

## DEKALB COUNTY DRAINAGE BOARD MEETING

December 21, 2023

### **Drainage Commissioners Present:**

Bruce Bell, II, Chair  
William L. Hartman, Member  
James A. Miller, Member  
Michael V. Watson, Member

### **Guests:**

James Freed  
Kellie Knauer  
Jacob Walker

### **Others Present:**

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

### **Absent:**

Sandra M. Harrison, Vice-Chair  
Troy Bungard, Survey Tech

Chair Bruce Bell, II, called the December 21, 2023, regular meeting of the DeKalb County Drainage Board to order at 8:30 a.m.

### **APPROVAL OF MINUTES**

A motion was made by Mike Watson to accept the Minutes of December 7, 2023, as presented as the standard minutes of the DeKalb County Drainage Board. The motion was seconded by Jim Miller, and the motion carried with Bill Hartman abstaining.

### **PERMIT EXTENSION**

Kellie Knauer Building and Planning Administrator for the City of Auburn was present to explain that the City was working to extend the permit for the temporary parking lot for Credent Wealth Management located along and within the right-of-way of the Cedar Creek Open Regulated Drain in the 300 block of East Seventh Street. The permit was granted in 2021 and was set to expire on December 31, 2024. The City's Board of Zoning Appeals had approved the extension at its November 28, 2023, meeting. The City's Plan Commission had approved the extension at its December 12, 2023, meeting. FEMA had reviewed the request and approved the permit without an expiration date, and the Maumee River Basin Commission (MRBC) had approved the extension with an expiration date of December 31, 2027. Mrs. Knauer stated that the City had planned on having other parking arrangements for Credent by now, but had run into some stumbling blocks. The City did not plan on the permit going past the December 31, 2027 date. Mr. Crawford stated he had no issue with the permit being extended to 2027. Ms. Kruse stated that she would recommend the Board mimic the MRBC permit expiration of December 31, 2027.

Mike Watson moved to approve the permit extension for the temporary parking lot for Credent Wealth Management located along and within the right-of-way of the Cedar Creek Open Regulated Drain in the 300 block of East Seventh Street. Bill Hartman seconded the motion, and the motion carried.

### **SURVEYOR'S REPORT**

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

**GEORGE SHONER TILE DRAIN NO. 356-00-0 AND THE GEORGE SHONER LATERAL 1 TILE DRAIN NO. 356-01-0 – MAINTENANCE PETITION AND RECONSTRUCTION CONSENT & WAIVER**

Mr. Crawford presented the Board with a Maintenance Petition from Walker Farms for the George Shoner Tile Drain No. 356-00-0 and the George Shoner Lateral 1 Tile Drain No. 356-01-0. Mr.

Crawford explained that these drains had never been placed on maintenance and were in bad shape. Mr. Crawford stated that the next item of business was a Consent and Waiver from the drains' watershed landowner for reconstruction of the drains. The Walkers would do the reconstruction.

Jake Walker, 4275 County Road 22, took the floor to state that the Walkers, Bowmans, and Jean Reinhol were willing to pay the entire cost of the reconstruction of the drains. Mr. Walker explained that there were a couple of other landowners in the watershed. Mr. Walker stated that he didn't believe the lateral 1 tile was still in existence, and that they would like to upsize the tile and install two risers, on each side of the road. Mr. Walker also stated that he had not contacted the County Highway Department regarding the work in the road right-of-way. He would if the Board approved the reconstruction of the drains. Mr. Walker stated that the western spur would remain the Lateral 1 county-regulated drain.

Jim Miller moved to accept and approve the Consent and Waiver for the George Shoner Tile Drain No. 356-00-0 and the George Shoner Lateral 1 Tile Drain No. 356-01-0 to be reconstructed by Walker Farms, and paid for by the Walkers, Bowmans, and Jean Reinhol. Bill Hartman seconded the motion, and the motion carried.

Mr. Miller asked if there would be a completion date needed for the project. Mrs. Kruse stated there was not one needed. Mr. Walker stated he appreciated there not being a deadline for completion as weather and other issues could slow the progress.

Bill Hartman moved to set a public hearing date of February 22, 2023, at 9:00 a.m. Jim Miller seconded the motion, and the motion carried.

#### DANIEL WAGNER NORTH DRAIN NO. 48-60-0 – VARIANCE REQUEST 5151 COUNTY ROAD 35

Jim Freed, 4230 County Road 00N, was present to represent the variance request. Mr. Freed was the contractor for Bobby and Carissa Miller, landowners of 5151 County Road 35. Mr. Freed stated that the Millers called him to set up a new septic system design because their current one is failing and outlets into the county-regulated drain. Mr. Freed stated the design was complicated by the fact that the northern lot by the county-regulated drain sat significantly lower than the lot that held the house. The system that Mr. Freed designed was a mound system because there was not enough room for an inground system. Mr. Freed stated that he would enclose the mound system with fencing to delineate its location for any contractors who would work on the county-regulated drain in the future.

Mr. Freed explained that the GPS points taken by the Surveyor's field staff, shown on the maps as approximately 40 feet from the county-regulated drain's top-of-bank were of the perimeter tile's location, not the mound. The mound was approximately 10 feet further south from the county-regulated drain's top-of-bank. Mr. Freed stated that a soil scientist had determined that the northern section of land, along the county-regulated drain owned by the Millers, was the only good location for the septic system. Mr. Freed further explained that the area to the south of the house was where the property's well was located.

Mr. Crawford informed the Board that he had spoken with Cathy Manual from the DeKalb County Health Department, who had also supplied a letter that was in the Board's packet. Mrs. Manual stated that this was the only legal, viable location for a septic system on the property. Should the Board deny the variance request the home would have to be condemned. Mrs. Lassiter explained that the couple had bought the property in 2022 and had a new mortgage on the property. Should the property be condemned they would need to find another place to live and still would owe the mortgage for this property.

Mr. Miller asked if the property needed to have two septic sites to be usable. Mr. Freed and Mr. Crawford explained that new home builds were required to have two viable septic sites, older homes were not. Mr. Miller expressed concern with setting a precedent by approving this variance request, while at the same time having great sympathy with the landowners' position.

Mr. Lanning looked up the property records which showed the house as having been built in 1954.

Mr. Crawford explained that the adjoining county-regulated drain to the north, the *John Weimer Open Drain No. 166-00-0* had been dipped four or five years ago. There had been issues with the culvert under the field entry which had been cleared up. Mr. Crawford thought there would be enough space with the approximately fifty feet of right-of-way proposed empty to maintain the drain, even if the field to the north was turned into a housing subdivision in the future. With the current conditions and situation, Mr. Crawford approved the granting of the requested variance.

Mr. Miller stated he would feel better if there were language added to the variance agreement with Bobby and Carissa Miller that indicated this decision was specific to their situation.

Ms. Kruse stated that the Board could approve the variance with Findings of Fact. Ms. Kruse stated she would propose the Findings be:

- The house was built in 1954 prior to the current septic and drainage codes.
- That the owners did not create the current situation.
- That the drain was historically maintained from the north side.
- That the DeKalb County Health Department had sent a letter stating that without the variance the house would have to be condemned, leaving the homeowners with a mortgage and needing to find another residence.

Mr. Miller was satisfied with Ms. Kruse's recommendations and moved to approve the variance for a septic system to be 50 feet from the top-of-bank of the Daniel Hursey North Open Drain No. 48-60-0 with the Findings of Fact as stated by Ms. Kruse. Mr. Hartman seconded the motion, and the motion carried.

#### FRED GROSCUP TILE DRAIN NO. 352-00-0

The contract with Knott Drainage and Excavating for the reconstruction of the Fred Groscup Tile Drain No. 352-00-0 reconstruction in Garrett was presented to the Board for signatures. The contract had been awarded at the November 9, 2023, meeting.

#### UTILITY PERMIT DISCUSSION

Mr. Lanning informed the Board that the Surveyor's Office had received a utility permit application from Mercury Broadband for fiber installation along the same route on Old US 27 in Steuben County that NIPSCO had taken for the installation of a natural gas pipeline in which the *John Bemenderfer Lateral 1 Tile Drain No. 49-01-0* and the *John Bemenderfer Lateral 3 Spur 1 Tile Drain No. 49-03-1* had been damaged. Mr. Lanning explained that the subcontractor for NIPSCO, Pipe Strong, had brought in a vac truck for two days to try and find the tile, but were not able to do so. A NIPSCO rep then emailed that since the tiles had not been found, NIPSCO was going to close the file and consider the issue resolved. Mr. Lanning had emailed back that the Surveyor's Office would be conducting further investigation into locating the file and determining the damage, contacting NIPSCO thereafter. The Surveyor's Office then had contractor Brian Kelham dig up the tile on the west side of the road and a locator was run up the tile. The locator ran into a blockage on the other east side of the road, the staff were unsure if it was a turn in the tile or a damaged section of tile. The

staff would need to have a contractor dig up the tile on the east side of the road with an NIPSCO representative onsite to proceed with the repairs.

With that being the case the Surveyor's Office was hesitant to have any additional utility permits issued for the *John Bemenderfer Lateral 1 Tile Drain No. 49-01-0* and the *John Bemenderfer Lateral 3 Spur1 Tile Drain No. 49-03-1* until the tile repairs are completed. They didn't want to have NIPSCO refuse to pay for the repairs by blaming another utility company for the damages. To the staff's knowledge, the gas pipeline was not yet active.

Mr. Miller stated that he often went to Steuben County along Old US 27 and there was a lot of water in the fields at those locations that had not been there before NIPSCO's pipeline installation.

Mr. Crawford stated that Pipe Strong had used mats in the installation of the gas pipeline. There should not have been damage done to the county-regulated drains unless the mats were placed in the wrong locations.

Mr. Lanning showed the locations of the drains in the GIS maps and pointed out where the water issues were located explaining that the southerly location had not been explored by the field staff and contractor.

Mr. Crawford stated it would be nice if the Surveyor's Office had its own excavator for this type of situation so the staff didn't have to wait for a contractor to fit the job into their schedule.

Mr. Miller stated he did not want to let NIPSCO off the hook and have another utility provider have to pay for the repairs.

Ms. Kruse recommended that the Board have Mercury Broadband wait thirty days and that the Surveyor's field crew work quickly to locate and repair the drains as the longer the situation was left unresolved the better the chances were that NIPSCO would say the repairs were not their responsibility.

Mr. Crawford asked at what point are there too many utilities in a drain's right-of-way. The more that are permitted maintenance of the drain becomes a nightmare.

#### JOHN KETCHAM TILE DRAIN NO. 334-00-0

Mr. Lanning and Mr. Crawford presented some questions to the Board regarding the bid documents for the *John Ketcham Tile Drain No. 334-00-0*. Mr. Lanning explained that ForeSight Consulting had submitted draft documents for review. The documents had a requirement of a bond for 110% of the contractor's bidded amount. He explained that the State Drainage Code required the Board to determine the bond amount required. After a brief discussion, the Board determined that they believed the 110% bond would be sufficient.

Mr. Lanning also explained that Mr. Crawford would like for the contractor to be IDOA certified and that the City of Auburn usually required this certification from contractors. Mr. Watson stated that he thought the certification was a good idea, and that the State of Indiana required that of contractors for any project over \$150,000.00. Mr. Lanning went on to explain that any contractor working with the State Road 8 right-of-way would be required to be INDOT certified. It was explained that INDOT certification was considered to be a higher level of certification than the IDOA certification level. Mr. Lanning explained that most of the contractors used to work on the county-regulated drains were not IDOA, nor INDOT certified. Ms. Kruse stated the IDOA certification was not difficult to acquire, as she had completed the process for her employer in her capacity as her employer's legal department.

Mr. Lanning then explained that ForeSight had tentatively placed in the documents the completion date of August 31, 2024, with a \$500.00 a day penalty for each day after as an incentive to get a contractor that could do the job on time. Ms. Kruse stated that “penalty” should not be used, as the State Code limits the amount that could be charged for a penalty. The terminology that should be used was “liquidated damage amount”.

Mrs. Lassiter informed the Board that there was an updated list of hearings that had been held that included the 2023 hearings. She then asked the Board if they would want to hold a meeting on December 28, 2023, between the Christmas and New Year’s holidays, stating that she did not have anything for that agenda. The Board agreed to cancel the December 28, 2023 meeting.

Mr. Lanning then presented the Board with a priority list for drain reconstruction projects, explaining that Charity Wisel’s request had been added in the chronological order in which it was submitted. Mr. Crawford explained that he had done a quick estimate of the cost and provided the information of what her portion would be to Mrs. Wisel. Mrs. Wisel was not happy with the amount and stated that she would not be able to pay that amount. Mr. Crawford explained that it was a long drain with a pump involved. Mr. Hartman stated there was talk in the past of taking the drain in the opposite direction which was something to keep in mind in designing the reconstruction.

Mr. Lanning stated the plans for the reconstruction of the *Levi Dennison Tile Drain No. 317-00-0* was in the final stages and would be ready for presentation to the Board in the coming weeks.

Mr. Lanning stated that the reconstruction design for the *E.P. Griffin Tile Drain No. 224-00-0* might need to be done by an outside engineer as it would be a more involved process. The drain went through a swamp and under some greenhouses on its upper end. The drain currently flooded County Road 19 and some homes on the north side of County Road 68. The lower end of the drain had been cleaned out by LaOtto Excavating with the removal of a sandbar at the outfall in *Cedar Creek Open Drain No. 470-00-0*.

The Board members asked Mr. Lanning to email a copy of the priority list to them.

Mr. Lanning informed the Board that Phase II of the *William Bickel Tile Drain No. 133-00-0* was underway. There was plastic tile found in good condition and working at the beginning of the project. The clay tile was also in good condition and working so far in the process. Mr. Lanning was unsure as to why there had been such a big push for the Phase II reconstruction of this drain.

Mr. Hartman inquired about the enclosure of the joint LaGrange/Noble County regulated open drain that is a creek discovered by the Surveyor’s field inspectors. Mr. Lanning stated that was being left up to the Noble County Surveyor to handle.

There being no further business or discussion, Mr. Bell thanked everyone for attending the meeting and declared the meeting adjourned at 9:48 a.m.



Bruce Bell, II, Chairman



Michelle Lassiter, Secretary