

MINUTES OF THE DEKALB COUNTY DRAINAGE BOARD MEETING OF DECEMBER 12, 2019

Chairman Randall J. Deetz called the regular meeting of the DeKalb County Drainage Board to order at 8:30 a.m., Thursday December 12, 2019. Answering roll call was Randall J. Deetz; Michael E. Krehl; Jacqueline R. Rowan and William 'Bill' Hartman

ABSENT: Donald D. Grogg

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

IN ATTENDANCE: Rory Walker; Phil Washler; Ed and Mary Yoder; Edward Smith; Angela Wallace; Carl Yoder

APPROVAL OF MINUTES: A motion was made by Bill Hartman to approve the Minutes of November 21st, 2019 as standard minutes taken by the DeKalb County Drainage Board, seconded by Mike Krehl, motion carried.

APPROVAL OF CLAIMS: A motion was made by Jacqueline Rowan to approve the following claims as presented to be paid from the 2020 budget in the amount of \$30.25, seconded by Bill Hartman, motion carried.

Approval of Claims for December (paid from 2020 Budget)

- STAR newspaper legal notice
 - Joint DeKalb-Noble meeting \$ 7.56
 - Guy Platter Recon. Hearing \$15.13
 - NEWS SUN
 - Joint DeKalb-Noble meeting \$ 7.56
- TOTAL \$30.25**

INFORMATIONAL: Travelers Insurance has been put on notice with the Hunter situation (*Fred T. Miller Drain Number 91-00-0*) and acknowledged there is the potential for a claim.

INFORMATIONAL: Claim notices on the *William Bickel Drain Number 133-00-0* had percentages that were not correct, it was determined that the numbers regarding cost were correct.

Drainage Board Attorney Shannon Kruse stated that initially when she was questioned she thought correcting the percentage at the hearing would be fine to do however, with further research it states in the Indiana Drainage Board Code that the notice must state the following:

- 4) That the land of the owner is shown by the schedule of assessments to be assessed _____% of the total cost of the reconstruction and that _____% of the estimated cost of the reconstruction is in the sum of _____dollars.

With that being said and by the direction of the Attorney it was advised that new notices be sent stating at the top 'AMENDED' with corrected percentages and an explanation since there is allotted time before the hearing is held.

OPEN QUOTES – MARVIN WALKER DRAIN NUMBER 403-00-0: Surveyor Mike Kline presented the quotes as follows:

LABOR (Engineer's Estimate \$49,500.00)

Clifford Excavating, Inc.	\$27,000.00
Crawford Excavating	\$37,500.00
Griffis Excavating	\$34,400.00
Tri-County Excavating	\$22,250.00

Bill Hartman moved to award the quote for labor to Tri-County Excavating in the amount of \$22,250.00, seconded by Mike Krehl, motion carried.

MATERIALS (Engineer's Estimate \$75,707.50)

Hixsons Sand & Gravel #1 – Fratco Pipe	\$60,433.70
(\$32,927.20 for pipe; \$26,232.50 for stone; \$1,274.00 for structure)	
Hixsons Sand & Gravel #2 – ADS Pipe	\$59,242.10
(\$31,735.60 for pipe; \$26,232.50 for stone; \$1,274.00 for structure)	

Drainage Board Attorney Shannon Kruse pointed out the Engineer's estimate for materials and it being more than \$75,000.00; not knowing if that had been advertised she questioned it being over the allowed amount for quotes.

Mike Kline stated that he bid all the materials separate but he added them together knowing they would bid all three of them. There were three different bids according to Mike.

The Attorney stated that with it being one contract, that estimate has to be lower than \$75,000.00.

Mike Krehl moved to accept and award the low quote with Hixson's Sand & Gravel #2 – ADS in the amount of \$59,242.10, seconded by Bill Hartman, motion carried.

PLAN COMMISSION PETITION – 2nd AMENDED PLAT OF MAPLE HILL: Present is Angie Wallace, Compass Land Surveying, Inc. on behalf of Jack L. and Nancy L. Wallace. The purpose is amend the plat to 2nd Amended plat of Maple Hill, so the property owners can prepare the property for their children in the future, keeping the lot that has the house on it as small as they can. This moves the original north line of Maple Hill (*when it was platted*) and extending it to the east line of the amended plat of Maple Hill so they will have the minimum acres required.

Surveyor Mike Kline reported that this plat is in the watershed of the *George Matson Regulated Open Drain Number 73-00-0*. 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 the site shall be directed onto the parent tract and not onto the adjoining tracts. This report is subject to any additional information submitted at the Plan Commission meeting.

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.

RECONSTRUCTION HEARING GUY PLATTER DRAIN NUMBER 112-00-0: The hearing for the purpose of receiving evidence for reconstruction was called to order by

Chairman Randall Deetz. Notices to landowners were mailed by First Class Mail on November 7th, 2019 and public newspaper notice appeared in the STAR newspaper on November 29th, 2019. Chairman Deetz asked that all present sign in and that the County Surveyor now give his written report.

Surveyor Mike Kline reported that a petition was filed by Mr. Yoder but he did not have that in his file.

DRAIN LOCATION: In DeKalb County, Township 33 N Range 15 East (Newville) Sections 5, 6, 7 and 8. Starting 1500' south of SR 8 on CR 79 A. The drain crosses 79 A, SR 8, and CR 75. Lateral 1 crosses CR 75 and Lateral 1 Spur 1 crosses SR 8 (as shown on the map).

DRAIN INFORMATION: Built in 1919 and petitioned to become regulated on July 22, 1993; 603 linear feet of 16" tile; 2200 linear feet of 15" tile; 1630 linear feet of 12" tile; 1100 linear feet of 10" tile; 1000 linear feet of 8" tile; 857 linear feet of Open Ditch. What is being discussed in this project is the outlet of the tile drain, up to County Road 75; the upper portion of the drain has been repaired and reconstructed in previous times according to Mike Kline. Lateral 1 consists of 500' of 12" and 1,300' of 8" tile and then the Spur 1 of Lateral 1 consists of 654' of 8" tile. The watershed consists of 325.18 acres of land and there is currently \$3,618.93 in the drain maintenance fund which was collected last year at \$6.75 per acre for Ag; \$13.50 per acre Residential; and \$20.25 per acre for Commercial with a \$6.25 minimum. The reconstruction project would consist of replacing the tile from the open drain to County Road 75, using a 24" tile from the outlet to the open drain, up to the structure on the north side of SR 8 in the right-of-way where Lateral 1 comes in. The remaining portion up to the structure at County Road 75 would be an 18" tile; they can lower that system by 2' and they will do some minor bottom dipping using the maintenance fund to pay for that. There are some wetlands and it appears the tile goes through that area where there are a lot of trees, so they will go slightly towards the west with the tile to skirt around that. The 16" inch tile will be upsized to a 24" inch tile and the 15" inch tile upsized to an 18" inch tile in order to provide the proper drainage. *The estimate for this reconstruction is \$97,212.50 and divided by the acreage that is \$298.95 per acre.*

TECHNICAL ASPECTS AND QUESTIONS:

Phil Warstler (SR 8) stated that the drain runs across to them from the open portion at SR 8; with what is being proposed he has his doubts about it being at the proper grade. There is a breakdown at the tile (6") in diameter. Where does the State come in to this, the guys who were out there stated that it wasn't their worry, it was the State's and to him it is a portion of this project and if not corrected a dam will be put right in the middle of things. Mr. Warstler thought a State representative would have been present to address that. The guys who were out there didn't know there was a manhole in that area.

Mike Kline responded that when crossing a highway or a road, whoever is responsible for the maintenance of that road pays the entire cost of the crossing. Mike said he talked to the State highway and they are aware of this project and they will pay for everything in their right-of-way, including the structure. Grade has been taken into account and if anyone were to pattern tile in this area in the future, this will handle the additional flow.

Edward Smith corrected that surveyor stating that from CR 75 to another area that he pointed to on the map, the tile was replaced but from that point to the east, that has never

been replaced. With a heavy rain it creates a river that runs through there, is there any concern with it washing down to the tile?

Mike Kline responded that he wasn't sure where exactly it was replaced. This will allow the drain to handle twice as much as the existing tile and a new catch basin to pick up all the water being two-feet lower as well.

Edward and Mary Yoder when it rains, the water comes up over the top on that culvert and trash goes down in the pipe (surveyor said they will make a different top for that), and there is another hole that has been there for a couple of years (surveyor said this will all be brand new and he wouldn't have to worry about that). Mary Yoder stated that is an awfully steep cost for the length of tile they will be replacing. How is this paid for and how does it happen, through tax assessments?

Mike Kline said they are not doing the lateral and no work can be done on private tiles. As for paying for the project, once the project is complete the total cost will be divided by the acreage in the watershed divided into the cost of the project, which gives the cost per acre. The Treasurer's Office will mail a notice to the landowners giving five years to pay the amount given; the first year is interest free however, after that first year there would be 10% interest added on the unpaid balance as determined by State Law. After that first billing, the amount unpaid will show on the tax statement the following year(s). Mike said if this passes hearing today, he would like to get work started on this after the first of the year (January 2020) if the conditions are good; he wants this to be done before the 2020 crop season.

Mary Yoder requested a copy of these minutes and asked that they also be sent to Senator Kruse as he has been wondering what is going on with this ditch, she will let 'Shelby' who is his assistant know that this is coming.

Calvin Yoder 7844 and the property they own as a business name he pointed to on the map. Being where he is located, there is tile that is almost on the surface (in a spot that he pointed to on the map), there was a portion that was replaced and so now they will be held to a certain depth. That which has already been replaced, you are going to replace that again?

Mike Kline said he has to have a good outlet; then when looking at the rest, he can get it down another two feet at minimum to get more depth. Doing this all at once would be a very large cost to the landowners. Mike said he would be replacing that again because he doesn't have any good information as to what (they) did the first time, he isn't sure it's big enough on the other area.

NO WRITTEN OBJECTIONS WERE RECEIVED.

SPEAKING AGAINST:

SPEAKING IN FAVOR: Ed Smith stated that he isn't against this, but he has concerns with the assessment being so high and the 10% interest on the unpaid balance after the first year. It was further explained how this is a State Statute and local entities have no control over that. On the maintenance program part of it, he was assured by this Board before and by the Surveyor's office that the trees would be kept sprayed and cut down over the years but none of that has been happening, it has been sprayed maybe once in the last twelve years.

Mike Kline stated that he was not part of that conversation and added that he has a spray program in place where they spray every three years.

Nate Frye stated that he took over this process in the last year and is working on the list for spraying, so he would be the one to call if there is a certain area that needs attention.

Phil Warstler questioned the statement they received and if that is an estimate with no hard facts until the contractors send in their bills, so a decision is being made with a gray area not knowing what they will really owe.

Bill Hartman explained that the actual numbers would not be higher than the estimate but that statement was corrected in that the project could be up to, but not exceeding 10% above the actual estimate.

Phil Warstler stated that with the 10% interest and the 10% that the project could be above the estimate, someone is walking away like a fat rat in this. It was advised that be a conversation with Senator Kruse's office. Phil was asked if he was against the project and he stated that he is not against it, he can see the problems upstream.

It was questioned: If there would be itemized bills once the project is done and it was stated that this is all public record and can be requested in the Surveyor's office; Notification of bid openings? It was stated that there is no notification of bids however, anyone can call the Drainage Board Administrative Office or the Surveyor's office to inquire as to when those will be opened and awarded.

Mary Yoder wanted to personally thank Commissioner Bill Hartman for coming out to their property and talking to them about this and listening to their concerns.

DEKALB COUNTY DRAINAGE BOARD FINDINGS OF FACT

NAME OF DRAIN: Guy Platter

NUMBER: 112-00-0

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 public hearing has been and is being recorded in digital form.
2. The three petition(s) previously filed for this drain is admitted into evidence.
3. The drain has been classified and previously placed on the priority list of the long-range plan of the Board.
4. There are no damages to any landowner.
5. None of the benefit factors of Section 112 of the Indiana County Drainage Board Code are excluded, except:
 - (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.

6. All landowners, sent notices of the proposed assessment, have lands within the watershed.
7. Notices by mail and by newspaper have been properly and timely made as required by the Indiana County Drainage Board Code for public hearing.
8. That any and all assessments are paid at the same base rate per acre for this reconstruction.
9. That the Surveyor's report with maps and drawings to the Board is received as evidence and approved by the Board, and the facts thereon are found to be true.
10. That all lands included in the watershed are assessed.
11. That no lands outside the watershed are assessed.
12. That none of the benefits assessed against any landowner are excessively applied.
13. That no further evidence is required for the Board to make a decision.
14. That all persons desiring to speak, in person or by counsel, have been permitted to present their evidence orally or in writing.
15. That there were no timely written objections filed with the Board.
16. That all persons present have been given adequate opportunity to ask questions of the Surveyor, the Board, or any other persons present.
17. That no person has objected to the procedure of the Board during the public hearing.
18. That the Board has jurisdiction of this drain under the Indiana County Drainage Board Code.
19. That the periodic maintenance amounts will remain the same as they were and will not be impacted by this reconstruction.
20. That any drains combined into one unit in the public hearing are done so in accordance with the following requirements: There was no combination of drains.
21. That the drain can be made to perform the function for which it was designed and constructed and can be made to properly drain all affected land with the reconstruction.
22. 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, if any.
 - 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.
23. That there has been no credible evidence presented to the Board to vacate the drain.

24. 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)
25. That there has been no evidence that the drain has been abandoned by the Board.
26. That all relevant documentation in the files of the Surveyor and the Board regarding this drain are received into evidence by the Board.
27. That the schedule of assessments as originally filed are adopted by the Board.
28. That the Administrative Assistant of the Board shall publish notice of the Board's Final Order as required by the Indiana Drainage Board Code.
29. 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.
30. The costs, damages, and expenses of the reconstruction do not exceed the benefits that result to the owners of all land benefited.

Jacqueline Rowan moved that the Board approve the Findings of Fact, numbers 1 through 30, as submitted, seconded by Bill Hartman, motion carried. Motion was then made by Mike Krehl to adopt the Petition for Reconstruction of said drain, seconded by Bill Hartman, motion carried.

**FINAL ORDER OF RECONSTRUCTION OF THE
GUY PLATTER DRAIN NUMBER 112-00-0**

The DeKalb County, Indiana Drainage Board (hereinafter referred to as "Board") now renders its Final Order for construction of the Guy Platter Drain, the same being Number 112-00-0 in the records of the Surveyor of DeKalb County, Indiana.

1. Date of Filing. That the petition herein was filed with the Surveyor of DeKalb County (hereinafter referred to as "Surveyor") pursuant to I.C. 36-9-27-109, on August 31, 2017 signed by Edward Yoder and Harold Smith.
2. Jurisdiction. That the existing drain is a regulated drain and within the jurisdiction of this Board, pursuant to I.C. 36-9-27-15.
3. Report of Surveyor. That the Board referred the Guy Platter Drain herein to the Surveyor to prepare a report pursuant to I.C. 36-9-22(c), which report was filed and presented to this Board on October 24th, 2019, in the Derald D. Kruse Commissioner's Court, 2nd Floor of the DeKalb County Courthouse, Auburn, Indiana.
4. Schedule of Assessments. That the Surveyor then prepared a schedule of assessments and damages pursuant to I.C. 36-9-27-50, naming each landowner benefited or damages, his/her address, percent of total cost to be assessed against each tract of land based upon benefit received, showing the amount of each assessment based on the total estimated cost of improvement, and showing the amount of each owner's annual

assessment based on the total estimated cost of periodically maintaining said improvement.

5. Legal Notice of Hearing. Legal notice of hearing was published pursuant to I.C. 36-9-27-52(a) as follows:
 - a. In the Star, a newspaper of general circulation in DeKalb County, Indiana.
 - b. On November 29th, 2019, which date was not less than ten (10) days before the date of said hearing.
6. Mailed Notice of Hearing. Notice of hearing was sent on November 7th, 2019, by First Class United States mail in a five-day return envelope to each owner named in the schedule of damages and assessments as filed with the Surveyor's report herein, which notice was mailed not less than thirty (30) days, nor more than forty (40) days, prior to said hearing date, all in accordance with I.C. 36-9-27-52(a).
7. Department of Natural Resources Notice. That since the improvement proposed does not involve the construction or reconstruction of a regulated open drain, notice of said hearing was not sent to the Indiana Department of Natural Resources.
8. Objections Filed. No objections were filed.
9. Evidence Concerning Objections. No objections were filed.
10. Hearing. A hearing in connection with said improvement was held on December 12th, 2019 at 9:00 a.m., in the Derald D. Kruse Commissioner's Court, 2nd Floor DeKalb County Courthouse, Auburn, Indiana, at which hearing the objects to said petition were heard and discussed, evidence was had and considered, the proposed improvement was explained, and certain landowners were present.
11. Disposition of Objection. No objections were filed.
12. Amendments to Surveyor's Report. Upon the record developed, no amendments were made by the Board to the report of the Surveyor and/or schedule of assessments.
13. Periodic Maintenance. That said improvement will be in need of periodic maintenance and the cost of periodically maintaining the proposed improvement is \$2,615.96 per year.
14. Reconstruction. That the present drain is in need of reconstruction.
15. Type of Improvement. That the proposed improvement is a reconstruction within the meaning of I.C. 36-9-27-34(a) in that: (include only those appropriate)
 - A. It no longer can perform the function for which it was designed and constructed.
 - B. Topographical or other changes have rendered the drain inadequate to properly drain the lands affected without extensive repair or changes.
 - C. It involves increasing the size of tile.
 - D. It involves deepening or widening an open ditch.
 - E. It involves changing the course of a drain.
 - F. It involves providing for erosion control or grade stabilization structures.
 - G. It involves major changes to a drainage system that would be of public utility.
16. 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 in that it will:
 - A. Result in reclamation of acres 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. Special Assessments. None.
18. Damage Awards. None.
19. Reduced Benefits. None.
20. Findings of Fact. After hearing all the evidence presented at the hearing for and against, the Board made the following FINDINGS:
 Findings of Fact as adopted in the Minutes Book on Page_____in the Drainage Board Minute Book Number_____.
- NOW THEREFORE, IT IS ORDERED by the Drainage Board of DeKalb County, that:

- A. The Findings of Fact are adopted by the Board as true and accurate for this proceeding.
- B. The report of the Surveyor and the schedules filed herein shall be adopted and the improvement established. Copies of same shall be attached hereto and made a part hereof by this reference; and
- C. A periodic maintenance fund be established for the periodic maintenance of the improvement under the terms and conditions set forth in the report of the Surveyor; and
- D. Public announcement of said order is hereby made at the said hearing 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, Indiana, which notice shall identify the drainage proceedings and state that the Findings and Order of the Board have been filed and area 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 Findings or 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 12th day of December, 2019
 DEKALB COUNTY DRAINAGE BOARD

_____Randall J. Deetz, Chairman

_____Michael E. Krehl, Vice-Chairman

_____ Donald D. Grogg, Member

_____ Jacqueline R. Rowan, Member

_____ William Hartman, Member

There being no further business, meeting adjourned.

_____ Randall J. Deetz, Chairman

_____ Brenda F. Myers, Administrative Assistant