

MINUTES OF THE DEKALB COUNTY DRAINAGE BOARD MEETING OF AUGUST 15, 2019

Chairman Randall J. Deetz called the regular meeting of the DeKalb County Drainage Board to order at 8:30 a.m., Thursday August 15th, 2019. Answering roll call was Randall J. Deetz; Michael E. Krehl; Donald D. Grogg; Jacqueline R. Rowan and William 'Bill' Hartman.

ALSO PRESENT: Drainage Board Attorney Shannon E. Kruse; Administrative Assistant Brenda Myers; Surveyor Mike Kline and staff member Philip Bremer.

IN ATTENDANCE: Kellen Dooley; Kevin Likes; Neal Blythe; Brad Grate; Joe Herendeen; Jeremy Henney; Chris Gaumer

APPROVAL OF MINUTES: A motion was made by Don Grogg to approve the Minutes of August 8th, 2019 as standard minutes taken by the DeKalb County Drainage Board, seconded by Bill Hartman, motion carried.

SURVEYOR CLAIMS: Mike Kline presented claims for his office, they were reviewed and discussed by the Board. It was discovered that there was a double entry on the claim for Walter Smith Drain so the total amount will be changed accordingly. No action was necessary by the Board.

INFORMATIONAL: The (private) flooding issue at County Road 40-A around the Soul's Harbor Assembly of God Church where across the road Thomas Wasson was complaining of flooding in his yard, this has been looked at by the Highway Superintendent with Don Grogg present. The Pastor of the church told them that the church has already marked this and have Bill Knott scheduled to run a new piece of tile 50-75' from an old clay tile, down to their new tile that goes down into their flood retention. This situation seems to be taken care of according to Don.

Q&A: Mike Krehl questioned where we are on the ditches that 'we' were going to focus on, where are we at on those, for instance the *Eric Morris Drain Number 416-00-0* was going to be sent out for bids, has that been done.

Mike Kline said they are waiting, the City of Auburn is going to help them hot-hole the utilities so they know if they need to do a jack and bore, so he doesn't have the final plans done until the City of Auburn gets out there; the sewer department is really busy so they will squeeze us in when they can Mike said. Once that is done he can get the plans finished and out for bid.

Mike Kline said on the *Marvin Walker Drain Number 403-00-0*, Rory Walker thinks this needs to just go to public hearing so Mike said he would get that set up for a hearing.

On the *William Bickel Drain Number 133-00-0* Mike said he is waiting on Nate to get the profiles so Mike can final that one out, as soon as Nate does this then Mike and Philip can get that one finished. Mike Krehl asked if he had been in contact with the other Surveyors on this project and Mike Kline said he hasn't, he wasn't going to until he has a whole plan; he'd like to do it all at once, but he could do the culvert and the ditch separately to get them done. Nate Frye said a request did come from Noble County for the open ditch information for the work that needs to be done, so they did get that sent out. Mike Krehl said they (Noble County) are having a meeting Monday morning and Mike Kline said he would make contact with them to make sure they are on the same page.

Guy Platter Drain Number 112-00-0 Mike Kline said they pretty much have that finished up and he's looked it over, right now he has some drawings to take down to the State Highway, there is at least one structure that needs replaced so he has to talk to the State

about how they want to do that, so he needs to get down there early next week to talk to them. Mike said he also wants to talk to them about what they are going to require in Ashley; there's another one on 427 that Mike said we were ready to go last year but never got done so he wants to go over that with them, and then he wants to give them the billings for the crossing at State Road 1 in Butler, Indiana, and their assessments for acreage they had in the *Butler City Drain Number 200-00-0* project.

Chairman Deetz informed the surveyor that he saw where someone was working diligently along Interstate 69 (*in the vicinity of DaySpring Church Drain Number 228-00-0*) with equipment so he wanted to know if that was something the Board should be aware of. There were State Highway trucks onsite in the area of an extended right-of-way where according to Mike they have a muck problem, or Mike said the State Highway could be lining the pipe underneath the Interstate with that being the low point in that area.

Mike Krehl asked about the Kent Hunter situation (*Fred T. Miller Drain Number 91-00-0*) and Mike Kline said that is on Nate's list to get it all put together for next week, Mike Kline said he wants to review it and then bring it up to the Board.

Don Grogg stated that on the *James Ferguson Drain Number 86-00-0* at the north end of his property it has washed in and almost has the drain plugged, Don asked if they would clean that from his side or the other side because he wants to knock that down and get it seeded.

Nate said he was waiting until Ben at the Highway gets their work done that they needed to do. Don said he'd like to seed this in September.

CREAGER/GRATE/COBURN PRIVATE DISPUTE: Chairman Deetz stated that the surveyor has looked at this private situation and it was important to get all parties in the same room to discuss the outcome. This is not a written report, this is for information to be presented.

Surveyor Mike Kline stated that Jim Dunn worked on this drain up through the woods to the field and got that working for Mrs. Coburn, so he hired him go out to look at the area that is being disputed where he found a lot of tree roots, removing as much as he could and he took down some trees in order to get to the private tile. In looking at the petition it is stated that the petition is for the removal of obstructions, and therefore we have done what we were petitioned to do by removing the obstructions as best as we could Mike said. Mr. Creager and Mr. Grate want more done because the tree roots will grow back but the obstruction has been removed. Mike said yes, there is a bunch of tile that needs replaced and yes, there are a bunch of trees that should be removed so the problem doesn't happen again but he does not have the authority to do any of that, once the obstruction is removed, that is the limits of his responsibilities in a private matter.

Drainage Board Attorney Shannon Kruse concurred that under a private drainage dispute where it is a private mutual drain; that is all this Board can be charged with is making sure the obstruction is removed. There are other avenues in the Code for putting in a new regulated drain which the county would then have control over and if that is what the landowners are desirous of, that would turn into something else with a new petition. The attorneys for both Mrs. Coburn and Mr. Grate/Mr. Creager are in attendance and were given the opportunity to speak.

Neal Blythe, Mefford, Weber and Blythe representing Mr. Grate and Mr. Creager stated that the beginning of this issue starts south of County Road 14, there is an old tile that

runs across Mr. Grate's property to the east, and then to Mr. Creager's property and under the road and into the wooded area as shown on the map. To make the Board aware, they tried to privately resolve this for months without success and therefore a petition was filed to move this forward. Basically there are two things under the Statute referring to 39-9-27.4, and all agree this is not a county regulated drain, but a mutual drain and there could be some legal arguments made by the Trust which Ms. Coburn is the Trustee of, about whether that is actually true or not, but the petition clearly was to remove the obstruction and have the surveyor report about the obstruction, so for his purposes, they are still needing for that report to be made. The other significant part of this dispute, even beyond what has already been done, is that the Board has an obligation to hold a hearing on this after that report is made. The significant factor to his clients is that if the Board were to determine that the obstruction was intentionally placed, the cost of the removal of the obstruction is borne by the Trust completely. The tree roots could have been intentionally placed as an obstruction in that they were planted intentionally and Ms. Coburn or the Trust collected fees for years with the trees that are planted there, knowing that they were planted over the top of this drain. In his interpretation of the Code was also that we needed to go through this step administratively to exhaust those options before they could go on to a civil lawsuit. The report very well may help in getting this resolved privately and that is why they need the report; it is not known if the drain is completely unobstructed or if there may be further down obstruction with clearing the one out to the north or if that will back up further to the south, but it is significant to his clients because once you cross over to the north side of County Road 14, that has created a huge amount of ponding there; water just sits there and makes the ground virtually useless, they can't farm it and even if they could plant it, it is not productive. Attorney Blythe stated that his request from the Board today would be to have Mike Kline do what it is that he needs to do to complete that report, the Board schedule a hearing and once that is done, then he and Attorney Likes can take it from there to determine if they actually need the hearing or if there is a way to get it resolved. The hearing has to be set thirty days out, but not less than ninety so in getting those two steps completed that would help tremendously in moving this along.

Attorney Kevin Likes who represents the Coburn Trust that the drain is located on stated that they need the report to figure out what needs to happen. Attorney Likes asked a couple of questions of surveyor Mike Kline 1) if the obstruction has been removed is there any way to know if there is any more obstruction there or is it gone.

Mike Kline said they started in the open field and went all the way to the road, when they were done the water was running through the tile; when you take a roter through a tile you don't get every single root so he couldn't say that the roots won't grow back and plug it in the future, but when they were done water was running through the tile.

Attorney Likes said it was mentioned that there is a section where a new tile would be beneficial, is that because it would be beneficial or is a new tile actually necessary to make the tile operational.

Surveyor Kline explained that what he was talking about was the tile being a clay tile has a lot of joints in it and will get a lot of roots in it with the trees, if this were a county drain we would clear those trees at least forty feet [40'] on both sides and he would put new longer length plastic tile in there so roots can't get into it.

Attorney Likes asked if all of that information given would be in a written report and Mike said it would be. Kevin said at that time, he and Neal can debate about where they go from here. Kevin said from the Coburn's point of view, first of all they don't feel there was anything intentional, planting trees in and of itself doesn't mean an intention was to block a tile; the second is that if this is even a mutual tile, because there is no paperwork to show that. The other thing is we all *agree* this is a mutual tile and it has been obstructed, non-intentionally and in his reading of the Statute *it* says the cost of making all of these repairs needs to be borne proportionately by those who benefit from the tile, so that will need to be figured out, that could be people other than the parties to this action/potential action.

Surveyor Kline stated that figuring out a watershed is fairly easy and then the Board would have to decide how they wanted to split up the cost; Mike said he can give Kevin numbers that he gives to his contractors of an approximate cost based on what his contractors would do the job for.

Mike Krehl questioned when these trees were planted but no one had an answer for that.

Chairman Deetz said the process if all parties decided there needed to be a new tile in place, they would have a choice of doing that as a mutual tile and continue on as a non-regulated tile, or they can work with the surveyor's office so that once their tile is up to the county standards it could be accepted and become a regulated drain. Those costs and the procedure to make this become a regulated tile can be discussed at the end of this process if requested. To capulate this, what is being requested is;

- 1) a written report and;
- 2) upon the completion of that, this is to be set for a hearing.

Randy asked for a timeframe from the surveyor as to when that written report will become available.

Mike Kline said he would hope to have this ready in two weeks.

Attorney Shannon Kruse stated that according to Section 12 of the Statute *'upon receiving the report from the surveyor, the Drainage Board shall set a date for the hearing and serve notice on the landowners'*.

PLAN COMMISSION PETITION – STONE BRIDGE ESTATES (Revision of Primary Plat): Present is Joe Herendeen, Sauer Land Surveying with this revision of the primary plat which is in more detail in regards to the ponds, calculations, proposed shed areas on this development located on County Road 64.

Surveyor Mike Kline stated that he has been given calculations and they have together discussed various options and from what they are showing him, they are meeting what the county requirements are. Mike said he is still debating on how much pond he wants, they are sitting right on the open ditch so he's not sure he wants to hold the water or release it to get rid of it. Mike said from what they are showing him today they are meeting the requirements and he sees no problem with it. Mike recommended the following:

Surveyor Mike Kline recommended that the Board approve the preliminary plans, specifications and calculations that have been presented to the Board, with the understanding that the final details of the plan specifications and detailed calculations would be submitted to his office for final review before the secondary plat gets approved and that the Board approves the final plan before they send a letter.

Chairman Deetz stated that it is his understanding that the developer owns the pond or part of the pond.

Joe responded that the original developer of this site appears to still have ownership of the pond but there are documents that allow access and usage of the pond for all adjoining owners. That will all be worked out in the secondary phase.

Don Grogg moved to approve this as the preliminary plan, subject to any new evidence presented at the Plan Commission meeting and requests the Administrative Assistant to pass this decision of the Drainage Board to the Plan Commission, seconded by Jacqueline Rowan, motion carried.

There being no further business, meeting adjourned.

Randall J. Deetz, Chairman

Brenda F. Myers, Administrative Assistant