

MARSHALL COUNTY DRAINAGE BOARD

REGULAR MEETING

MONDAY, NOVEMBER 16, 2020

The Marshall County Drainage Board met for a regular meeting on November 16, 2020 at 8:30 am in the Commissioner's Room of the County Building, 112 W Jefferson St., Plymouth IN. Board members present were: Kevin Overmyer, President; Stanley Klotz, Vice-President; Michael Burroughs, Board Member; David Stults and Randy Glinge, Citizen Board Members. Also present were: Craig Cultice, County Surveyor; James Clevenger, Drainage Board Attorney and Barbara Neidlinger, Drainage Board Secretary. The meeting was opened in due form and the following business was considered.

DRAINAGE MAINTENANCE BIDS

The board accepted bids from the following contractors on three maintenance projects:

Wm Myers Ditch to J Ballinger-Myers Ditch

Beaver Excavating \$8000.00 LDP Excavating \$24350.00 Langfeldt Excavating \$11505.00

It is noted Beaver Excavating submitted cash in the amount of \$400.00 as his surety instead of a certified check or bid bond. Mr. Overmyer asked if Beaver Excavating is in good standing; Mr. Cultice replied he is now. Mr. Glinge moved, seconded by Mr. Burroughs to accept the bid from Beaver Excavating in the amount of \$8000.00, motion passed, 5-0.

FLETCHER DITCH

Beaver Excavating \$3000.00 LDP Excavating \$3950.00 Langfeldt Excavating \$4015.00

It is noted Beaver Excavating submitted cash in the amount of \$50.00 as his surety instead of a certified check or bid bond. The cash amount was short of the required 5%. Mr. Beaver, sitting in the audience acknowledged this was his error and stated he had the cash balance on him. He was advised if he wanted his bid considered he shall present the required cash balance. Mr. Burroughs moved, seconded by Mr. Klotz to accept the bid from Beaver Excavating in the amount of \$3000.00, motion passed, 5-0.

PFIEFER DITCH

Beaver Excavating \$4500.00 LDP Excavating \$6600.00 Langfeldt Excavating \$5610.00

It is noted Beaver Excavating submitted cash in the amount of \$25.00 as his surety instead of a certified check or bid bond. The cash amount was short of the required 5%. Mr. Beaver again acknowledged his error; the cash balance shall be presented. Mr. Klotz moved, seconded by Mr. Burroughs to accept the bid from Beaver Excavating in the amount of \$4500.00, motion passed, 5-0.

The completion date for all projects is April 16, 2021. Discussion regarding Marshall County's required 5% surety followed the awarding of the bids. Attorney Clevenger advised the board this should not be a standard practice going forward regarding a contractor not providing the correct surety at bid opening. Mr. Cultice asked for clarification regarding the surety requirement. Attorney Clevenger stated it is common practice to require surety to "stand behind" your bid. In the event the contractor does not

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fulfill the contract, the surety goes to the County. The County then would engage another contractor to perform the project. Mr. Overmyer advised Mr. Beaver to present the balance owed at the conclusion of the meeting and if the correct 5% surety is not included in his future bids they will not be accepted. Mr. Beaver questioned the surety requirements and stated several other counties do not require surety. At the conclusion of the discussion between Mr. Beaver; the board members and Attorney Clevenger, Mr. Overmyer informed Mr. Beaver when Beaver again disagreed this is Marshall County's requirement and he (Beaver) can choose not to bid.

DOGWOOD TILE DRAIN TO MARBURGER DITCH – VARIANCE

The property owned by 3301 Fir Road LLC, located at 1808 Dogwood Road and identified as Parcel ID 50543000035001005 is requesting a variance reduction for the location of a retention pond within the right of way easement of the Dogwood Tile to the Marburger Ditch. Mr. Cultice reminded board members a variance request was presented on September 21st with the board approving a 40' variance reduction for the proposed building however the board requested the proposed retention pond should be located farther away than the proposed 30'±. Mr. Cultice presented the revised plan for the board to review which indicates the retention pond will be over 40' from the centerline of the Dogwood Tile. Mr. Burroughs moved, seconded by Mr. Stults to approve the variance reduction for the proposed retention pond as presented, motion passed, 4-0. Mr. Klotz abstained from voting as he was a previous owner of this property.

SCHUH DITCH – AKA NEWCOMB-EISENHOUR DITCH

Mr. Cultice presented photographs for the board to review of a recent brushing project on the Schuh Ditch located on the east side of Oak Road in the City of Plymouth. The burning of brush is discouraged in the city limits so the services of Beaver Excavating were engaged to utilize a long reach excavator with a chopper which is able to chop brush and small trees into chips and blow material back onto the ground. The chopper was able to obliterate problematic honeysuckle. The ground photographs depicted several sites before and after the completion. Several board members voiced their approval, Mr. Overmyer complimented Mr. Beaver for the work done.

YELLOW RIVER

Mr. Cultice provided the board with "before" and "after" photographs of a log jam in the Yellow River located west of Peach Road to review. The Kankakee-Yellow River Basin(s) Commission will be responsible for the funding as this is south of 13th Road.

Mr. Cultice informed the board of a pending project funded by the Kankakee River Basin and Yellow River Basin Commission on the Yellow River. The bank reconstruction and sediment reconstruction project is located upstream and downstream at the Marshall County and Starke County line. The purpose of the project is to stabilize the banks to keep the sand from washing into the Yellow River. Mr. Overmyer and Mr. Cultice attended the kickoff meeting for said project. Mr. Overmyer stated he asked the Indiana DNR representative if sediment traps could be located at the site; the DNR replied no; this is no longer considered a good practice.

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(PROPOSED) 2B ROAD DRAIN- PUBLIC HEARING CONTINUANCE

PERIODIC MAINTENANCE & CLASSIFICATION AS A REGULATED DRAIN

Mr. Overmyer announced the public hearing for the 2B Road Drain would continue and invited Mr. Chris Waidner to come forward. Mr. Chris Waidner, 2795 2B Road gave a summary of the proposed tile construction through the Waidner and Bowen properties. The route of the new tile will be in close proximity to the existing private / mutual tile and will connect with structures on the north and south side of 2B Road; the new tile will outlet into a private pond. A portion of the existing drain runs under the Waidner garage. The board has been provided with the project plan to review. Mr. Overmyer asked for other comments. Mr. Cultice stated the descriptions for the easements were revised and are presented to the board for review. Attorney Clevenger stated the Bowen's and Waidner's have signed their revised easements. The revised easement for the Hansen property was prepared; the impact on their property is significantly reduced; Attorney Clevenger stated the earlier easement signed by Hansen's covers that area and left as is. The easement for Hundt did not change regarding the use of the pond. Attorney Clevenger stated he is in possession of the signed easements which will be recorded if the project moves forward. Attorney Clevenger stated the Bowen's concerns about the tile's installation on the impact of the trees on their property but now have stated they are in agreement and want the project to move forward for Waidner's and will not object if they lose a tree(s). The trees will not be taken down for the tile installation. Mr. Glinge asked if the tree roots would get in the tile; Mr. Cultice replied the big tile would be deep. Mr. Overmyer asked for a motion to open the public hearing; Mr. Klotz moved, seconded by Mr. Burroughs to open the public hearing for the 2B Road Drain, motion passed, 5-0. Mr. Overmyer asked if anyone else would like to speak, no one responded. Mr. Overmyer asked Mr. Jason Peters to appear before the board regarding the Highway's financial cost towards the project. Mr. Peters provides a written itemized report of the Highway's and Waidner's financial and other responsibilities for the project for the board to review. Attorney Clevenger stated the responsibilities should be prepared into a contract or memorandum of understanding form to be signed by the Waidners. When questioned by Mr. Overmyer the proposed project has not been let out for bid; Mr. Peters recommends letting the bid in the spring. Several board members suggested to bid out earlier; contractors could work if the weather cooperated with a spring completion date. Mr. Overmyer asked if anyone else would like to speak, no one responded. Mr. Overmyer asked for a motion to close the public hearing. Mr. Klotz moved, seconded by Mr. Glinge to close the public hearing for the 2B Road Drain, motion passed, 5-0. Following discussion between the board members, Attorney Clevenger and Mr. Cultice, Mr. Glinge moved, seconded by Mr. Klotz to approve the 2B Road Drain project, motion passed, 5-0. The board members, Attorney Clevenger and Mr. Cultice discussed the matter of the maintenance assessment of the 2B Road Drain. It was determined annual maintenance would not be assessed until the project was completed and the tile was in the ground. The annual maintenance would be assessed until there was a 4 year unexpended balance in its account as per statute. Mr. Burroughs moved, seconded by Mr. Stults to approve the maintenance assessment for the 2B Road Drain at \$10.00 per acre with a \$10.00 minimum, motion passed, 5-0. Mr. Overmyer asked for a motion to allow for the 2B Road Drain project to be bid out. Mr. Klotz moved, seconded by Mr. Stults to allow

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Mr. Jason Peters to bid out the 2B Road Drain project, motion passed, 5-0. Attorney Clevenger again recommended the need for a contract or memorandum of understanding with Waidners regarding responsibilities, Mr. Waidner stated he had a memorandum of understanding he could provide to Attorney Clevenger. Mr. Peters stated Mr. Waidner will obtain the materials he is responsible for; the highway will bid out for the contractors' installation labor. The highway will also be responsible for all of the stone and top dirt. The consensus of the board is a memorandum of understanding will be prepared and signed and will be presented to the board for its approval at their next scheduled meeting. Mr. Glinge moved, seconded by Mr. Stults that a memorandum of understanding will be prepared as discussed and presented to the board, motion passed, 5-0.

WEST BUNCH DITCH – MAINTENANCE ASSESSMENT – PUBLIC HEARING

Mr. Overmyer announced the matter regarding the increase of the maintenance assessment rate for the West Bunch Ditch was to commence and asked Mr. Cultice to proceed. Mr. Cultice presented the board with the Surveyor's Report. The length of the West Bunch Ditch is 8800'± with current benefited acreage being 713±; current annual maintenance collection is \$604.00± and the current account balance is negative \$1099.00. The current assessment rate established in 1976 is \$0.80 per acre; the minimum assessment if \$5.00. The maintenance repairs in the past 6 years have totaled \$8606.70 which equals 14 years ± of collection. A petition was presented to the board to reconstruct the West Bunch Ditch; it was denied on August 17, 2020 by the drainage board as the board determined the costs exceeded the benefits. The data available has determined the benefited acres in the new watershed to be 811.8±. The proposed assessment rate of \$4.00 per acre, \$20.00 minimum would generate an annual maintenance collection totaling \$3505.76±; also to stop collection when the collection equals eight times the annual balance. Mr. Cultice stated as the upper end of the ditch is in bad shape; he has projected the annual cost to be \$5000.00± towards those repairs. Mr. Cultice stated the board will need to review the new watershed area and to determine what the assessment rate should be. Mr. Cultice stated two property owners have filed remonstrance(s) requesting to be removed from the watershed; also a petition has been filed from seven property owners objecting to the proposed increased assessment rate. The board were provided with those documents to review. Mr. Cultice also presented the board with a copy of Indiana Code 36-9-27-112 which defines what options they may consider in their determinations. Mr. Cultice stated he would schedule a site visit for the board to review the watershed area if they wished. The property owners filing a remonstrance are: Millard Clauss and Thomas and Elaine Monhaut. The property owners filing the petition are: Millard Clauss; Larry Zillmer; Wayne Spicher; Dean Nettrour; Thomas and Elaine Monhaut; Timothy Laidig; and James Bope. Mr. Overmyer asked board members if they had other questions; hearing none he asked for a motion to open the public hearing. Mr. Glinge moved, seconded by Mr. Burroughs to open the public hearing for the West Bunch Ditch, motion passed, 5-0. Mr. Overmyer asked if there was anyone who would like to speak. Those appearing before the board were:

Thomas Monhaut: 774 Juniper Road, Bremen IN: Mr. Monhaut is requesting his property be surveyed and excluded from the West Bunch watershed. Mr. Monhaut stated in his remonstrance his property and the Clauss property are tiled to the Stock-Heston Ditch. Mr. Cultice replied the survey of the

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property is the new watershed map; the board needs to determine if the Monhaut property is to be included or excluded from the watershed. Attorney Clevenger asked if the Monhaut property has a maintenance assessment on the Stock-Heston Ditch; Mr. Cultice replied it did as well as the Clauss property when asked.

Mrs. Millard (Valena) Clauss, 69488 Miami Rd, Bremen IN: Mrs. Clauss is speaking in behalf of Mr. Clauss. Mrs. Clauss is requesting their property adjacent to the Monhaut property be excluded from the West Bunch watershed referring to his filed remonstrance.

The board discussed the requests; acknowledged Monhaut and Clauss claims that they have tiled into and are assessed on the Stock-Heston Ditch. Mr. Glinge moved, seconded by Mr. Burroughs to exclude the Monhaut tract(s) and the Clauss tract from the watershed assessment on the West Bunch Ditch, motion passed, 5-0. Mr. Monhaut inquired if another land owner's property could be excluded and was informed it is that property owner's responsibility to petition for. Mr. Overmyer asked if there was anyone else who wished to speak.

Mrs. Clauss and Mr. Monhaut spoke about the petition filed to object to the increase of the maintenance assessment rate. The board determined Mr. Monhaut no longer has input as his tracts are no longer in the watershed. Mrs. Clauss read the objection of Mr. Clauss and others to the increase. Mrs. Clauss requested a copy of the Surveyor's Report and was told she could obtain the report.

Mr. John Rader, 591 Ironwood Rd, Bremen IN: Mr. Rader stated he felt the \$4.00 rate was not too high referring to the objection of Clauss and others. Mr. Rader has requested needed work on the West Bunch as said ditch crosses through his property.

Mr. Cultice informed the board their action on excluding the Monhaut and Clauss tract(s) from the watershed will reduce the annual assessment in the amount of \$477.00±; the annual assessment would now be approximately \$3000.00 based on the \$4.00 rate. Mr. Klotz and Mr. Glinge asked how many years it would take to bring the ditch back up to standard if the projected annual cost is \$5000.00 and the annual collection estimate is \$3000.00. Mr. Cultice replied the upper end of the ditch needs work; it will take time and funding to build up to be able to work there. The board discussed the proposed \$4.00 assessment rate; it was determined if the board was to consider a higher rate they would have to send new notices. The board felt they should not lower the assessment rate below the proposed \$4.00 per acre. Mr. Burroughs moved, seconded by Mr. Stults to approve to increase the maintenance assessment rate for the West Bunch Ditch to \$4.00 per acre, \$20.00 minimum, motion passed, 5-0. The board members now sign the Finding and Order.

MINUTES

Mr. Klotz moved, seconded by Mr. Glinge to approve the September 21, 2020 minutes, motion passed, 5-0.

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GEORGE SELTENRIGHT DITCH

Mr. Marvin Houin, 7563 Plymouth-Goshen Trl, Bremen IN representing Mrs. Marilyn Ralston appears before the board. Mr. Houin informed the board the burning of leaves on the Rupert Camp Ground property has started the muck on fire nearing adjoining properties. Mr. Houin is requesting if it would be possible to place a 24" pump in the George Seltenright Ditch to pump water out of said ditch to flood the area to help in putting the fire out. Mr. Houin stated he contacted Beaver Excavating to visit the site; this is their recommendation. Mr. Houin felt this was an opportunity to site a silt trap on the ditch; he was informed the DNR no longer allows them. Mr. Houin is requesting to create a hole in the ditch to set the pump. Mr. Cultice asked how close to Lake of the Woods they would go to get the water to flow back. Mr. Beaver and Mr. Houin replied they are looking from the west side of Lake Shore. Mr. Cultice stated the DNR will have to be contacted as this is a sensitive area. Mr. Cultice informed the board the George Seltenright Ditch maintenance account balance is negative \$3000.00±; should this be paid for privately. Several board members felt the parties (Rupert) responsible for the fire should be liable for costs and questioned if Rupert had been asked. Attorney Clevenger stated the drainage issue is: does the board want to allow the ditch to be impacted because this is supposedly a solution. The drainage board should not be involved in disputes between landowners as to the fire impact. If the board allows the impact on the ditch who will pay and how will it be paid for. All parties present agree the DNR has to be contacted. The board members stated Houin and Rupert should contact the DNR. Mr. Overmyer asked if Mr. Cultice would also contact the DNR, Mr. Cultice replied he would.

ADJOURNMENT

Mr. Klotz moved, seconded by Mr. Burroughs to adjourn the meeting at 9:40 am, motion passed, 5-0.

MARSHALL COUNTY DRAINAGE BOARD

Kevin Overmyer, President

Stanley Klotz, Vice-President

Michael Burroughs, Board Member

David Stults, Board Member

Randy Glinge, Board Member

Attest: _____

Barbara Neidlinger, Drainage Board Secretary