

MINUTES OF THE DEKALB COUNTY DRAINAGE BOARD MEETING OF SEPTEMBER 19, 2019

Chairman Randall J. Deetz called the regular meeting of the DeKalb County Drainage Board to order at 8:30 a.m., Thursday September 19, 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 Nate Frye.

IN ATTENDANCE: Lawrence and Pamela Bak; Todd Bauer; Jan Bauman

APPROVAL OF MINUTES: A motion was made by Mike Krehl to approve the Minutes of September 12th, 2019 as standard minutes taken by the DeKalb County Drainage Board, seconded by Bill Hartman, motion carried.

UTILITY PERMITS: Surveyor Mike Kline presented three utility permits as follows:

INDIANA MICHIGAN POWER who will be replacing poles, wire and equipment starting at the intersection of County Road 29 and going east past County Road 55.

The county regulated drains involved are:

Alex Provines Drain Number 71-00-0

Nowlin-Rafine Yoder Drain Number 262-00-0

Nowlin-Rafine Yoder Lateral 1 Drain Number 262-01-0

Nowlin-Rafine Yoder Lateral 2 Drain Number 262-02-0

Don Grogg moved that the Board approve the Utility Permit for drain crossings in regard to the above drains and to authorize the Chairman to sign on behalf of the Board, seconded by Jacqueline Rowan, motion carried.

AUBURN ELECTRIC DEPARTMENT with a project beginning at the northeast corner of County Road 35 and County Road 56, east to 3685 County Road 56 on the north side of County Road 56. AES (Auburn Essential Services) will be contracting boring crew to install fiber optic services on County Road 56. AES will be as close to the edge of the right-of-way as possible with minimum depth of 48".

The county regulated drain involved:

Alex Provines Lateral 1 Drain Number 71-01-0

Bill Hartman moved that the Board approve the Utility Permit for drain crossings in regard to the above drains and to authorize the Chairman to sign on behalf of the Board, seconded by Jacqueline Rowan, motion carried.

AUBURN ELECTRIC DEPARTMENT: AES (Auburn Essential Services) will be contracting boring crew to install fiber optic services on County Road 35 between County Road 52 and County Road 60. AES will close edge of right-of-way as possible with minimum depth of 48". Starting at 5425 County Road 35, boring south 4650' to 5754 County Road 35 on the east side of County Road 35. Then on the west side 1550' from 5754 County Road 35 south to 5890 County Road 35. Road bores on County Road 35 will be at 5504, 5552, Highland Cove, Braveheart Circle, County Road 56, 5754 and 5890. AES will be extending to the end of Highland Cove and Braveheart Circle also.

The county regulated drains involved are:

Alex Provines Drain Number 71-00-0

Ellen Reed Drain Number 151-00-0

Mike Krehl moved that the Board approve the Utility Permit for drain crossings in regard to the above drains and to authorize the Chairman to sign on behalf of the Board, seconded by Don Grogg, motion carried.

AMERICAN ELECTRIC POWER/SDI: Mike Kline stated that this had been brought to the Board last week as a variance request however he does not feel that a variance is needed and therefore asked that the Board approve the drainage plan as presented. They are building a new substation known as the Varner – North Varner Station; AEP is building a substation that immediately feeds into one owned by SDI and AEP is buying land in this area and obtaining easements off of County Road 55 to the substation, with the rest owned by SDI. This will have a pipe outlet with riprap, so a variance is not necessary. Mike asked the Board to approve their drainage plan which includes the swales, the pond and outfall pipe. Mike said he will approve the outfall into the pond under the Drainage Code.

It was questioned where a letter should be sent and Mike said one has not been requested at this time. A copy could be sent to the consulting engineer and plan commission.

Drainage Board Attorney Shannon Kruse noted that a variance is not necessary because it is not within the seventy-five (75') foot right-of-way of the county drain.

Don Grogg moved to approve the drainage plan for the American Electric Power Varner – North Varner Station at the northeast corner of County Road 55 and State Road 8 as per the plans, specifications and drainage calculations as submitted by MS Consultants, Inc., of Columbus Ohio, dated August 2019, seconded by Bill Hartman, motion carried.

PLAN COMMISSION PETITION –HUNTERS HAVEN: Present is Todd Bauer, ForeSite Consulting, LLC on behalf of Johnathon and Charlotte Burns for this one-lot subdivision located on County Road 47 where they have a twenty-four acre parcel where they will construct a hunting cabin. In order to fulfill their desire to construct this hunting cabin they have had to create a minor plat.

Mike Kline noted that according to Nate there is already a plat of Hunter's Haven in the county so Todd may want to check with the Plan Commission to see if a different name is necessary.

Surveyor Mike Kline reported that this plat is in the watershed of the *W. E. Swanders Regulated Open Drain Number 107-00-0*. The plat does not appear to exceed the threshold set by the Drainage Board for additional drainage improvements. This development shall not block off-site drainage across the site and storm water from this lot shall be directed onto the parent tract and not onto adjoining tracts. This report is subject to any additional information submitted at the Plan Commission meeting.

A motion was made by Don Grogg to accept the report of the Surveyor concerning the drainage, 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.

PRIVATE ISSUE: Present is Lawrence and Pamela Bak who reside at 2646 CR 68, Auburn Indiana. Mr. Bak stated that starting back in 2015 when their neighbor had put in a dirt berm and it's keeping water standing that cannot get away so it floods his driveway. Labor Day weekend this neighbor added height to the dirt berm which will make the water deeper and the issue is getting worse. What Mr. Bak would like to happen is for the neighbor to open that up so water can get through and he would even help him to dig a drainage tile that might even benefit him some; his yard is lower than the ditch and that is where his problem arises from. Pictures were presented of the flooding.

The Drainage Board Attorney was asked if this falls under a private drainage dispute or if this is something the Plan Commission would address.

Drainage Board Attorney Shannon Kruse stated that it potentially could be a private drainage dispute but with no tile in place it may not.

Surveyor Mike Kline stated that the lowest point is in the middle of this neighbor's yard so it floods before it can get out to the culvert and away. Mike didn't know if this was an original overland flow path or if this was created because of the construction there, it would have to be looked at prior to any building in the area. Mike said he didn't know if this was actually a platted lot or if it's a 'meets and bounds', so he didn't know if it even went through the Plan Commission. In looking at this from the contours and LIDAR data, they could put a tile in all the way through and into the existing county regulated drain to get rid of all that water which would help everyone in this area.

Chairman Deetz asked if Mr. Bak had spoken to this neighbor and offered to help him to put a tile in and he had not, he said they are not on good speaking terms.

Drainage Board Attorney Shannon Kruse stated that there are two options:

- 1) For the Bak's to file a petition for the removal of an obstruction with a private drainage dispute. A \$500.00 non-refundable filing fee has to be paid and the landowner has to allege an obstruction. There would then be a hearing process where this Board sits as a quasi-judicial unit and makes a determination (if there is an obstruction as determined with the surveyor investigation) with both the petitioner and the neighbor being notified. The Board would rule on the obstruction (if there is one) and who would pay for the removal.
- 2) A petition with several of the neighbor's to make a connection to the county drain.

Mr. Bak stated that he would try talking to his neighbor.

MINIMUM COMBINED BILLING: Present is Jan Bauman, DeKalb County Auditor who stated that by Statute they have to be able to provide to taxpayers/property owners, the ability to do combined billing for tax purposes. Currently they do combinations for physically combining properties, merging properties together with a brand new legal description, new boundaries, etcetera, so that part they (the Auditor's office) are already doing properly. Jan said they would like to do 'combining properties for tax purposes only' and they have everything set up to do that. The tax bills currently has two types of charges on it, the property tax and the drainage assessment(s), so when they can combine parcels, such as currently for example: a landowner living in the city whose home sits across five small parcels equaling way less than an acre; they are not getting the best benefit of their Homestead deduction because that goes on a property that has a house, garage and up to one-acre of property, but when that is split up into five parcels and the Assessor has to choose which parcels the house sits on would be the one to get the Homestead deduction, but if the garage is on another parcel it would not get the benefit of the deduction and neither would the land. In doing that process, 'combining for tax purposes only' so they can get all those assessments on one parcel and then when the Homestead or other deductions is applied that assessment is getting reduced to the lowest amount possible, which is what we are supposed to do. The tax side of things are done through the Assessor's office and Jan will be working with her (Sheila) to come up with a process so that they can get all the property tax part onto one property. So let's say those properties are now combined (for tax purposes), they still have their five parcels that still

all have their own legal descriptions, boundaries, but the Assessor has moved all of the assessment onto one parcel so that when the person gets their tax bill(s) in the spring, they will still get five bills but all of their tax part is on one bill. The tax side is fine and she and Sheila will be able to work through that and get a process started, the thing about that is, once that happens, the drainage assessments will still be showing up on all five parcels. What they would like to have happen is to have out of those five parcels, one bill that has all of the assessments on it, all of the taxes due with a \$0.00 bill for all the others. Farmers want this, it helps them consolidate and keep better track of things; it's a convenience as well as a benefit of their tax deduction. Jan said she has been in talks with Nate in the Surveyor's office who assigns the assessments and he says there would need to be some changes through LOW.

Chairman Deetz questioned combining the parcels to become one and Jan said for this purpose they would remain five separate parcels but the assessment would be manipulated and put onto one parcel. Randy thought it was said they would become a whole new parcel name/number.

Jan said that would be combining 'physically' and that is when a survey would be required because they want it combined into one parcel; that would generate a new legal description, deed and survey to become one parcel and that is not what is being proposed today.

Nate Frye stated that the way the system is set up, in some watersheds if there are say three parcels, it will look at the total acreage when it takes into consideration whether to charge per acre rate or the minimum rate; however, not all watersheds do that, so in those areas where it is under the acreage minimum, it will charge the minimum rate to each parcel so that needs to be addressed throughout.

Chairman Deetz questioned how it is determined which parcel gets the assessment (in the first scenario where we are already combining tracts).

Nate said that LOW automatically does that and he has not dug in deep enough to understand exactly how that works, he has to research that. Nate said there are also certain watersheds (Cedar Creek and Garrett City Tile) where they actually assess based on an amount per parcel so it doesn't matter the size or acreage that is a clog in the system as well.

Chairman Deetz asked Jan to clarify the combination because knowing that we are required to combine parcels by State Law, is that combining these into one parcel by survey and we are taking this out a little farther because it was his understanding from working closely with Farm Bureau was the fact that we are required to do this but part of that is the survey making it one parcel.

Jan stated that it was her belief that it includes the 'for tax purposes only' as well, she said she could find the Statute.

Mike Kline said from his standpoint if a landowner has a rate per acre and he owns five tracts that creates five different numbers so he asked if he could give the Auditor a total for that particular person and have that be the assessment. Mike said they didn't have to do a lot of fancy work, all they would have to do is add up the total for that drain for that particular person and submit that to Jan to put on the tax bill.

Jan said for her purposes in her office, they just need a dollar amount.

Nate questioned reaching out to LOW to inquire about them adding a tool into LOW to generate a combined billing statement for each individual landowner. The combination will change the assessments/what the landowner pays.

Jan stated that she wasn't sure how that would work because if they are doing a combined minimum billing statement, then when the Treasurer receives a check for that amount are they applying it to all those different parcels; is it still going to be all separated out to those parcels? What she sees happening is that since that is not being taken off the parcel in the system, when they get their zero dollar bill for property taxes on those other parcels, there is still going to be something showing up and she didn't know if there would be a way to shut off the drainage billing per parcel.

Chairman Deetz said he would also be concerned with doing this in that he would also want to be able to track what parcel is paying what to what tile. There is enough confusion already so we cannot streamline this to the point it becomes confusing.

It was the conclusion that LOW needed to be involved.

The consensus of the Drainage Board was that all were in favor of what was presented and there are a few legal things that will need to be worked through but the hearing process, what has been decided in a public hearing as far as collection of assessments, not taxes, of assessments, cannot be changed without going through a hearing.

Drainage Board Attorney Shannon Kruse stated that how it appears on a tax bill as combined, that's a different issue. The consensus is to see what we can do in order to be helpful to landowners.

ED F. HAYNES LATERAL 1 DRAIN NUMBER 8-01-0: Mike Kline stated that this drain had been discussed and there needed to be some clarification with the attorney present. Mike told the attorney that his office found that a portion of this drain had been combined into the *Frank Yarde Drain Number 27-00-0* at a hearing. The lateral to the Ed F. Haynes drain was included as a regulated drain and as they researched it, they found that the courts had vacated this back in the 1920's. There was a petition to build the drain and this was the lateral to it and right after that was approved this was vacated Mike said. Mike said somehow it hasn't gotten picked up in their (his office) records but it's in the card file so going back in history you can find where it was vacated, but it was included and looks like it has always been a regulated drain but he doesn't have confidence that it actually is a regulated drain. This is all open drain now and the landowner wants it cleaned out, since it is shown on the map that way everyone thinks it's regulated.

Drainage Board Attorney Shannon Kruse questioned the copy given to her and asked if there was more vindication of this being vacated.

Mike said he is struggling with, do we go ahead and say it is a regulated drain since it's been shown that way, but he doesn't have anything that says it is, he has documentation that says it was vacated, or do we petition to make it regulated and if we do then all of this tile needs to be replaced because it's from the 1920's; the open drain needs to be cleaned too. They could do this as they did the Elaine Kline drain in that they approved this as regulated subject to the reconstruction and if that didn't happen then they wouldn't have accepted that as a regulated drain. Lonnie Lanning wants Mike to have a contractor give an estimate on cleaning the drain and he may just clean it himself so as to not upset neighbors. Mike said it is shown on the map so does he leave it on the map or take it off and show it vacated.

Chairman Deetz said arguably it's not going to be much different financially one way or the other.

Don Grogg expressed that if it's been vacated for 100 years it would still be vacated and should be taken off and then let Lonnie and his neighbors fix it and Mike Krehl agreed.

Drainage Board Attorney Shannon Kruse stated that she wouldn't mind seeing actual paperwork that says this has been vacated, her only hesitation is if it has been noted all these years that it's a county drain, she would want convincing evidence that it was vacated back in the day. The document presented has no date and refers to a petition that isn't available, so while this could be evidence, there needs to be better evidence of that. Shannon asked that the surveyor's office dig up as much evidence as possible so there is clear evidence of a vacation.

Mike Krehl asked if that research could be done by next week and both Mike and Nate said it could be. Mike Krehl then asked that this be tabled until next week.

INFORMATIONAL: A letter was read into record from Kent Hunter who has obtained help from the Indiana Agricultural Law Foundation in Indianapolis who have referred him to a local agricultural lawyer to help get some action and resolve this.

Chairman Deetz stated that something needs to be done and asked that Don Grogg get with Jim McCanna to discuss insurance.

Mike Kline stated that what needs to happen is to hold a public meeting to make that a regulated drain and come up with the damages. Mike said if there had been a public hearing held it would have gone the same way in paying damages.

While Chairman Deetz agreed as did Mike Krehl, Mike Krehl felt that some direct contact would be a better first approach. Randy asked that Mike Kline set up a meeting with all three present (Randy, Mike Krehl and Mike Kline) to meet with Mr. Hunter to determine where we're at and see if there is anything we can do to make this a first step to move forward.

There being no further business, meeting adjourned.

Randall J. Deetz, Chairman

Brenda F. Myers, Administrative Assistant