

DEKALB COUNTY DRAINAGE BOARD MEETING

December 7, 2023

Drainage Commissioners Present:

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

Others Present:

Glenn Crawford, County Surveyor
Tyler Lanning, Lead Survey Tech
Michelle Lassiter, Secr. /Drainage Board Adm.
Troy Bungard, Survey Tech
Shannon Kruse, Attorney

Guests:

Ben Krafft
Davide Schmucker
Esther Schmucker
Judy Krafft
Chris Krafft

Absent:

None

Chair Bruce Bell, II, called the December 7, 2023, regular meeting of the DeKalb County Drainage Board to order at 8:30 a.m.

APPROVAL OF MINUTES

A motion was made by Bill Hartman to accept the Minutes of November 30, 2023, with the following corrections: the last sentence of the NIPSCO paragraph to be completed or deleted, “free” to be changed to “feet”, and “Rakeshaws” to be changed to “Rackstraws” as the standard minutes of the DeKalb County Drainage Board. The motion was seconded by Sandy Harrison, and the motion carried with Mike Watson abstaining.

HEARING

GEORGE WADE TILE REGULATED DRAIN NO. 31-00-0: DAMAGE DETERMINATION REGARDING DAVID AND ESTHER SCHMUCKER, 5392 COUNTY ROAD 60

Surveyor’s Office Situational Report: Mr. Lanning explained to the Board that the Steury field on the upper end of this drain had been holding more and more water prompting them to file a complaint with the Surveyor’s Office regarding the drain. When the office investigated the complaint, it was discovered that the tile was damaged where came into the Schmucker’s pond and the tile had material sacks stuffed into it. There had been a tile incorrectly connected to the drain on the north side of the pond without a permit which was allowing sediment to enter the drain causing additional issues. Mr. Gustin explained that the section of drain that was supposed to be coming out of the south end of the pond had been dug up and removed. During the investigative digging, the contractor had to dig pretty far back to find the remaining tile. There was no water flowing through that section of the drain. There were either feed or concrete sacks stuffed into the drain, which were removed and then water blew out. There was either a six-inch tile stuffed into an eight-inch tile or an eight-inch tile stuffed into a ten-inch tile without a reducer between. It was replaced with a dual-wall tile connected to a section of clay tile. Mr. Crawford explained that Mr. Steury had stated the county-regulated tile had flowed through the pond on the Schmucker’s property for some time. The Surveyor’s Office had spent \$2,134.83 out of the drain’s maintenance fund for the repair of the tile. Mr. Lanning pointed out that the air photos in the GIS maps were older, and that the barn showing to the west of the pond was no longer there.

Mr. Hartman asked if there was a reason that the reconstruction of the tile was not considered and if a drain through a pond was okay according to codes. Mr. Lanning explained that other county-

regulated drains flowed through ponds. Mr. Lanning further explained that there was an immediate need to provide relief to the Steurys as they had close to ten acres underwater. Mr. Lanning stated that the drain needed reconstruction and would need to be redesigned and rerouted during that process. Mr. Lanning further explained that there was a considerable amount of debris in the pond as a lot of material had been deposited into the pond that could flow through the tile.

David Schmucker took the floor to answer questions.

Ms. Kruse explained that the purpose of the hearing was to determine if any of the damage was caused by the landowner or someone else on behalf of the landowner and if the landowner was responsible for the cost of the repairs. It was the Board's responsibility to make that determination.

Mr. Schmucker explained that he and his wife had purchased the land in 2018. At that time the property had a small driveway off the road. The property had been vacant for some time and was overgrown with weeds. Mr. Schmucker began reclaiming the property by bush-hogging the property. When he reached the back section of the property he fell into a large hole. He didn't know at the time what the hole was from. He didn't know that there was a county-regulated tile on the property. Mr. Schmucker stated that once he was aware of the county-regulated drain he tried calling the County Surveyor's Office to have it and another hole between the pond and the buildings repaired. He stated that he did not get much response from the Surveyor's Office. Mr. Schmucker wasn't sure how the sacks ended up in the tile. Mr. Schmucker stated he was trying to clean up the property for his family to reside there. Mr. Schmucker stated he was afraid that either his kids or his animals would fall into the holes, so he filled them with dirt and leveled off the ground. Mr. Schmucker went on to state that the Surveyor's Office did come out to his property and repaired one sinkhole. Mr. Schmucker stated that he did make the outlet connection without a permit that Mr. Gustin described and backfilled it with dirt, admitting that he shouldn't have done so. Mr. Schmucker stated there was a ten-inch tile going into his pond that was exposed, and that Bill Rychener from the Surveyor's Office came out putting orange flags along the tile's path. Mr. Schmucker had pictures of flooding on his property, both before and after the repair of the drain. Mr. Schmucker stated he had spoken with Mr. Rychener and Mr. Frye (formerly with the Surveyor's Office) regarding the reconstruction and relocation of the tile to his property line. Mr. Schmucker stated that in 2021 he had proposed to the Surveyor's Office that if the County would purchase the material, he and Mr. Ben Krafft would do the reconstruction and relocation of the drain for free.

Mr. Hartman asked if Mr. Schmucker was proposing a reconstruction of the entire drain or only a portion. It was explained to Mr. Schmucker that if the reconstruction was done through a consent and waiver process, all affected landowners, which would include the Steurys, would have to sign the consent and waiver form, otherwise there would need to be a public hearing for the reconstruction to happen.

Mr. Schmucker informed the Board that he had pictures of the drain repair in process and he felt it had not been properly as no stone was used. Mr. Schmucker stated he didn't feel he should pay for work not done properly as a temporary fix. Mr. Schmucker also stated that he wasn't sure that the tile wasn't damaged by the contractor fixing the tile. Mr. Lanning and Mr. Gustin stated that stone was always used during drain reconstructions, but not always for repairs. Mr. Hartman stated it was easy to nick a tile while digging as he had done so himself in the past.

A discussion between the Board and Mr. Schmucker then took place in which Mr. Schmucker repeated that the tile's location limited his use of his property and that he would like for him and Mr. Ben Krafft to be allowed to reconstruct and relocate the 700 feet of the tile to his western property line. Mr. Bell stated that the purpose of today's hearing was to determine if Mr. Schmucker was

responsible for any of the damage done to the county-regulated drain and what portion of the repair costs were the Schmuckers. Mr. Schmucker then asked Mr. Bell if the invoice sent to him was the correct price for the repairs on his property. Mr. Schmucker stated that he did not dig the holes at the back of his property, he only filled them in and did not feel he should pay for that portion of the repairs. Mr. Lanning explained that Fry Excavating has sent the repair bill as a lump sum invoice including some repairs made on the drain north of Mr. Schmucker's property. A second corrected invoice was sent to Mr. Schmucker with an explanation letter. Mr. Hartman asked how many acres were in the drain's watershed. Mr. Bungard brought up the watershed and the watershed consisted of 537.57 acres. Mr. Hartman asked Mr. Schmucker when the drain became exposed in the pond. Mr. Schmucker stated it must have happened under the previous owners. Mr. Miller asked Mr. Schmucker if he had enlarged the pond. Mr. Schmucker stated he had dug out the pond and may have inadvertently enlarged the pond in that process. Mr. Schmucker repeated that he didn't feel that the bill had been appropriately itemized, that the tile was not installed properly, and he didn't feel he should have to pay for it. Mr. Bell explained that if the drain needed repairs in the future they would be paid out of the maintenance fund. Ms. Kruse explained to the Board that the Surveyor's Office had provided a packet of information for the Board to review and reference. Mr. Schmucker stated that he had not responded to the letter sent to him by Ms. Kruse. Mr. Schmucker further stated that he had called to set a meeting date with Mr. Crawford which didn't happen due to Mr. Crawford having to leave town. Mr. Crawford stated that he had conducted a site visit to walk the tile. Mr. Schmucker tried calling Mr. Crawford several times on his personal cell phone. Mr. Crawford informed Mr. Schmucker that all calls should be directed to the office, not his personal cell phone. Mr. Bell asked Mr. Schmucker why he thought the Surveyor's Office felt he was responsible for the tile damages. Mr. Schmucker admitted that he had damaged the clay tile coming out of his pond. Mr. Bell stated that the Surveyor's urgency to repair the tile was to provide relief to the neighboring field on the upper end of the drain. Mr. Bell asked Mr. Schmucker if he understood the letter that was sent to him by the Board's attorney. Mr. Schmucker replied that he did not. Mr. Crawford stated that when he spoke with Mr. Schmucker he informed Mr. Schmucker that if he would open the tile to get the water off the Steury field they could talk about the repair or the reconstruction of the tile at a later date. Mr. Crawford stated that the Steurys were losing approximately ten acres of land to the flooding caused by the drain damage. The Surveyor's Office was not out there to cause Mr. Schmucker a big bill. Mr. Bell asked in regards to the pictures provided by Mr. Schmucker if the flooding shown was mostly on the north side of Mr. Schmucker's property. Mr. Schmucker replied not until he leveled off the property. Mr. Schmucker did not feel the tile was working properly at that time as he had over a foot of water all the way up. Mr. Schmucker repeated he just wanted to state his case and retrieved his pictures from the Board.

Chris Krafft, 5475 County Road 60, took the floor stating that he lived across the road from the Schmuckers. Mr. Krafft further stated that the neighbor to the west of his property had replaced a portion of the tile himself and that the neighbor further to the west had put feed sacks into the tile as a "repair" of the tile and covered them with dirt. Mr. Krafft further stated that a gentleman named Rowdy Johnson had previously lived on Mr. Schmucker's property and would run a backhoe on the property every weekend which earned him the nickname "the mole". Mr. Krafft stated that he had a large sinkhole on his property that he had called the Surveyor's Office to have fixed. Mr. Bell informed Mr. Krafft that the information provided was not the reason the hearing was taking place. Mr. Krafft then replied that a reconstruction would need to be paid by the landowner.

Mr. Hartman then recommended that the repairs be paid out of the maintenance funds and put on the reconstruction list. He further recommended that the Board take the Schmuckers' and Ben Krafft's

proposal for the reconstruction of the 700 feet of tile on the Schmuckers' property, placing the remainder of the drain on the reconstruction list.

Ben Krafft, 5543 County Road 60, took the floor stating he would like to give a bit of back story. Mr. Krafft stated that Melvin and Ben Steury were contracted to build a house for Mr. Krafft. The Steurys and Mr. Krafft were no longer on good terms. Mr. Krafft stated that one of the Mr. Steurys told Mr. Krafft that he had dug the holes at the back of Mr. Schmucker's property. Mr. Krafft stated that Mr. Melvin Steury dug a trench from Mr. Steury's property to Mr. Schmucker's pond. Mr. Krafft stated that he felt the watershed should pay for the repairs. Mr. Hartman stated there was no proof as to who did what to the drain. Mr. Krafft stated he owned his own excavating business and he wanted to know why no stone was used in the drain's repair.

Mr. Lanning informed the Board that no reconstruction petitions for this drain had been submitted to the office.

Mr. Bell stated that he did not want to move the reconstruction of this drain up on the priority list.

Mr. Miller stated he had no issue with the drain being moved to the western property line of Mr. Schmucker's property, but if a reconstruction of the drain was needed and the drain needed to be lowered in the process any section Mr. Schmucker reconstructed would become a high spot and would need to be lowered. Mr. Miller would hate to see them spend money for a reconstruction to only turn around and have to tear it out. Mr. Miller felt the Board and County Surveyor needed to do their due diligence. Mr. Miller further stated that Mr. Schmucker had testified that he had damaged the tile on the side of his pond. Mr. Miller stated that he would propose that Mr. Schmucker be billed for one-third of the bill for the drain repair. Mr. Miller stated that this was the first time the Board had heard of the other issues in the watershed. Mr. Miller stated that he wanted to see one contractor affect the reconstruction of the whole drain.

Ms. Kruse advised the Board that they could look at the evidence and apportion the costs to the individuals found to be at fault or to have causation in the drain's damages.

Mr. Lanning stated that the current office staff had not been aware of the issues that were brought up as there was a whole rotation of staff over the last few years.

Mrs. Lassiter informed the Board that there was \$5,800.00 in the drain's fund.

Mr. Bell stated that the whole problem was because the process for repair requests was not followed. The issue could have been avoided if the processes were followed. Mrs. Schmucker stated that they had been calling the Surveyor's Office since 2018. Mr. Hartman reminded the Board that the reconstruction process had been a nightmare under the previous County Surveyors and was working more smoothly now. Mr. Bell stated he wanted to do this right and stop the issue from going on and on.

Mr. Hartman made a motion to apportion one-third of the drain's reconstruction costs, \$711.61, to the Schmuckers for payment. Mr. Miller seconded the motion, and the motion carried.

Mr. Hartman then left the meeting for a doctor's appointment.

Mr. Bell asked the Schmuckers and the Kraffts to come to the Drainage Board if other issues unresolved by the Surveyor's Office came up.

Mrs. Lassiter informed the Schmuckers that a new bill for the \$711.61 would be sent to them for payment. She told Mr. Chris Krafft that she would email him a petition for reconstruction of the drain and that he would be responsible for getting the signatures of landowners holding at least ten percent of the land in the watershed.

BID AWARD

ALBERT HIGBEA LATERAL 1 TILE DRAIN No. 268-01-0

Mr. Lanning presented the bid tab for the reconstruction of the Albert Higbea Lateral 1 Tile Drain No. 268-01-0. The bids had been opened at the November 30, 2023, Drainage Board meeting. Staff had verified that the information provided was accurate. Mr. Lanning informed the Board that Tri-County Excavating was the low labor bid with the amount of \$49,516.00. He further explained that Tri-County had also been awarded the reconstruction of the *William Bickel Tile Drain No. 133-00-0* by the Joint DeKalb/Noble County Drainage Board. Mr. Lanning stated that Tri-County was a solid contractor. Mr. Lanning went on to inform the Board that Hixson Sand and Gravel was the low material bidder with the amount of \$14,002.94 and that Klink Trucking was the low stone bidder with the amount of \$13,747.20. Mr. Lanning explained that Klink Trucking was also the stone provider for the *William Bickel Drain No. 133-00-0* reconstruction. The total of the three bids was \$77,266.14 which was lower than the engineer's estimate for the project of \$87,124.12 with ten percent, leaving room for \$18,570.39 for any change orders needed.

SURVEYOR'S REPORT

Mr. Bell asked for the Surveyor's Report and the surveyor's staff provided the following information:

Mr. Crawford stated that he did not have any report to give.

Mr. Lanning stated that maintenance projects were moving along. That Tri-County has machines onsite for the *William Bickel Drain* reconstruction, that all crops were off as of yesterday, and the project should start in a couple of weeks. Mr. Lanning also stated that Knott Drainage and Excavating should be starting the *Fred Groscup Drain No. 352-00-0* reconstruction in January.

Ms. Kruse informed the Board that the City of Garrett had concerns with signing the Intergovernmental Agreement for the upsizing of the tile for the *Fred Groscup Drain No. 352-00-0* reconstruction. Garrett would like a not-to-exceed statement added. She asked if the cost of tile was going down. Mr. Lanning stated that the cost of tile appeared to be going down. Mr. Lanning stated that the project bids were well below the estimated costs and should be okay. Ms. Kruse instructed Mrs. Lassiter to add the not-to-exceed language to the agreement, to remind the City they will need to pay their portion of the assessment costs for the other portions of the reconstruction, and to inform Garrett that should they not pay the upsizing costs, then the watershed landowners will be paying it.

Mr. Lanning stated the *Albert Higbea Drain No. 268-01-0* reconstruction will take place in the spring. The Surveyor's staff was working with ForeSight Consulting to get the bid documents out with the return in mid-January.

Mr. Lanning informed the Board that the field staff was continuing to work with the NIPSCO subcontractor Pipe Strong to find the damages to the *John Bemenderfer Lateral 1 Drain No. 49-01-0* and the *John Bemenderfer Lateral 3 Spur 1 Drain No. 49-03-1*. Mr. Lanning stated that Pipe Strong has had a staffing turnover with him having spoken with three individuals. A vac truck has been used to try to locate the county-regulated tile without success. They will be digging next.

Mr. Lanning stated that the repair of the *Singrey Lateral to the Frank Yarde Drain No. 27-49-0* was going to be taken out of the drain's maintenance fund. He did not feel it was worth trying to get NIPSCO to pay for the bank repair.

Mrs. Lassiter informed the Board that the *Butler City Tile Drain No. 200-00-0* reconstruction had been paid in full by the assessed landowners. It was now ready for Ms. Kruse to draft the resolution

to turn the drain's jurisdiction over to the City of Butler. Ms. Kruse stated that she needed to research the code for the relinquishment of drains to see what the City of Butler would need to do to receive the drain and the maintenance fund balance.

There being no further business or discussion, Mr. Bell thanked everyone for attending the meeting and declared the meeting adjourned at 9:58 a.m.


Bruce Bell, II, Chairman


Michelle Lassiter, Secretary