

MINUTES OF THE DEKALB COUNTY DRAINAGE BOARD MEETING OF MARCH 12, 2020

Chairman Randall J. Deetz called the regular meeting of the DeKalb County Drainage Board to order at 8:30 a.m., Thursday March 12, 2020. Answering roll call was Randall J. Deetz; Michael E. Krehl; Jacqueline R. Rowan and William 'Bill' Hartman. Board member Donald D. Grogg was absent.

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

IN ATTENDANCE: Kevin Webb; Matt Snyder; Teresa Brown; Lonnie Brown; Steve Woodward; James Deetz

APPROVAL OF MINUTES: A motion was made by Jacqueline Rowan to approve the Minutes of March 5th, 2020 as standard minutes taken by the DeKalb County Drainage Board, seconded by Mike Krehl, motion carried.

UTILITY PERMIT REQUEST – CITY OF AUBURN ELECTRIC DEPARTMENT: Mike Kline stated that the City of Auburn Electric Department has a project that will extend overhead utility lines west across the Peckhart Ditch for the new Astral/Sterling Development located at 2144 SR 8. The starting point is at Potter Drive on the south side of State Route 8 and going west 400 feet crossing the Peckhart Ditch. The county regulated drain involved:

William Peckhart Drain Number 22-00-0

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

UTILITY PERMIT REQUEST – INDIANA MICHIGAN POWER: Mike Kline stated that I&M will be replacing poles, wire and equipment with thirty six (36) poles and reconductor approximately 6,400' of #2 AA with #556 AA, starting 140' west of County Road 11 and going west 1,200' west of County Road 7. The county regulated drains involved are as follows:

John Wilderson Drain Number 204-00-0

Levi Ober Drain Number 187-00-0

George Burtzner Lateral 1 Drain Number 233-01-0

Mike Krehl moved that the Board approve the Utility Permit for the 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.

OZRO FREEMAN DRAIN NUMBER 175-00-0: Surveyor Mike Kline questioned who needed to sign a Consent and Waiver to reconstruct, if it needed to only be the landowners affected or the entire watershed.

Drainage Board Attorney Shannon Kruse stated that according to the Indiana Drainage Board Code '...owners of land affected by the reconstruction'. There is no real definition of the word 'affected'; the Board needs to look at the project and what makes sense.

Chairman Deetz stated that in his mind those 'affected' by the reconstruction are those on the tile portion and Mike Krehl agreed.

It was the consensus of the Board that the tile portion is what the Board is going to consider as 'affected landowners'.

The administrative assistant questioned the surveyor if Mr. Prosser would have that Consent and Waiver yet this week as Mr. Prosser would like to bring it back signed to the Board at next week's meeting.

Mike Kline said he would get it as soon as he can get it done now that he knows who has to sign it, they will finish it and get it to him.

ERIC MORRIS DRAIN NUMBER 416-00-0: Surveyor Mike Kline felt the cleanest way to terminate the contract with Fleming for the work they've already done would be to do a 'change order'.

Bill Hartman questioned if there was a way to negotiate the \$8,000+ and Mike said no, they are entitled to be paid for moving in equipment and digging holes, etcetera. Bill said he would prefer to hold off until summer to do the project and that was the consensus of the Board as well.

Mike said they will fill in the hole that was dug and as they are doing that they will tie the tile back together and then in the meantime, he will obtain other prices to do the crossing.

Randy said he would side more with Mike in just getting it done but it does make sense to wait.

Drainage Board Attorney Shannon Kruse stated that it would be fine to do this as a change order but she added some verbiage, and noted that the change order serves as a termination to answer that concern.

The consensus of the Board was to hold off on doing this open cut until a later date in the summer and to obtain other quotes.

INFORMATIONAL: Mike Kline wanted the Board to know that the Senate passed SB 229 and that amends the Indiana Code regarding environmental law concerning wetlands. Also reconstruction in I.C.36-9-27-2 of a regulated drain in accordance with I.C. 36-9-27-29.2 we would no longer need a permit from the State to do that. Mike said we have to be careful and make sure to talk to Army Corp about delineated wetlands.

DRAIN VARIANCE – JOHN BRYANT DRAIN NUMBER 289-00-0: Present is Matthew Snyder who desires to construct a pond on his property that would be forty (40') feet from the county regulated drain. All permits have been taken care of, this is the last step in digging the pond.

Chairman Deetz asked Mr. Snyder if he understood that when/if there is a reconstruction or maintenance done on the tile, that he would be responsible for any additional cost that may be associated with the added cost, and Mr. Snyder said yes, he understands that.

Mike Krehl moved that based upon the facts stated and the recommendation of the Surveyor, that the Board approve executing a variance, to be no closer than forty feet (40') of the John Bryant Drain Number 289-00-0, seconded by Jacqueline Rowan, motion carried.

Mike Kline informed the Board that when Mr. Snyder has his contractor bring his equipment out they will expose the tile so they know exactly where it is, and they can mark it so he knows where the forty feet limit begins.

Mr. Snyder was advised of the procedure for finishing up on the variance to get it recorded.

STRAUSS BROTHERS DRAIN NUMBER 23-00-0: present is Teresa and Lonnie Brown 4254 County Road 56 Auburn Indiana. Back when this drain was being reconstructed and they received their letter, the assessment amount was half because their almost eight acres was considered agriculture; then they received another letter that showed it being double the original amount with the response of they (the county) had changed it to residential. Had they known that they probably would have investigated but it was a surprise to them; they then spoke to the Assessor's office who told them that they send

out a letter when it is 10 or more acres, so then she questioned because they do not live on all of their eight acres. The procedure was gone through with the Assessor, she then went out to the Soil and Water Department and got it changed there (stating it is now 3.56 acres able to be mowed). They didn't do that before due to the drain tile always flooding; as they have a neighbor who is pouring water onto them. Had they known that this was all going on behind the scenes they would have gotten this corrected prior to the hearing that was held.

Chairman Deetz stated that the 'surplus residential' has only taken place in the last two years, so the hinge of the argument would be how that was assessed at that time; if that is the case, this would be a legitimate concern. There have been lots of concerns throughout the community due to this change.

Mike Kline said he didn't know if the first letter was an assumed number and then the second letter was the actual, he would have to go back and look at that to make that determination.

Teresa said they have spoken to their neighbor (on Mike's suggestion) but the neighbor refuses to correct the problem.

Lonnie stated that there is an eight inch tile on the neighbor's property that is running over to them and their other neighbor and makes a swamp; it runs 10-12 acres onto their 3 acres; he has a ditch on his own property but refuses to run the water the other direction.

The common enemy doctrine was explained by the Drainage Board attorney and she expressed that you cannot obstruct someone's drainage but you can prevent a channelized flow onto your property; that is case law in Indiana.

Mike Krehl suggested that the County Surveyor along with his field inspector go on-site to see if a connection needs to be made and where the tile is.

Mike said he will take a contractor on-site to look at this and Chairman Deetz asked that he also look at the timing of the letters that were sent and the assessment amounts.

GEORGE BURTZNER LATERAL 1 DRAIN NUMBER 233-01-0: Steve Woodward stated that he resides at 6038 County Road 327 in Butler Township. In the last eight years there has been an awful lot of increase of water that comes into his basement; he has two sump pumps running and last year he had \$18,000 in water damage from flooding, there is a huge water issue on County Road 11. Two or three years ago the man who owns the property where the water stands made a big hole with dozers and backhoe's, and most likely broke that tile.

Surveyor Mike Kline stated that this was brought to the Board's attention in 2012; Mike said he did investigation and had contractor's on-site patching and then presented this to the Board for a reconstruction. At the meeting the landowners stated that the cost was too much for the project to happen.

Chairman Deetz asked the surveyor if he was making a commitment that when the weather turns, that he would go on-site and investigate the lateral 1 to see if it is functioning.

Mike said he hasn't had time to go through the old 'notes' so he will do that and then walk the drain to see if there are any holes in the tile.

Chairman Deetz informed Mr. Woodward that if it is found that the problem is downstream and not in the area of this problem, that he has the right to go through the petition process as there is no active petition on this drain. At the hearing that was

previously held, this was voted down for repairs because the landowners didn't want to pay the cost associated with it. Randy asked that Mr. Woodward write down as much information as he can with this water situation and get that to the Surveyor's Office.

INFORMATIONAL: James Deetz is present inquiring if the March 19th, 2020 meeting is on schedule for next week and the answer was yes.

INFORMATIONAL: Mike Krehl stated that he received a call from Rory Walker stating that the *Marvin Walker Drain Number 403-00-0* has been placed on hold because of a tree and asked the Surveyor what the situation was here.

Mike Kline stated that he spoke to the landowner and they are moving the tree because of the wetland and some issues that Mike said he doesn't want to deal with, it will be in an upper land area and will be much better; the contractor will meet them out there as soon as he can get away and get started on it. This is not on hold, it will move ahead as quickly as they can get it done.

Mike Krehl stated that the Rory told him that the contractor told Rory that he (the contractor) is ready to move in in the matter of a few days and if the Surveyor is not ready to (release that hold) and let him go with it, he will go somewhere else to work and the Walker ditch will fall further behind on schedule.

Mike Kline said that he never told him that but he will talk to the contractor to make sure that with some corrections on the plan they will be ready to go; he told Mike Krehl that there would not be a hold up.

Mike Krehl asked if the surveyor would be meeting with the contractor soon, this week or first of next week and the surveyor responded, 'as he can make time'. The contractor is ready for this work in two to three days, so Mike Krehl felt they'd be ready to go next week.

Mike Kline said he would do everything he can to work with him (the contractor) on this.

BUTLER CITY DRAIN NUMBER 200-00-0: Mike Krehl asked the surveyor if he had the bill ready to go on this drain and the surveyor responded 'no, as soon as he can'. It was stated that is a lot of money the county is waiting to get and the surveyor said 'it's a lot of work too.'

INFORMATIONAL: Chairman Deetz asked if the Hunter situation was under way and attorney Kruse stated that she is waiting to hear from the Insurance, if she doesn't hear anything by the end of the week she will contact them.

There being no further business, meeting adjourned.

Randall J. Deetz, Chairman

Brenda F. Myers, Administrative Assistant