

MINUTES OF THE DEKALB COUNTY DRAINAGE BOARD MEETING OF OCTOBER 10, 2019

Chairman Randall J. Deetz called the regular meeting of the DeKalb County Drainage Board to order at 8:30 a.m., Thursday October 10, 2019. Answering roll call was Randall J. Deetz; Michael E. Krehl; Donald D. Grogg; Jacqueline Ro. 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: James Deetz; Walter Prosser; Joe Prosser; Brian and Judy Cronin

APPROVAL OF MINUTES: A motion was made by Mike Krehl to approve the Minutes of October 3rd, 2019 as standard minutes taken by the DeKalb County Drainage Board, seconded by Don Grogg, motion carried.

SURVEYOR CLAIMS: Nate Frye presented claims for the Surveyors office. No action was necessary by the Board.

Chairman Deetz questioned there being two drains with the exact claim amount and asked that be checked for clarification.

INFORMATIONAL: Present is Brian and Judith Cronin who reside at 2646 County Road 68. Their neighbor Lawrence and Pamela Bak have been before this Board and had stated that they would be willing to help the Cronin's with the cost associated with running a tile to alleviate a water problem. Mr. Cronin stated that they have spoken to several offices over the course of the last five or so years and Surveyor Kline urged them not to go legal back in 2013, 2014 and 2015 and this past Saturday he was approached by Mr. Bak at his fence line with the confrontation not going well and involving the police. The previous owner forced Mr. Bak to remove a dump truck, a tractor, a brush hog and a bob-cat from one of the buildings because they had sold the property to the Cronin's and that upset them. The Bak's asked to be able to put their things back in one of their buildings but were denied; the Bak's also said they did their snow removal which Mr. Cronin told them they would no longer need to do. In the spring of 2013 is when they noticed the water problem in their front yard and began calling different offices because of the health concerns. Pictures were presented and Mr. Cronin stated that he and his wife do not have a water problem even though admittedly they are the lowest property on the road. Mr. Bak stated that he had to run a four-hundred (400') feet, four (4") inch pipe from the water area on his property to the road which is actually a six (6") inch pipe and is in and out of the ground all the way to the road and is over ten years old. The history of the properties involved was given stating that at one time this was a fruit orchard and they needed a water reservoir so they dug out the 'pond' in the 1940's or 1950's. There are tiles in place and some were verified by a member of the Carnahan family. The family that owned their home and several around them came to a meeting asking that the Bak's not be allowed to build their home because of the potential flooding it could cause and Mr. Bak himself told the Cronin's that the neighbors did that and that he was angry. There was a petition to abandon a county drain that is behind the Bak's property about fifteen years ago. Back in 2013 and 2014 they could not mow their front yard and he questioned Mr. Bak as to where the water was coming from as it would stop at his driveway, no one else had a problem with standing water. In the spring of 2015 he witnessed Mr. Bak stopping at the road where a section of his tile comes out of the ground and using a snow shovel he shoveled a trench from the pipe to the driveway; there

was a baseball sized hole in the pipe upon investigating what he had been doing, and that is what runs into his yard. In being confronted Mr. Bak blamed it on another neighbor.

Chairman Deetz appreciated all of the history on this problem but asked what a potential solution is that Mr. Cronin is looking for.

Mr. Cronin stated that he does not feel that he has to do anything, this is not his water problem, it is his thought that after all the damage over the course of these 15+ years, that Mr. Bak should endure the entire cost of running a tile to the county drain. Mr. Cronin stated that with the direction of the DeKalb County Surveyor who also gave them the dirt that was used to berm his property in order to keep from flooding, that he has done nothing wrong. The dirt that was added Labor Day weekend was simply replacing dirt that had gotten washed away.

Chairman Deetz stated that this is a private matter and this Board has no jurisdiction or authority.

Drainage Board Attorney Shannon Kruse stated that the only way to involve the Drainage Board in a private dispute is if one of the landowners is alleging an *obstruction* to the *natural surface watercourse*, and Mr. Bak has spoken to that as a possible solution if he is alleging that the berm is an obstruction. In looking at the common enemy doctrine, if you are not channeling water onto your neighbor, neighbors can treat water as a common enemy.

Surveyor Mike Kline stated that he can tell by contour lines how the water once flowed and when the barns were flooded Mike told Mr. Cronin that he could put a berm up to protect his property under this common enemy doctrine and let the water then go down through the front yard; he cannot block the whole thing and the water eventually builds up and then goes down to the front. Mike has looked at this recently and in looking at the LIDAR there is no reason that a tile couldn't run down the driveway and across the front yards to reach the county tile to the east. Mike said it was discussed but the landowners can't be ordered to do that, but that would be the ideal way to do it.

Chairman Deetz stated that without documentation from those who can shoot grades, and getting the Highway Department involved would all have to happen prior to making any determinations of how to proceed. It is at the discretion of either Mr. Bak or Mr. Cronin to take the next step by deciding if they want to take this to a private dispute between the parties involved.

Mr. Cronin stated for the record that he and his wife will not work with Mr. Bak on anything, these water issues are his, not theirs, so as far as joining in on any expense with him that is not going to happen, they do not need a drain, Mr. Bak does.

OZRO FREEMAN DRAIN NUMBER 175-00-0: Present is Walter Prosser 3023 CR 61 Butler Indiana in Wilmington Township and he is wanting to address the Board on a petition that has been in place for many, many years on this drain. The drain was established in 1892 and consists of two-thousand two-hundred (2,200') feet of fifteen (15") inch tile; one-thousand six hundred (1,600') feet of twenty-four (24") inch tile and five-thousand two hundred (5,200') feet of open drain consisting of five-hundred fifty-five (555) acres in the watershed; the drain was petitioned in 2006 to put on maintenance and was established at \$10.00 an acre at that time. It was reported at the hearing that the drain was in very poor condition and needed repaired. In March of 2012 there was a meeting where landowners asked again about upgrading the ditch as there was money in the fund to work on the drain. In 2016 Dan Fry presented a study on the drain with all

the prices that were involved and yet nothing has been done, but it was stated in later minutes that Dan would get back with the landowners to inform them of the costs associated with this and the suggestion of perhaps some cost sharing of the landowners but nothing was received due to his termination. Mr. Prosser said they still would ask that the drain be upgraded. There was a time when they had cement foundations for culverts and when the county switched over to steel culverts back in the 1990's, instead of putting the culvert down at the original grade, they put it where the ditch level was so it has been a problem ever since that was done. Mr. Prosser stated that they want that three (3') feet back and that would help their tile situation; the twenty-four (24") inch tile and the fifteen (15") inch tile is all broken down and he presented pictures. Mr. Prosser said he feels as though the ball has been dropped, they haven't been collecting maintenance funds anymore and noting that the Prosser's own the majority of the land and will bear a large portion, he asked that the Drainage Board back them to get this done.

Chairman Deetz asked the surveyor if this drain was currently petitioned to be reconstructed or maintained.

Mike said there is, there was one recently but he didn't know about back in 2006 when it was put on maintenance and he didn't know if there was anything on reconstruction, but the tile needs reconstructed and there is not enough money to do a maintenance project. Mike said this has been on his list for reconstruction and he has the information from 2016 where they did preliminary elevations and design but the big problem is the culvert pipe on County Road 34 is too high. The Highway Department will have to lower that pipe and under their study it says this pipe is good for another 25 years. The tile is broken up and has a lot of holes in it but the reason they haven't been collecting the drain is because the fund has \$20,800.00 in the maintenance fund and it collects \$4,700.00 a year, so they are over the four year maximum collection for maintenance. Mike said that this is one he's been wanting to get done and it was set to come on the next phase of projects to be done.

Chairman Deetz explained that a list of reconstruction projects were presented and it was determined at that time that if any were to be expedited on the list, it would cost additional money but this certain drain seems to have already been engineered.

Mr. Prosser asked how long it will be before something will be done.

Chairman Deetz stated that this particular drain is number 15 on the list; if Mr. Prosser wanted to agree to outside engineering and work to move it up, which would add to the project but it would get the project done.

Mike Krehl asked the surveyor if he was finished with the engineering on this.

Mike Kline said he's pretty much finished except for the one thing he wants to do is to verify his numbers; when the crops come off he can shoot tile holes.

The Commissioners were put on notice that the structure on County Road 34 will need to be lowered and asked that they speak with the Highway Superintendent and get his response.

Mike said in 2016 the cost estimate to do the project was just under \$75,000 which won't be good numbers now. The Prosser's own about 80% of the watershed so they would pay a large portion of the cost.

Mr. Prosser stated that he would be more than willing to upfront money to get this done and was willing to write a check today.

Mike Kline said there is enough money in the maintenance fund that he can bottom dip that, it would be a little more expensive than what they normally do because he has to take three (3') feet out at the top end and they will taper it at the curve, so most of the engineering is done and he could have the plans put together in two, maybe three weeks at the most he can have this ready to go.

Chairman Deetz stated that he didn't want for Mr. Prosser to leave here today thinking in a certain amount of time this is going to happen, Randy wanted him aware that there is a procedure now in place and when the decision of which one is next, a) stepping up to the plate with funding, b) getting that culvert taken care of, those things will take this a long way in getting moved up since it has been engineered to the degree that it has.

Mr. Prosser asked if this could be put back on collection. It appears it can take a year or more to get this done and he would like to see it done sooner than that.

Chairman Deetz stated that 75% of maintenance money can be used towards the reconstruction and some of that maintenance money will be used towards the bottom dipping of this drain.

WILLIAM BICKEL DRAIN NUMBER 133-00-0: Present is Jim Deetz to hear the update on the drain.

Surveyor Mike Kline said that he readjusted everything on this system and explained his plans in detail. The cost was re-evaluated which were done in two pieces, the final number is \$286.69 an acre based upon today's cost and that includes 10% for fitting contingencies and 10% for unforeseen costs, so it may be less than that.

The consensus of the Board is to accept the current criteria as meeting everyone's standards.

Mike Kline said he would bring the assessment roll for the Board to review and set up for hearing.

Chairman Deetz asked if this is a Joint Drain and being that it is, this Board can review the assessments however Drainage Board Attorney Shannon Kruse stated that it would take the Joint DeKalb/Noble Board to review the assessment roll and schedule this for hearing. Randy asked if Mike had been keeping Randy Sexton informed.

Mike Kline said he had not, he planned to wait until he had everything put together and he will check with him and then also check with LaGrange County to see how soon they will have that pipe, supposedly they have ordered it so he would like to get that put in as soon as possible.

Mike Krehl stressed that the sooner we can get this done the better.

INFORMATIONAL – SAM POMEROY DRAIN NUMBER 350-00-0: Mike Kline said this goes back to the Steinman/Pomeroy issue, he went out again with Greg Owens who dug a long trench but they never found anything. Mr. Goings who is a landowner in this area said that a piece of the drain west of the road to the outlet they did work on. Mike said he put together a cost estimate of \$40,000.00 to replace that part of the Sam Pomeroy drain so they can tie in their tile drain. The drain maintenance fund currently has \$3,800.00. This can be on the list for reconstruction but it will be years down the road.

Chairman Deetz said he has no problem with telling someone their drain project is on the priority list but further down on the list, our priority list is done in a timely fashion so it will come in the order as it is on the list.

GUY PLATTER DRAIN NUMBER 112-00-0: Mike Kline said he had a meeting with the State Highway about the jack and boring of projects; one thing we have to be very careful

of is that if we suggest that we are going to pay the difference, in the eyes of the State Highway that means we have plenty of money so they will make us do the jack and bore and they will make us pay the difference on all of them. Mike said they warned him as to whether he should ask for that or not and so he decided to wait but with that being said, anything within the State right-of-way the State pays for so Mike said he can go ahead and get the costs put together and presented to the Board and get the public hearing done, whether it is late this year or in the spring, they would have that ready to go. Mike said with the Board's approval he is going to finish the design and get all of the costs put together.

Chairman Deetz wanted to be clear that what is being said is that we are not offering to pay additional money for the jack and bore to expedite the process.

Mike said he broached the subject about the 'what if' and was told that if he did that he would open the door to having to do that for all of them, so we aren't going to do that.

The consensus of the Board was to prepare the design and costs moving forward with the project.

ALBERT FISHER DRAIN NUMBER 179-00-0: Mike Kline said this is an open drain at the north end of the county and there is a lateral that comes in that is a county drain for Steuben County; the farmers are having drainage problems with muck settling so they want to lower this about three (3') feet. Mike said he took shots and could get about four (4') feet of additional depth and he's gotten prices on doing this. Larry Gilbert uses Wilson Excavating and they had a machine in the area where they had done some work, so he got a quote from them and also from Gene Clifford for doing this project, but we don't have enough money to do this project. There are both county drains involved but we are responsible for the maintenance.

The drain has a balance of \$6,700.00; collects \$2,900.00 a year; the lowest quote for doing the dipping was \$15,000.00. In addition to the dipping project, the drain would have to go through a spray maintenance cycle the next couple of years so the drain would have to be in the red for three to four years depending on the final costs.

Chairman Deetz asked for the General Drain Fund balance.

Mike Kline said what has been done in the past is under the Drainage Code, you have to borrow the money from the General Drain Fund but our maintenance balance of all of our drains is \$3.5 million dollars but Nate corrected that to \$4.4 million dollars, so they let it ride and it comes out of the maintenance pot.

Chairman Deetz asked if by 'they' are we talking the Auditor or State Board of Accounts.

Mike said the 'they' is the Auditor's office and there haven't been any issues on it so far. Mike said they met with all the farmers and they are ready to go.

Mike Krehl asked about the portion that Steuben County is responsible for.

Chairman Deetz entertained a motion to let drain number 179-00-0 go into the red for approximately four years.

Bill Hartman made the motion and Randy Deetz seconded the motion to bring it to a vote at which time discussion was held. Mike Krehl said that he is open to the motion if we want to redo it to the actual \$16,500.00 and upgrading the one-time maintenance fee to be included, if it can be. Don Grogg said we would be putting our portion of this drain in the red to assist Steuben County and that doesn't help us any, he is against putting drains in the red and would prefer waiting until there is money to do it. Randy said that there may be no regulated tile but he would be hard pressed not to think

there is some private tile that is feeding into that and by lowering it three (3') feet, obviously will help everyone who privately drains into it. Randy wants to get as many of these projects done as we can before the rules change and we can no longer be as favorable in getting things done.

Drainage Board Attorney Shannon Kruse stated that lowering the drain is classified reconstruction.

Chairman Deetz asked for a week to ponder this, to find out if the 25% can be or has been utilized and to give either a justification as to how it can be done through maintenance or the needed facts in order to defend not doing this as a reconstruction project.

Jacqueline Rowan moved to table this motion and discussion for a week, seconded by Mike Krehl, motion carried.

INFORMATIONAL: Don Grogg said there is word that Crawford Excavating will no longer do work for DeKalb County because he is having trouble getting paid so he is going to concentrate doing work for Allen County.

There being no further business, meeting adjourned.

Randall J. Deetz, Chairman

Brenda F. Myers, Administrative Assistant