road was flooding, her property, along with other properties were being impacted by flooding from the drain's failure. Mrs. Eriau explained that when the tile collapsed on her property

she had contractors onsite who fell into the hold it caused and she almost fell in as well. She explained that there were children at risk in neighboring properties with holes in their backyards where the tile has collapsed. Mrs. Erieau stated that floodwaters had crossed the road this past spring. The flooding was dangerous, and those with flooding on their land needed relief.

Robert Scribner of 6749 County Road 27 presented stating he had lived and farmed the area for 30 years. He had seen a lot of development in which the elevations were changed and wanted to know why those properties were not included in the watershed. Mr. Watson explained that a development had to provide a drainage plan to the County Surveyor and the Drainage Board for approval. Mr. Kline explained that when a subdivision is designed it had to include detention ponds and storm sewers to limit the stormwater leaving the site. Mr. Kline explained that the watersheds were reassessed every three to five years after new State LIDAR data was collected. He explained that two-acre tracts of residentially used land didn't generate more stormwater runoff than a bare farm field. He stated that when residential sites add ponds and outbuildings then it changes the runoff rate and it has to be taken into consideration. Mr. Kline stated his office tried to be as accurate as possible in calculating storm runoff rates for land usage. The State Code stated everyone is equal and was to be charged the same rate per acre for drain reconstructions. The amount charged to each landowner was based not on the total acreage owned, but on the number of acres in the watershed, the benefitted acres. Mr. Kline explained the maintenance assessments collected were used to keep the drain open and working. He also explained that a landowner paid assessments for each drain their stormwater entered. Mr. Kline stated that the decision for the reconstruction was up to the Board to make. Mr. Kline stated that if the landowners decided they didn't want to pay for the reconstruction, and the Board declined to order the construction, then future tile collapses happened they would not be considered a priority. Mr. Kline stated he had 37 other drains in need of reconstruction that were either flooding homes or roads, or close to flooding homes and roads. His focus would be on those systems. He was presenting this reconstruction project to the Board based on the complaints of the landowners who were concerned with and wanted the collapses on their properties remedied. Mr. Kline stated the county was only responsible for county-regulated drains, not private field tiles. He used the analogy of the drain system was like a highway system, with local (small) systems feeding into the larger systems. The towns, cities, and counties were responsible for the smaller systems and the State was responsible for the larger systems. Ms. Kruse stated that landowners can apply to the County Surveyor to be able to connect to the main county-regulated drain. Mr. Kline stated that landowners were welcome to pay for and provide him with LIDAR data collected from their land, he would review it to see if it proved they were not within the watershed.

Cary Bishop of 2597 County Road 68 presented stating that he did not object per se to the reconstruction, but to the way for which the project was to be paid. Mr. Bishop felt that all properties in the Woodland Trail subdivision should be considered to be part of the watershed and share in the cost of the reconstruction. Mr. Kline stated that he had already explained how the watershed was determined according to LIDAR data, elevations, and contours. Mr. Bell stated that Woodland Trail was assessed as a part of the watershed for the *James Ferguson Regulated Open Drain No. 86-00-0* and had been assessed for the maintenance that would be used for the clearing and dipping of that drain. Mr. Watson explained the State Code was very specific as to what the Board could and could not do. Mr. Kline explained the dipping of the James Ferguson was maintenance paid for by all the landowners in the James Ferguson watershed, and the Warner Lateral reconstruction was a separate project paid for by the landowners within the Warner Lateral watershed.

PERSONS SPEAKING IN FAVOR OF THE PROJECT

Greg Erieau of 2653 County Road 68 asked if the new drain tile around the low area of his property would drain the water out of his low area. Mr. Kline stated that the maps showed the federal

government considered that low area a potential wetland. The Army Corps of Engineers would have to determine for sure if it was a wetland before anything could happen to it. If a delineation were to happen it would at least \$20,000 more to the project. If a wetland is damaged or impacted then the cost would be at least \$86,000 an acre. Mr. Kline stated he was not willing to go to jail or pay the delineation fee. Mr. Miller stated that with the tile being two feet deeper Mr. Erieau should see the water receding from the low area. Mr. Kline stated that he would be installing "T"s for private tie-ins.

Mr. Kline advised the audience to be cautious in denying a neighbor access to the county-regulated drain by running across their land because the neighbor could go to the Drainage Board to ask for a tile to be installed to provide access, at which time the non-agreeing neighbor could then be assessed for benefit from the new tile, whereas an easement agreement would not place additional monetary responsibility.

Allen Diller of 2457 Woodland Trail presented stating that anyone objecting should live at his residence. He had experienced six sinkholes. The holes were dangerous. Two years ago he was mowing and from experience with the sinkholes, he step on a spongy area in the yard and knew it was a sinkhole forming. He poked the area with a shovel. He took a 2x4 piece of wood, 8-foot long, and probed it. He couldn't reach the sides or bottom, He later determined the hole was ten feet deep and six feet wide. Mr. Diller had concerns that his grandchildren or the neighbor's children would fall into one of the sinkholes and drown. He wanted to make sure the holes on his and his neighbor's properties would be repaired. Mr. Kline assured him they would be.

Lawrence Bak of 2646 County Road 68 questioned if installing a larger tile at a lower depth would help everyone in the watershed. Mr. Kline stated it would.

Mr. Kline explained that the old tile had no bells to hold it together allowing it to separate, pull in debris, plug it up, and set it up for degrading and failure. The new tile would have bells to hold it together. The perforated tile would be bedded in stone and backfilled with stone to help it suck water from the ground to the tile, lowering the water table to get relief for the landowners. Mr. Kline explained the plastic tile was better than the old clay tile.

Mr. Kline explained there would not be a bid notification sent out. There would be an invitation for quotes on the tile, the stone, the structures, and the labor separately. The quotes would be opened at a public meeting and all were welcome to attend. If those who wished to be notified of the date for quote opening, they could leave a note by their name on the sign-in sheet.

Mr. Kline stated the letters the landowners received were the best estimates. The cost could not be more than that estimate but could be less. After the construction was complete, the costs would be analyzed and sent to the Auditor and Treasurer for billing. The bills would not go out for one to two years. The project had to be quoted, the quotes opened and accepted by the Board, a contract signed with the contractor, and the job placed on the contractor's schedule. Mr. Kline anticipated it would be completed in either the fall of 2023 or the spring of 2024.

There being no one additional wishing to speak, no objection letters having been received, no additional evidence being requested by Board members, no reason to adjourn and reconvene the hearing, no reason to change the schedule of assessments, and the Surveyor's reported having been accepted, Mr. Watson asked Attorney Kruse to read the Findings of Fact.

DEKALB COUNTY DRAINAGE BOARD FINDINGS OF FACT

NAME OF DRAIN: JAMES FERGUSON WARNER LATERAL

NUMBER: 86-53-0

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 County Surveyor requested the reconstruction due to County Road 23 flooding.
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.
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 over 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 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 the said watershed.
 - (b) Result in longer life and fewer repairs of public highways in or near the 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 sinkholes on private property and flooding, as well as hazards to the personal safety of property owners.
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 is received into evidence by the Board.
27. That the schedule of assessments as originally filed is 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.

Bruce Bell, II moved that the Board accept the Surveyor's Report as presented and approve the Findings of Fact, numbers 1 through 33, as submitted, seconded by Sandra M. Harrison. Mr. Watson asked all in favor to say Aye, all members present responded, motion carried.

A motion was then made by James A. Miller to adopt the Petition for Reconstruction of the said drain, seconded by Sandra M. Harrison. Mr. Watson asked all in favor to say Aye, all members present responded, motion carried.

**FINAL ORDER OF RECONSTRUCTION OF THE
JAMES FERGUSON WARNER LATERAL DRAIN NUMBER 86-53-0**

The DeKalb County, Indiana Drainage Board (hereinafter referred to as "Board") now renders its Final Order for construction of the James Ferguson Warner Lateral Drain, the same being Number 86-53-0 in the records of the Surveyor of DeKalb County, Indiana.

1. Date of Filing. No petition was filed. 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 June 2022.
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 James Ferguson Warner 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 8, 2022, 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 the 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 25, 2022, which date was not less than ten (10) days before the date of said hearing.
6. Mailed Notice of Hearing. Notice of the hearing was sent on August 4, 2022, 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 the said hearing date, all in accordance with I.C. 36-9-27-52(a).
7. Department of Natural Resources Notice. 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 the 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 the 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 8, 2022, 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 the 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

None

DISPOSITION

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 will remain at the same rate of \$7.00 per acre for agricultural land use, \$14.00 per acre for residential land use, and \$21.00 per acre for commercial land use per year, with a minimum of \$5.00 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 the 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 the reclamation of approximately 8 acres of agricultural land.
 - B. Result in increased safety on public highways in or near the said watershed.
 - B. Result in longer life and fewer repairs of public highways in or near the 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 especially 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 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 the 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 8th day of September 2022


DEKALB COUNTY DRAINAGE BOARD

 Michael V. Watson, Chairman


 Bruce Bell II, Vice-Chairman

Absent _____ William L. Hartman, Member

 James A. Miller, Member

 Sandra M. Harrison, Member

There being no further business, the public hearing adjourned at 10:28 a.m.


Michael V. Watson, Chairman


Michelle Lassiter, Administrative Assistant

Mr. Miller then addressed the audience stating that as a landowner of several hundreds of acres of farmland, he had been in the same position as those in the audience. He believed that with more housing being constructed in the county it was in everyone's best interest to upsize the tile size to take the additional stormwater. The existing tile was over 100 years old. He didn't believe the initial installers of the tile ever expected the tile to be in use as long as it had. Mr. Miller believed the plastic tile was 100% better than the old clay tiles. He believed bedding the tile in stone was best, as without the stone the tile would not hold its shape. It would become oval-shaped, carry less water, thin and fail. The stone bedding helped the tile retain its circular shape carrying water as it should. He further stated that perforated tile collected water better than clay tile.

SURVEYOR'S REPORT

Mr. Watson asked for the Surveyor's Report and Mr. Kline provided the following information:

Mr. Kline stated he didn't have anything additional for today's meeting.

DISCUSSION

Mr. Watson asked the Board for additional discussion.

Mr. Bell stated he had a call into Gensic Engineering regarding the reconstruction project for the *Levi Dennison Regulated Tile Drain No. 317-00-0*. Mr. Bell asked if the Board could move on with the drain reconstruction process. Ms. Kruse stated the Board could move forward with the hearing process. They would just need to have a definitive plan and assessment rolls.

Mrs. Lassiter stated she would like to review the list of documents that Katie had put together and put the cost tally together. Other than the attorney's request for assessments for the Walter Smith Drain.

Ms. Kruse stated Mrs. Lassiter and Mrs. Rutan should pull together all they can. It would be provided in good faith with the request. She also stated that with the thought of moving forward with a public hearing she felt the proposed assessment rolls for the Dennison Drain should also be provided to the attorney since the drain currently is not on maintenance. Mrs. Lassiter asked if Gensic is considering the project done for them, and how the plans, assessment rolls, estimates, and Surveyor's Report would be completed and presented. If the Board wanted to hire another engineering firm the request for proposal process would be another three to four months. Mr. Watson stated that if Mr. Bell didn't get a response from Gensic Engineering, then the Board should have Ms. Kruse write a letter asking for clarification as to where Gensic stood regarding the contract with the Board.

Mr. Kline presented the Board with a list of drains in the red, stating the drains will need to be assessed next year. There were several not on maintenance, marked as NOM. It was stated that the Board had the option to spend up to \$1,500.00 on a drain, not on maintenance out of the general drain fund.

Ms. Kruse stated those drains needed to be placed on a list for a public hearing to be placed on maintenance. Mr. Kline stated that the list would include 15 to 20 drains.

Mr. Miller asked if there was anything in the State Code that would permit a flat per acre fee county-wide for drain assessments. Ms. Kruse stated that the Code was set up to assess per drain only, not en masse.

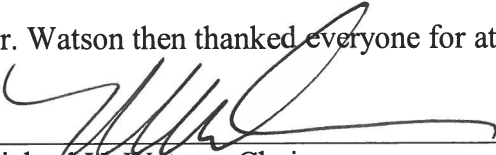
Mr. Miller clarified that he was referencing maintenance assessment only. Ms. Kruse stated that there was a provision for accumulative drain tax to take in all of the drains. However, there would be a lot of competition as to the priority of drain maintenance. She also stated that this would involve the taxing governor that stated a county could only tax to a certain capped amount. That there was a discussion that needed to take place at the State level for Drainage Code changes to make it more modern with some flexibility.

There was a discussion as to how to educate property owners about their responsibilities regarding the many facets of maintenance such as drainage, zoning, and permitting. The idea was thrown out that realtors could be a part of the process or classes in high school.

Mr. Kline stated that the Cedar Creek Drainage Board recently found that the assessment rate for the *Cedar Creek Drain No. 470-00-0* was \$6.24 per parcel, not a per acre rate. It may be an issue with the courts in the future.

Mr. Bell stated there were a lot of old drain issues that were in place before Mr. Kline took office that needed to be repaired or reconstructed. Mr. Kline stated part of the backlog was because in the past the Surveyor's Office has staff that should have known what they were doing and didn't and they created more issues that need to be corrected.

Mr. Watson then thanked everyone for attending the meeting and declared it adjourned at 10:52 a.m.



Michael V. Watson, Chairman

Michelle Lassiter, Administrative Assistant