

MINUTES OF THE DEKALB COUNTY DRAINAGE BOARD MEETING OF JUNE 4, 2020

Chairman Randall J. Deetz called the regular meeting of the DeKalb County Drainage Board to order at 8:30 a.m., Thursday June 4th, 2020. 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.

APPROVAL OF MINUTES: A motion was made by Mike Krehl to approve the Minutes of April 2nd, 2020; April 30th, 2020; May 14th, 2020 and May 21st, 2020 as presented. Don Grogg seconded. Motion carried.

The record showed that those not present for any particular meeting abstained from voting for those minutes.

APPROVAL OF CLAIM: A claim was presented in the amount of \$1,295.00 for June Attorney Fees. Don Grogg moved to approve the claim in the amount of \$1,295.00. Jacqueline Rowan seconded. Motion carried.

PLAN COMMISSION PETITION – SWARTZ ESTATES: Two-lot subdivision located on County Road 64, east of County Road 55. Surveyor Mike Kline reported that this plat is in the watershed of the *George Wade Regulated Open Drain Number 31-00-0* and the *E. L. Dilley Regulated Open Drain Number 155-00-0*. 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. Storm water from these lots 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 hearing.

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 Bill Hartman, motion carried.

PLAN COMMISSION PETITION – THE REPLAT OF KEENER CREEKSIDE ADDITION: Located on County Road 50, east of County Road 75 and west of County Road 81. Surveyor Mike Kline reported that this plat is in the watershed of the *Melissa Kelley Regulated Open Drain Number 30-00-0*. 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. 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 hearing.

A motion was made by Bill Hartman 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.

CONSENT AND WAIVER TO RECONSTRUCT OZRO FREEMAN DRAIN NUMBER 175-00-0: A Consent and Waiver to reconstruct the tile portion of the Ozro Freeman Drain Number 175-00-0 was signed by the following landowners: Joseph Prosser, Prosser Investments, LLC; Donna J. Garman; John West; Ann West; Walter E. Prosser; Illa Prosser, Trustee; David L. Prosser, Trustee; Ann Louise Prosser, Trustee; Joseph E. Prosser, Trustee; Tracie L. Prosser, Trustee; Konnie S. Prentice; William A. Emmert; Marilyn R. Emmert; John R. Dillingham; Amy S. Dillingham.

Mike Kline stated that Joseph Prosser will be paying for this project and should he decide to ask cost sharing with those in the watershed that will be between himself and his neighbors. Mike will obtain quotes for the installation portion of the project.

Mike Krehl moved to accept and approve the Consent and Waiver as signed and presented, seconded by Don Grogg, motion carried.

DEKALB COUNTY DRAINAGE BOARD FINDINGS OF FACT FOR
RECONSTRUCTION OF A PORTION OF DRAIN BY CONSENT AND WAIVER

NAME OF DRAIN: Ozro Freeman

NUMBER: 175-00-0

THE BOARD MAKES THE FOLLOWING FINDINGS OF FACT FOR THE RECONSTRUCTION OF A DRAIN:

These are the proposed findings, which are not final until adopted by the Board:

1. The petition previously filed for this drain is admitted into evidence.
2. The drain has been classified and previously placed on the priority list of the long-range plan of the Board.
3. There are no damages to any landowner.
4. None of the following benefit factors of Section 112 of the Indiana County Drainage Board Code are excluded:
 - (1) The watershed affected by the drain to be maintained.
 - (2) The number of acres in each tract.
 - (3) The total volume of water draining into or through the drain to be reconstructed, and the amount of water contributed by each landowner.
 - (4) The land use.
 - (5) The increased value accruing to each tract of land from the reconstruction.
 - (6) Whether the various tracts are adjacent, upland, upstream, or downstream in relation to the main trunk of the drain.
 - (7) Elimination or reduction of damage from floods.
 - (8) The soil types; and
 - (9) Any other factors affecting the reconstruction.
5. That consent to the reconstruction of the drain and a waiver of the public hearing has been signed by the affected landowners and is hereby admitted into evidence.
6. That the Surveyor's report with maps and drawings to the Board is received as evidence and approved by the Board, and the facts therein are found to be true.
7. That all lands included in the watershed are assessed.
8. That no lands outside the watershed are assessed.
9. That none of the benefits assessed against any landowner are excessively applied.
10. That no further evidence is required for the Board to make a decision.
11. That the Board has jurisdiction of this drain under the Indiana County Drainage Board Code.
12. That the drain is in need of periodic maintenance after the reconstruction.
13. That there has been no evidence that a combination of drains is required.
14. That the drain cannot be made to perform the function for which it was designed and constructed and cannot be made to properly drain all affected land under current conditions.

15. That the work proposed by the Surveyor to be performed on this drain do the following: (Check the items that apply)
- A. Converts all or part of an open drain to a tiled drain.
 - B. Converts all or part of a tiled drain to an open drain.
 - C. Adds an open drain to a tile drain.
 - D. Adds a tiled drain to an open drain.
 - E. Increases the size of a tile.
 - F. Deepens an open drain, if any.
 - G. Widens an open drain, if any.
 - H. Extends the length of the drain.
 - I. Changes the course of the drain.
 - J. Includes construction of a drainage detention basin.
 - K. Includes construction of a drainage control dam.
 - L. Provides for an erosion control structure.
 - M. Provides for grade stabilization structure, and;
 - N. Makes any major changes to a drainage system that would be of public utility.
16. That the proposed improvement will result in the benefits to the watershed in excess of the costs of reconstruction in that it will:
- A. Result in reclamation of agricultural land.
 - B. Result in increased safety on public highways in or near said watershed.
 - C. Result in longer life and fewer repairs of public highways in or near said watershed.
 - D. Decrease the threat of insects, pests and their related diseases.
 - E. Increase yields of farm crops from land within the watershed.
 - F. Increase the values of land within the watershed.
 - G. Reduce damage from flooding.
 - H. Other (Specify)_____.
17. That there has been no evidence that the drain has been abandoned by the Board.
18. That all relevant documentation in the files of the Surveyor and the Board regarding this drain are received into evidence by the Board.
19. That the schedule of assessments as originally filed are adopted by the Board.
20. That the Administrative Assistant of the Board shall publish notice of the Board's Final Order as required by the Indiana Drainage Board Code.
21. That the Final Order form of the Board is approved for this drain, and is adopted to the extent it can be made consistent with these Findings and the Final Order of the Board.
22. That the undersigned owners of land consent to hold the DeKalb County Drainage Board, and the DeKalb County Surveyor harmless from any liability, and agree to indemnify them, with the attorney fees, in the event of any objecting person;
23. That the undersigned owners of land covenant not to sue the DeKalb County Drainage Board and the DeKalb County Surveyor in consideration of the Board approving and ordering this portion of reconstruction;
24. That the undersigned agree the cost damages and expenses of the proposed reconstruction will not exceed the benefits that will result to the owners of all the land affected and each of the undersigned is an owner of land assessed and

benefited, and the benefits assessed to the land of each of the undersigned is not excessive;

25. That the undersigned waive any right of objection or legal appeal of the action of the Drainage Board in approving this request and consent;
26. That there is no knowledge of any adverse effect to the land of the undersigned, or any other lands affected by this proposed reconstruction;
27. That the request of the DeKalb County Drainage Board is to make these facts as Findings and order the proposed reconstruction as established;
28. That Joseph Prosser shall pay the cost for the reconstruction of 3860 linear feet of existing tile of 24" and 15" size to 1700 linear feet of 24" and 2160 linear feet of 18" HDPE dual wall tile, as shown on the attached map.
29. That it is agreed that the reconstruction shall be accomplished under the provisions of Section 52.5 of the Indiana County Drainage Board Code.
30. That the General Drain Fund has enough balance to support purchasing the materials;
31. That the DeKalb County Surveyor recommends this be approved as presented.

Mike Krehl moved that the Board approve the Findings of Fact, numbers 1 through 31, as submitted, seconded by Don Grogg, motion carried. Motion was then made by Mike Krehl to adopt the Petition for Reconstruction of said drain, seconded by Don Grogg, motion carried.

FINAL ORDER OF RECONSTRUCTION OF OZRO FREEMAN DRAIN NUMBER 175-00-0 UNDER SECTION 32-9-27-52.5

The DeKalb County, Indiana Drainage Board (hereinafter referred to as "Board") based upon its Findings of Fact now renders its Final Order on the petition for reconstruction of the Ozro Freeman drain, the same being Number 175-00-0 in the records of the Surveyor of DeKalb County, IN. After due consideration of all reports, evidence, testimony and other information presented through the course of this public meeting and the Findings of Fact of the Board, the Board now enters its FINDINGS:

1. Date of Consent & Waiver. The Surveyor of DeKalb County (hereinafter referred to as "Surveyor") received a request by a landowner for the construction of a portion of a regulated drain solely on the lands of that landowner at that landowner's cost, and proceeded to prepare the reconstruction report for this drain under Drainage Code Section 32-9-27-52.5 on or about March 19th, 2020. The landowners who signed the Consent & Waiver were as follows:
Joseph Prosser, Prosser Investments, LLC; Donna Garman; John West; Walter Prosser; Illa Prosser, Trustee; David L. Prosser, Trustee; Ann Louise Prosser, Trustee; Joseph E. Prosser, Trustee; Tracie L. Prosser, Trustee; Konnie S. Prentice; William A. Emmert; Marilyn R. Emmert; John R. Dillingham; Amy S. Dillingham
2. Jurisdiction. That the existing drain is a regulated drain, and is within the jurisdiction of this Board, pursuant to I.C. 36-9-27-15.
3. Report of Surveyor. That the Board requested the Surveyor to report pursuant to I.C. 36-9-27-52.5, which report was filed and presented to the Board on March 19th, 2020 in the Derald D. Kruse Commissioner's Court, 2nd Floor DeKalb County Courthouse, Auburn, IN., at a public meeting of the Board.

4. Schedule of Assessments. The landowner requesting the reconstruction of the regulated drain shall pay the entire cost of the project.
5. Consent and Waiver. That consent to the reconstruction of the drain and a waiver of the public hearing has been signed by the affected landowners and is hereby admitted into evidence.
6. Legal Notice of Hearing. No special legal notice of hearing was required under Drainage Code Section 52.5.
7. Mailed Notice of Hearing. No mailed notice was required under Drainage Code Section 52.5.
8. Department of Natural Resources. No notice was required to be sent to the Indiana Department of Natural Resources under Drainage Code 52.5.
9. Objections Filed. The Board heard no objections.
10. Evidence Concerning Objections. No objections were received.
11. Hearing. Notice and public hearing were not required under Drainage Code Section 52.5 but the Board at a public meeting heard the reconstruction request.
12. Disposition of Objection. No objections were received.
13. Amendments to Surveyor's Report. Upon the record developed, the Board made no amendments to the report of the Surveyor, except as may be shown in the Minutes Book of the Board.
14. Periodic Maintenance. Said improvement is in need of periodic maintenance and currently is on maintenance.
15. Reconstruction. That the present drain is in need of reconstruction.
16. Type of Improvement. That the proposed improvement is a reconstruction within the meaning of I.C. 36-9-27-34(a).
17. Improvement Justification. Pursuant to I.C. 36-9-27-52(I), the Board finds that the proposed improvement will result in benefits to the watershed in excess of the costs of reconstruction.
18. Special Assessments. None.
19. Damage Awards. None.
20. Reduced Benefits. None.
21. FINDINGS OF FACT. After hearing all the evidence presented at the hearing, for and against, the Board made the findings required by Drainage Code Section 52.5 as reported in the Minutes Book of the Drainage Board.

NOW THEREFORE, IT IS ORDERED by the Drainage Board of DeKalb County that:

- A. The Board adopts the Findings as true and accurate for this proceeding.
- B. The report of the Surveyor and the reconstruction of a portion of the regulated drain at the costs of the affected landowner as provided under Drainage Code Section 52.5 is hereby approved and adopted by the Board and the improvement established; and
- C. A periodic maintenance fund has been established for the periodic maintenance of the improvement; and
- D. Public announcement of said order is hereby made at the said public meeting on this improvement; and
- E. The Administrative Assistant of the Board is directed to cause notice of this action to be published immediately in a newspaper of general circulation throughout DeKalb County, IN., which notice shall identify the drainage

reconstruction and state that the Findings and Order of the Board have been filed and are available for inspection in the office of the Surveyor of DeKalb County, all in accordance with and pursuant to I.C. 36-9-27-52(I); and

- F. If judicial review of the Findings and Order of the Board is not requested pursuant to I.C. 36-9-27-106(a) through 36-9-27-109(a) within twenty (20) days from the date of publication of the aforesaid notice, the Findings and Order shall become conclusive and the Surveyor shall proceed to reconstruct the improvement according to law.

Dated at Auburn, Indiana, this 4th day of June, 2020.

Randall J. Deetz, Chairman

Michael E. Krehl, Vice-Chairman

Jacqueline R. Rowan, Member

Donald D. Grogg, Member

William L. Hartman, Member

Mike Kline stated that Kraft Water Solutions (St. Joe, IN) have bottom-dipped the open portion of this drain; when lowering the culvert pipe on County Road 34 it was not in good condition so they replaced it with a 5' diameter dual-wall pipe.

UTILITY PERMIT – INDIANA MICHIGAN POWER – PROJECT: Replacement of poles, wire and equipment. Reconductoring (putting up new lines) approximately one (1) mile of 4 CU with 556 AL and 4/0 AA, along County Road 56, starting at 0.46 miles west of County Road 45. Work ends at intersection of County Road 56 and County Road 47. County regulated drain involved:

Daniel Shilling Drain Number 25-00-0

Jacqueline Rowan moved that the Board approve the Utility Permits 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.

UTILITY PERMIT – FRONTIER COMMUNICATIONS – PROJECT: Plow along County Road 59, starting from a point 4,035' south of County Road 44 and 243' north of State Road 8. Plow north and parallel to the east right-of-way for 1,300'. County regulated drain involved:

Solomon Shank Drain Number 28-00-0

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

ERIC MORRIS DRAIN NUMBER 416-00-0: Mike Kline was instructed to have Galen Anspaugh call the Administrative Office to schedule a time to come before the Board regarding his driveway.

DRAIN VARIANCE - HENRY BEAMS REGULATED TILE DRAIN NUMBER 205-00-0:

Joseph Schmucker and Ida Mae Schmucker bought the property and wanted to build a barn; they dug across the property, digging 10' deep and tile prodded but never found the tile. The barn was built the next day; Plan Commission is upset because he had no building permit to do that and he's wanting to know that the Drainage Board is going to do about that. On the Henry Beams Lateral 3 Spur 4 Drain Number 205-03-4 a property owner (Decker's) was adding on a garage and it appeared the garage would be over the tile; a deep trench was dug and the tile was never found. At that time, the Drainage Board granted that landowner a variance to be no closer than forty feet (40') to the drain since it couldn't be found. Verbiage was added to the variance agreeing that if the tile were to be found and not more than forty feet away from his garage that he would move the tile at his expense. Mike said his contention is that since this cannot be found, and in order for Mr. Schmucker to obtain his permit, Mike prepared a variance similar to the one for Decker's which states that the physical location of the drain could not be verified at the signing of this variance; upon the verification of the physical location of the drain by the DeKalb County Surveyor's Office, the owner shall pay to move the drain to comply with this variance if the drain is less than forty feet from the building. IF Schmucker does not move the tile within six months to comply with the variance, the landowner agrees to reimburse all costs and expenses to the drain fund. A handwritten letter from Mr. Schmucker was read into record stating the above. Mike said that his staff has tried finding the tile.

Bill Hartman moved that he is willing to make an allowance for the Henry Beams Drain Number 205-00-0 drain variance due to the difficulty in matching up the records as to where the tile is physically located and the circumstances of not being able to locate the tile in two different locations of the tile, and on the recommendation of the Surveyor, to approve and sign the Permit Agreement and Consent for Variance to Build a Permanent Structure within the Right of Way of Regulated Drain, seconded by Mike Krehl, motion carried.

It was noted that there would be a fine for building without a permit.

WILLIAM BICKEL DRAIN NUMBER 133-00-0: Mike Kline presented the contract with Kevin Linnemeier for the project and he is in need of both Randy Deetz and Bill Hartman's signatures so the contract will be ready to go. Mike will still need the signature of Jim Cowl (Steuben County) but with these two signatures the contract will be legal.

Mike Kline stated that there is a lack of cooperation from LaGrange County.

The Attorney stated continuing on with the reconstruction for Ken Hartman would not be possible without a change order and that was not recommended; maintenance would be preferred. Once they are to this point if this can be done legally by maintenance they will take care of it that way, otherwise the next phase in that area would be done through another reconstruction.

Mike Krehl made the offer to tear out the old connections if the Surveyor would agree to dispose of it and Mike Kline said he would do that. Mike Krehl wanted specifics on where he needed to tear it out from and the surveyor said when they get over to that side they would be digging some test holes so he knows where the tile can go.

INFORMATIONAL: On County Road 68 east of County Road 427 on the south side of the road, is property owned by Jonas, Jason, Christ and John Schmucker. Chris Gaumer

is asking for a letter stating that the Surveyor's Office and/or Drainage Board has no objection to them going before the BZA for a variance from permitted standards to put in a five-lot subdivision. Approval for the subdivision was given in 2007 but at that time the county surveyor required a pond and another large pond with drainage going south. Due to the cost this apparently was dropped but they are now back wanting to move forward. Mike said he told Chris that the same drainage requirements from 2007 would have to be followed for development. There will be major issues with drainage and 'they' are going to have to determine if this tile is still usable and if it still functions. Mike said he has no idea where it goes to. The Board can agree to hold them to the original drainage requirements or the Board can say they have no objections if they obtain a variance to bring the plat to the Board for final review and then looking at drainage.

The consensus was to follow the original recommendation and there would have to be a development plan that the Drainage Board could agree to prior to taking it further. A drainage plan would have to be in place prior to a variance being approved.

COUNTY ROAD 12/COUNTY ROAD 00W (update): Nate Frye reported that he did look at this area; there is a low spot and apparently some private tile running down to the county drain; running a ditch down to that corner did not seem to be a viable option in his opinion. This is an issue that needs addressed and there are others within the county so Nate asked what the best way would be to handle these situations.

Mike Kline said the highway could petition for a lateral and his office would be happy to help but they would not be the driving force.

The attorney stated that the County Highway could be invited in for a meeting to discuss these situations.

PRIORITY LIST: Mike said he wants to get the *Ozro Freeman Drain Number 175-00-0* done; working on the *Guy Platter Drain Number 112-00-0* but has to get with the State Highway to figure out how they are going to work on that; then the next group has some small ones, the *C. B. Kagey Drain Number 225-00-0* they are willing to put up \$80,000 to do that right now so if he puts some quick plans and specs and cuts a contractor loose that money will come in quickly. The *Albert J. Higbea Drain Number 268-00-0* Sam has been told he is coming up high on the list. A check from the City of Butler was received in the amount of \$320,000.00 last Thursday for the *Butler City Drain Number 200-00-0* project.

FRED T. MILLER DRAIN NUMBER 91-00-0: Chairman Deetz submitted a Consent and Waiver for a Reconstruction of a portion of the Fred T. Miller drain, signed by: Kent R. Hunter, Trustee and Janet M. Hunter, Trustee dated June 2nd, 2020.

Mike Krehl moved to accept and approve the Consent and Waiver as signed and presented, seconded by Don Grogg, motion carried.

**CONSENT AND WAIVER TO RECONSTRUCT A PORTION OF THE
FRED T. MILLER DRAIN NO. 91-00-0
BY AFFECTED LANDOWNERS
AND WAIVER OF PUBLIC HEARING BY THE AFFECTED LANDOWNERS**

We, the undersigned petitioners, being in the opinion of the DeKalb County Surveyor, all of the Landowners affected by the proposed reconstruction of the following regulated drain, to-wit:

DRAIN NAME: FRED T. MILLER
DRAIN NUMBER: 91-00-0
DRAIN LOCATION: Fairfield Township
DeKalb County, Indiana

PROPOSED RECONSTRUCTION: To reconstruct approximately 390+/- linear feet of the Fred T. Miller tile drain as shown on the attached map; Hereby consent to the DeKalb County Drainage Board's reconstruction of the above-referenced portion of said regulated drain under Indiana Code Sections 36-9-27-49 through 52.5, and we:

- (1) Consent to said proposed reconstruction as all of the affected Landowners of said proposed reconstruction.
- (2) Waive any and all notice and hearing rights under the County Drainage Board Act of Indiana.
- (3) Hold the DeKalb County Drainage Board, and the DeKalb County Surveyor harmless from any liability, and agree to indemnify them, with the attorney fees, in the event of any objection I may file.
- (4) Covenant not to sue the DeKalb County Drainage Board, and the DeKalb County Surveyor in consideration of the Board approving and ordering this portion of reconstruction.
- (5) Agree that each of the undersigned is an owner of the land and that they consent to the reconstruction of the Drain as shown on Exhibit A.
- (6) Waive any right of objection or legal appeal of the action of the Drainage Board in approving this request and consent.

Dated: June

ALL AFFECTED

Kent R. Hunter, T

Hunter Trust Agree

DEKALB COUN

Randall J. Deciz,

Gay D. O. E. M.

Michael B. eki

[Signature]

[Signature]

[Signature]

FRED T. MILLER DRAIN NUMBER 91-00-0 SETTLEMENT AGREEMENT, MUTUAL RELEASE & WAIVER: This settlement agreement, mutual release and waiver is for tree damage and violation of policy damage.

Don Grogg moved to accept the settlement agreement, mutual release and waiver, seconded by Mike Krehl, motion carried.

An invoice needs to be generated and paid in the amount of \$3,641.00 as a claim submitted against the drain fund to be paid to Kent Hunter.

Jacqueline Rowan moved to approve a claim being generated in the amount of \$3,641.00 to be paid to Kent Hunter from the Fred T. Miller Drain Number 91-00-0, seconded by Bill Hartman, motion carried.

There being no further business, meeting adjourned.

Randall J. Deetz, Chairman

Brenda F. Myers, Administrative Assistant