

DEKALB COUNTY DRAINAGE BOARD MEETING

April 20, 2023

Drainage Commissioners Present:

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

Others Present:

Glenn Crawford, County Surveyor
Michelle Lassiter, Secr. /Drainage Board Adm.
Shannon Kruse, Attorney
Troy Bungard, Surveyor Technician

Guests:

Herb Horrom
Mike Woodward

Absent:

William L. Hartman, Member

Chair Bruce Bell, II, called the regular April 20, 2023, meeting of the DeKalb County Drainage Board to order at 9:30 a.m.

APPROVAL OF MINUTES

There were no minutes to approve.

APPROVAL OF CLAIMS

Mr. Bell asked for a motion for Ms. Kruse's May stipend of \$1,295.00. Jim Miller moved to approve Ms. Kruse's May stipend of \$1,295.00, Sandy Harrison seconded the motion, and the motion carried.

DRAINAGE PLANS

WOODWARD ESTATES – COUNTY ROAD 32, CORUNNA

The Board reviewed the drainage plan for the Woodward Estates, located along County Road 34 between County Road 7 & State Road 327. This development is located within the watersheds of the *John Diehl Regulated Open Drain No. 45-00-0* and the *Cedar Creek Regulated Open Drain No. 470-00-0*.

Mr. Crawford stated that regarding the proposed one-lot subdivision replat along the *John Diehl Regulated Open Drain No. 45-00-0*, he saw no drainage issues, as there was sufficient land for a residence and the dispersal of the additional runoff it would create.

Mike Watson moved to approve the drainage plan drawings dated 03.15.2023, signed and stamped by Michael C. Vodde, Land Surveyor, of Anderson Surveying, Inc., with the Surveyor's recommendations. The motion was seconded by Sandy Harrison, and the motion carried.

UTILITY PERMITS

AUBURN ESSENTIAL SERVICES (AES) – COUNTY ROAD 35 NORTH OF STATE HIGHWAY 8

Mr. Crawford informed the Board that Auburn Essential Services had been asked to supply services to a cell tower on land owned by Jeffrey and Tina Johnson at 4499 County Road 35. The cell tower had an address of 4495 County Road 35. The project had the AES fiber being bored three feet deep, crossing the *Cliff Metcalf Regulated Tile Drain No. 83-20-0*, the *Cliff Metcalf Regulated Open Drain No. 83-00-0*, paralleling in the right-of-way the *Sam Pomeroy Regulated Open Drain No. 350-00-0* and then crossing the *Sam Pomeroy Open Regulated Open Drain No. 350-00-0*. Mr. Crawford had no concerns with this project.

Mike Watson moved to approve the Auburn Essential Services utility permit providing service to a cell tower addressed as 4495 County Road 35 crossing the *Cliff Metcalf Regulated Tile Drain No.*

83-20-0, the *Cliff Metcalf Regulated Open Drain No. 83-00-0*, paralleling in the right-of-way the *Sam Pomeroy Regulated Open Drain No. 350-00-0*, and then crossing the *Sam Pomeroy Open Regulated Open Drain No. 350-00-0*, with the Surveyor's recommendation. Sandy Harrison seconded the motion, and the motion carried.

GUEST COMMUNICATIONS

Herb Horrom of 1208 Roger Drive, Auburn, owner of 425 West Rope Street, Waterloo, presented stating that the *Henry Frick Regulated Tile Drain No. 278-00-0*, which ran through his property in Waterloo, was not working. Mr. Horrom had owned the property for five years. He regularly mowed seven acres. The ground was now spongy and unable to be mowed. There was a tile coming out of the ground. Mr. Horrom stated that Mr. Crawford had re-bedded the tile a couple of years ago. There had been tile blowouts in the field which had gotten worse. Bowman Farms had several hundred acres of agricultural land to the north that drained into the tile. Mr. Horrom questioned whether the end of the tile could be converted into an open drain.

Mr. Crawford stated he remembered rebidding the tile. It was constructed of some of the first dual-walled tiles to be produced and was brittle. It was not bedded in stone. He had only replaced a couple of hundred feet of the drain. The land is low land muck and has floated up. There was only \$3,200.00 in the drain's maintenance fund. Bowman Farms owns the land where the outlet was located. Mr. Bowman did not farm the ground. The tile was 15 inches in size. The outlet was located in a floodplain. Department of Natural Resources permits would be required to convert the tile to an open drain. Mr. Crawford recommended installing a backflow preventer to see if that would help the situation. The Board members agreed with Mr. Crawford's recommendation and asked him to have staff have the backflow preventer installed.

SURVEYOR'S REPORT

Mr. Bell asked for the Surveyor's Report and the Board was provided the following information:

Mr. Crawford informed the Board that a portion of the *George Wade Regulated Tile Drain No. 31-00-0* had been destroyed going across land owned by David and Esther Schmucker, located at 6392 County Road 60, Saint Joe. The tile was destroyed when the Schmuckers demolished a barn without a demolition permit and enlarged a pond without a permit. Mr. Crawford explained that the field to the east of the Schmuckers used to sheet flow to the drain. The spoils from the Schmucker's enlarged pond now blocked the sheet flow and were causing the field to flood. Mr. Schmucker was refusing to fix the tile.

Ms. Kruse read Section 47 of the Drainage Code:

IC 36-9-27-47 Persons entering land under contract, easement, or statute; damage to drains; repair procedure

Sec. 47. (a) Whenever any person:

- (1) goes upon any land under any contract, easement, or statute; and
- (2) damages a regulated drain or impedes the flow of such a drain by placing pipe, cable, or other material over, under, or through the drain;

the board shall serve upon the person an order requiring the person to immediately repair the damages and remove the obstruction.

(b) If the person fails to comply with the order, the county surveyor shall repair the damage and remove the obstruction. The board may then bring an action against the person to recover damages, including the reasonable cost of repairing the damage and removing the obstruction, along with reasonable attorney's fees.

[Pre-Local Government Recodification Citation: 19-4-6-3 part.]
As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.127-2017, SEC.338.

Ms. Kruse also read reference Section 46 of the Drainage Code:

IC 36-9-27-46Obstruction of drains; repair procedure

Sec. 46. (a) When a regulated drain is obstructed or damaged by logs, trees, brush, unauthorized structures, trash, debris, excavating, filling, or pasturing livestock, or in any other way, the county surveyor shall immediately remove the obstruction and repair any damage.

(b) Notwithstanding subsection (a), if the obstruction or damage is caused by an owner of land affected by the drain, the county surveyor shall first mail a notice to the owner, with return receipt requested, requiring the owner to remove the obstruction and repair the damage. If the owner fails to comply within ten (10) days after receipt of the notice, the surveyor shall perform the work, and the cost of the work shall be paid out of the annual maintenance fund of the drain if one has been established, or, if no such fund has been established, out of the general drain improvement fund.

(c) If the obstruction or damage has been caused by the acts or omissions of an owner of land affected by the drain, the board may, after a hearing with written notice served on the owner, add an amount sufficient to pay for the damage to the next annual assessment made against the land of the owner. The board shall certify the assessment to the county auditor in the same manner as any other assessment.

(d) If the obstruction or damage is caused by the acts or omissions of a person other than the owner of land affected by the drain, the board may bring an action against that person in court. The board is entitled to recover the reasonable value of removing the obstruction and repairing the damage, plus a reasonable attorney's fee.

[Pre-Local Government Recodification Citation: 19-4-6-2.]
As added by Acts 1981, P.L.309, SEC.101.

The Board discussion ended with Mr. Crawford recommending the drain be reconstructed. Mr. Watson recommended the Surveyor's Office do the reconstruction, not the landowner, and that the easiest way to have the reconstruction move forward was through a consent and waiver by the landowners. Mr. Crawford stated if the tile were at the proper elevation, it would keep the pond at the same elevation.

Mike Watson moved to direct Ms. Kruse to prepare a notice to the landowner regarding the tile repair as per Section 46 of the Drainage Code that the drain will be reconstructed as per the County Surveyor's direction at the landowner's cost. Jim Miller seconded the motion, and the motion carried.

Mr. Crawford informed the Board the County Auditor had reached out to remind him he needed to employ a qualified deputy as per the Drainage Code. Mr. Crawford then read from Section 30 of the Drainage Code:

IC 36-9-27-30Qualified deputies; appointment; duties; compensation

Sec. 30. (a) Whenever the county surveyor is not registered under [IC 25-21.5](#) or [IC 25-31](#) and that statute prohibits an unregistered person from performing any function that the county surveyor is directed to do under this chapter, the surveyor shall employ and fix the compensation of a person who is a professional engineer or professional surveyor in performing those functions. However, if the county surveyor does not employ a registered person within one (1) year of the acceptance of a petition for construction or reconstruction of a drain, the board may make the appointment of a registered person that this section requires.

(b) The person employed by the county surveyor, who shall be known as a qualified deputy, shall file with the county surveyor the original of all plans, specifications, and other documents made by the person in performing the work for which the person was employed. Those plans, specifications, and other documents become a part of the permanent file of the county surveyor's office, which the county surveyor shall maintain for the use of the board as provided in section 109 of this chapter.

(c) The rate of compensation paid to a qualified deputy shall be assessed against the drainage project for which the deputy was employed.

(d) This subsection applies whenever the county surveyor is not registered under [IC 25-21.5](#) or [IC 25-31](#), and the county surveyor has not employed a registered person as provided in subsection (a). If the county has a full-time employee who is registered as a professional surveyor under [IC 25-21.5](#) or as a professional engineer under [IC 25-31](#), the board may, subject to the approval of the county executive and the county surveyor, designate that person to perform the functions of the county surveyor under this chapter that are allowed under the employee's license as a professional surveyor or professional engineer. If a designation is made and approved under this subsection, the county surveyor may not employ a registered person under subsection (a) to perform that same function.

[Pre-Local Government Recodification Citation: 19-4-1-6 part.]

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.206-1984, SEC.1; P.L.76-1989, SEC.5; P.L.2-1997, SEC.84; P.L.2-1998, SEC.88; P.L.241-1999, SEC.4; P.L.57-2013, SEC.101.

Mr. Crawford stated there were a couple of firms he intended to ask to act in this capacity. Ms. Kruse explained that Steuben County Surveyor and Drainage Board had been through this procedure in the past and would be a good resource. Steuben County contracted with a couple of firms where a rate is set and the firms are only paid as the need for their services arises. Mrs. Lassiter was asked to reach out to Michelle Milholland in Steuben County for a copy of the contract.

Mr. Crawford's understanding as someone who holds an engineering degree was that as long as a project did not have a road culvert, traffic bridge, pump, or lift station the drain reconstruction plans did not need a stamp by a licensed professional engineer.

Mrs. Lassiter stated she explained to the County Auditor that Ms. Kruse has explained that Steuben County for cornerstone perpetuation paid a type of bounty or stipend to a licensed land surveyor who was willing to go above and beyond while laying out a subdivision to do the reclamation work for a county cornerstone.

DISCUSSION

Mrs. Lassiter explained that the office had received calls and letters from a couple of landowners. Mrs. Lassiter stated she had written response letters she would like Ms. Kruse and the Board to review. If all agreed she would mail the response letters to the landowners.

Mrs. Lassiter presented the Board with copies of the first one from Julie and David Hirons who lived at 9004 Terry Lake Road in Hamilton. The Hirons owned land adjacent to the AEP substation in Hamilton and had sent a letter regarding what they believed was a water issue coming from the construction of the substation expansion.

February 22, 2023

Attn: DeKalb County Plan Commission
301 South Union Street
Auburn, IN 46706

Re: Drainage Plan
AEP Hamilton Substation
48 County Road 61
Hamilton, IN 46742

DEKALB COUNTY SURVEYOR
RECEIVED

MAR 27 2023

COURTHOUSE
AUBURN, IN 46706

We are writing in regards to an approval you made of construction of the new substation, 48 County Road 61, Hamilton, IN 46742. At the time of approval, we were not notified of the terms and conditions of the approval as we are the adjacent land owners.

Noted in your approval process, there is a clause that states if there is watershed of the project onto the adjacent land then the land owner can object to the project. The project has been shedding outlet water from the retention pond onto my property.

It also states that AEP needs to rectify the problem with an appropriate solution and to the satisfaction of your department and the DeKalb County Surveyor's office.

We, David J. Hirons and Julie A. Hirons, object to the design of these plans.

Sincerely,

Julie A. Hirons

David J. Hirons

Victory Farms
9004 Terry Lake Road
Hamilton, IN 46742

DEKALB COUNTY DRAINAGE BOARD

220 EAST SEVENTH STREET, SUITE 130
AUBURN, INDIANA 46706
(260) 925-1928

April 17, 2023

Julic & David Hirons
9004 Terry Lake Road
Hamilton, IN 46742

Re: Letter Regarding AEP Substation Construction

Dear Mr. & Mrs. Hirons:

The Surveyor/Drainage Board Office received your letter dated February 22, 2023. Our office is not required by State Code to notify adjacent landowners when we review a proposed development's drainage plan. The notification would come through the Plan Commission for their public hearing for consideration of the Development Plan for the project. If the project does not meet the Plan Commission's criteria requiring a development plan then no notification is required by State Code and an Improvement Location Permit (ILP) is issued for the construction project.

The Surveyor's Senior Field Supervisor conducted a field inspection of the site. His report states:

"I inspected this site on 2/23/23 following a complaint from a neighbor that water from the expanded site's retention pond was allowing water to flow onto the neighbor's property. We observed that the site improvement was being conducted according to the plans, but the full construction of the retention pond was not complete.

What was complete was the concrete structure that will eventually set the level of the pond by allowing water to discharge from the pond once it is complete. There was no water to speak of inside the future retention pond, and some surface water from the site could be observed making its way down the hill onto the neighbor's property.

We also observed a standpipe on the neighbor's property which, rather than take water from the field, was gushing water up out of it onto the property. This leads us to believe that the tile running from this location (presumably to the lake) is blocked or undersized for the amount of water it is receiving.

In any case, the pond was not nearly complete or full anywhere near the level which will allow water to be captured, retained and let out as a sheet flow over the rip rap."

Give the information provided in the inspection report, the pictures taken during the site visit, and the information shown on the county's GIS maps regarding flood plain as determined by the Indiana Department of Natural Resource the DeKalb County Drainage Board does not feel that the AEP Substation construction is causing any additional water to flow onto your property. In addition, this Board feels that when completed the retention pond will help the water issues in this area.

Should you have any questions, please feel call our office at the number listed above.

Respectfully,

Michelle Lassiter, Administrative Assistant
DeKalb County Drainage Board

Enclosed: GIS Map and Pictures

Mrs. Lassiter then provided Ms. Kruse and the Board with a letter from Jim Smith of JSEC Family Farms who owned land by the *George Wade Regulated Drain No. 77-00-0* who were having flooding issues from the failure of the culvert under the railroad.

DEKALB COUNTY SURVEYOR
RECEIVED

MAR 30 2023

COURTHOUSE
AUBURN, IN 46706

Jim Smith, Ph.D.
JSEC Family Farms, LLC
15936 Rupert Rd.
Grabill, IN 46741

March 27, 2023

DeKalb County Drainage Board
220 East Seventh St., Suite 130
Auburn, IN 46706

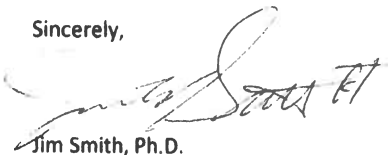
Dear Drainage Board:

My sister and I own farms in Section 4 of Concord Township as JSEC Family Farms LLC. These farms are partially drained by the George Walters Tile 77-20-0 then the George Walters Drain 77-00-0. Our family has owned these farms since the 1950s and 1860s. We were recently informed that our CRP contracts for these farms will not be renewed because of the flooding caused by the break down of the Regulated Drain that drains these farms.

The tile in the George Walters Tile has broken down somewhere between the east property line of our land and the George Walters Drain. This tile breakdown not only affects our farms and income but also the farms owned by Tim Maldeney and the home owned by Seth and Nicole Smith. These farms were farmed by Chuck Arnett in the 1980's before they were enrolled in CRP and were productive farms. Now that the USDA has determined these farms are no longer eligible for CRP the profitability and value of our farm along with the land of others affected by the lack of maintenance.

I would like to have clarification of the situation with this drain tile. Parts of the land on these farms were in active production in the past, the drainage issues now make much of this land un-farmable and unusable.

Sincerely,



Jim Smith, Ph.D.
JSEC Family Farms, LLC
Partner

DEKALB COUNTY DRAINAGE BOARD

220 EAST SEVENTH STREET, SUITE 130
AUBURN, INDIANA 46706
(260) 925-1928

April 17, 2023

Jim Smith
JSEC Family Farms, LLC
15936 Rupert Road
Grabill, IN 46741

Re: Letter Dated March 27, 2023

Dear Mr. Smith:

The Surveyor/Drainage Board Office received your March 27, 2023 letter on March 30, 2023. The Surveyor's Senior Field Supervisor conducted a field inspection of the drain and has recommended that the George Walters Regulated Open Drain No. 77-00-0 be dipped on the east side of the railroad tracks.

The Surveyor's Office has received a letter from Norfolk & Southern Railroad Company. They are planning on replacing the drain culvert under the railroad tracks that connect the George Walters Regulated Open Drain No. 77-00-0 and the George Walters Regulated Tile Drain No. 77-20-0.

We have not been provided a timeline for the culvert replacement. However, the dipping will follow the culvert replacement to ensure the elevations are correct to each other. We believe that these actions will alleviate your flood issues.

Should you have any questions, please feel call me at the number listed above.

Respectfully,

Michelle Lassiter, Administrative Assistant
DeKalb County Drainage Board

Ms. Kruse stated she saw nothing wrong with the letters. Mrs. Lassiter had stated facts only, with no promises from the Drainage Board or the County Surveyor.

Ms. Kruse and the Board members were curious regarding the JSEC Family Farm statement that the USDA was removing the land from the CRP program. Mr. Miller stated the USDA drop-dead date was 12.15.1984 for farmable wetlands. If the lands were farmed before that date and went into the CRP program it should still be farmable. Mr. Miller further explained that the USDA and Army Corps of Engineers are supposed to work together regarding these types of lands in the CRP program. Mr. Miller stated he would reach out to his contacts at the USDA to clarify what the rules were and what might be the situation with these lands.

There being no further business or discussion, Mr. Bell thanked everyone for attending the meeting and declared the meeting adjourned at 10:14 a.m.



Bruce Bell, II, Chairman



Michelle Lassiter, Secretary