TIPPECANOE COUNTY DRAINAGE BOARD
June 5, 2019
JOHN BONE REGULATED DRAIN #129
HEARING MINUTES

Those present were:

Tippecanoe County Drainage Board President Tracy A. Brown, Vice President Thomas P. Murtaugh, County Surveyor Zachariah Beasley, Drainage Board Attorney Doug Masson, Engineering Consultants; Dave Eichelberger from Christopher B. Burke Engineering LLC, Machelle Watts from Butler Fairman and Siefert and Drainage Board Executive Administrator Brenda Garrison. James Butcher, Surveyor Office Project Manager and Tim Walters, Surveyor’s office GIS Technician were also in attendance. Member David S. Byers was absent.

President Tracy Brown called the hearing to order. He reminded attendees to sign the attendance list. He referred to the Surveyor. The Surveyor stated landowners petitioned his office to convert the John Bone mutual drain to a County Regulated Drain and reconstruct said drain. He stated he had an informal meeting with 90% of the affected landowners in the watershed. He referred to the Attorney. Attorney Masson stated there was an extra step to take since landowners petitioned the Drainage Board to establish the mutual drain as a county regulated drain as well as reconstruct the drain. He stated the following findings to establish the mutual drain a county regulated drain:

#1. Owners of more than 50% in acreage of affected land will be benefitted if the drain is made a county regulated drain. The benefit is likely to be greater than the damages to owners damaged by reason of the mutual drain being made a regulated drain. So, in effect most of the acreage involved would be benefitted by making this a county regulated drain instead of a mutual drain and those benefits overall exceed any damages to landowners by making this a county regulated drain.

#2. Reconstruction of the drain would be the next step. He referred to the Surveyor for his report. The Surveyor read his reconstruction report into the record as follows: John Bone Regulated Drain #129 Reconstruction Report dated April 18, 2019 The John Bone Drain was originally constructed at an unknown date as a private tile drain. The drain and its watershed are located in Sections 28, 29, 30, 31 and 32 of Township 33 North and Range 5 West, in the political townships of Union and Wayne all being within Tippecanoe County, Indiana. Based on testimony from the benefitted landowners and Lidar elevation and contour data available in the year 2019, the total benefitted watershed area is 660.81 acres. From this day forward there are 13,271 linear feet of main and branch tile, 900 linear feet of open ditch under maintenance. It is the professional judgement of the Tippecanoe County Surveyor that a sum of $124,836.25 is needed to reconstruct the existing tile drainage system. A reconstruction assessment rate of $38.00 per acre and a $20.00 minimum over a five (5) year period are recommended. This will generate $125,887.23 over a five (5) year period. Assuming the reconstruction project has been completed after five (5) years, the per acre assessment rate will be lowered to a maintenance rate of $5.75 per acre and a $20.00 minimum over an eight (8) year period. This will generate $31,544.28 over an eight (8) year period. The maintenance rate shall not be charged during the five (5) year reconstruction period. These rates will allow for the much-needed reconstruction project and ensure that monies will be generated for future tile and open ditch maintenance. Respectfully submitted Zach Beasley. The Attorney clarified the word testimony used in the Surveyor’s report did not constitute a formal legal proceeding testimony as it reflected the Surveyor had spoken with the landowners only. The Surveyor then stated the maintenance and reconstruction estimates along with the watershed map and additional data were all available to the public. The Attorney acted there were objections filed were received from the following landowners: Fred Halsema 6415 Sleeper Road Laf. Indiana, David, Kathy, Rose and Gary Loser 6780 Sleeper Road Laf. Indiana and would be included directly after these minutes as part of the official minutes of the Board. President Tracy Brown opened the floor for public comment.

David Loser 6780 Sleeper Road Lafayette Indiana approached the Board. He stated he realized the bank had approximately 60% of the affected acres within the watershed, and this project seemed to be in their favor. He stated those landowners with tillable land can recover their cost. He stated other than surface drainage, the landowners within the watershed that are not farm owners to include himself would not see a benefit to them. While he did not oppose improvements, he opposed the way it was being assessed and handled. He stated it was
an act of imminent domain without compensation and he had not been treated fairly. Responding to Attorney Masson’s inquiry, Mr. Loser stated he purchased drain tile in 2018. Due to tree roots impeding the tile, he was planning to replace the entire section located on his property. He had started the replacement and when he became aware of the Petition - he stopped. Mr. Loser’s property was shown on the map as tract “P”. The Surveyor clarified the following: Indiana Drainage Code 36-9-27 makes no difference where you live, as the assessment has to do with the land topography within the watershed. He clarified the standard operating procedure is the per acre assessment regardless of land use. There are urban drains based on land use, however this is an agricultural drain. He informed Mr. Loser, property assessments and drain assessments are not the same. The Surveyor stated he reviewed a damage claim from Mr. Loser for loss of timber, purchased pipe, attorney fees and the estimated future value of the trees to be removed during reconstruction. He informed the attendees, historically, the Board has worked with the landowners in these situations. However, the Board has not reimbursed landowners for private pipe purchases, attorney fees or estimates of future tree values. Indiana Code does not require reimbursement of purchased pipe, attorney fees or forestry (timber) estimates. The Surveyor stated he conducted a site visit to Mr. Loser’s property within the past week. He recommended reimbursement for the damage to the trees during the reconstruction project (within the drainage easement) in the amount of $3,886.36. Reimbursement would be paid when the reconstruction project was completed. The Attorney noted it was within the Board’s rights to declare tree removal as damage to property and reimburse Mr. Loser for the current value of the trees that would be removed during the project. The Surveyor thanked Mr. Loser for comments.

Kathy Loser 6736 Sleeper Road Lafayette Indiana 47909 approached the Board. She stated she was speaking for herself and Jerome and Mary Loser 6834 Sleeper Road Lafayette IN. 47909, her parents. She read a statement of objection to the Board. She requested their drain assessments be removed from the rolls. She asked the Board members to vote no to the project today. She stated there was a communication issue as she was not informed prior to today of the details for this project. The Surveyor interjected she too was invited to an informal meeting held regarding this project with the affected landowners. Responding to her “lack of communication” statement, he stated he goes above and beyond to include landowners in the drain petition process. He informed her the informal meetings are not required by law. However, he holds these meetings with the affected landowners to obtain any additional information which may be useful in the planning of the drain project at hand. Her brother David Loser did attend however she did not. She asked the Surveyor what landowner requested the work on the drain. He stated he provided Mr. Dean Craig the Petition to Establish and Reconstruct a Mutual Drain, a watershed map of all landowners affected and a list of assessments for each landowner at Mr. Craig’s request. Ms. Loser stated she given a paper with lines on it to sign. The Surveyor responded he had done his due diligence providing all documents required when a petition is requested by his office. He stated she would have to speak with Mr. Dean Craig to find out why she was not given the watershed or assessment exhibits which are part of the Petition documentation.

Ernie Halsena 6415 Sleeper Road Lafayette Indian 47909, speaking for himself and Fred Halsena (in attendance), approached the Board. Mr. Halsena stated himself and his brother Fred objected to the reconstruction. He noted they had submitted an objection letter to the Surveyor office prior to this hearing. He stated reconstructing this drain would not benefit them due to their property location. Discussion was held regarding their tract location within the watershed, the tile’s current route and condition and benefits of the reconstructed tile drain for the entire watershed. The Surveyor stated this plan would be the cheapest and most beneficial for all the landowners. He noted open ditch stabilization was also included in the plans. There was no other public comment.

The Surveyor then recommended the Board approve the Assessments for the establishment and reconstruction of the John Bone drain as presented. President Brown referred to the Attorney. Attorney Masson read the following into the record:

BEFORE THE TIPPECANOE COUNTY DRAINAGE BOARD IN THE MATTER OF THE ACCEPTANCE, RECONSTRUCTION, AND MAINTENANCE OF THE JOHN BONE DRAIN FINDINGS AND ORDER (ACCEPTANCE, RECONSTRUCTION, AND ANNUAL MAINTENANCE)

This matter came to be heard upon the PETITION TO ACCEPT A MUTUAL DRAIN, RECONSTRUCTION REPORT and SCHEDULE OF ASSESSMENTS prepared by the Tippecanoe County Surveyor and filed on April June 5, 2019  Tippecanoe County Drainage Board Hearing Minutes 1144
On March 6, 2019, a petition requesting that the John Bone mutual drain be accepted as a County regulated drain was received in the Office of the Tippecanoe County Surveyor.

The reconstruction report of the Tippecanoe County Surveyor and schedule of assessments were filed in the office of the Surveyor on April 18, 2019.

Notice of filing of the report and the schedule of assessments and their availability for inspection and the time and place of this hearing was mailed to all those landowners affected more than thirty (30) and less than forty (40) days before the date of this hearing.

Notice of the time and place of this hearing was given by publication in the Journal & Courier newspaper of general circulation in Tippecanoe County, Indiana more than ten (10) days prior to this hearing.

The drain consists of 13,271 lineal feet of main and branch tile, and 900 lineal feet of open ditch.

The owners of more than 50% in acreage of the affected land will be benefitted if the drain is accepted as a regulated drain. The benefit to owners benefitted is likely to be greater than the damages to owners damaged, if any, by reason of the mutual drain being made a regulated drain.

The present condition of the ditch is poor and in need of repair.

The ditch needs the following reconstruction at present:
Ditch clearing and dredging and tile replacement

There is now $3,891.02 owed to the General Drain Fund for investigation and examination of this ditch.

The ditch drains 660.81 acres total.

The estimated cost of reconstruction is $124,836.25 to reconstruct the existing tile drainage system.

The estimated annual cost of maintenance is $30,316.00.

The estimated benefits to the land exceed repair and reconstruction costs.

A fund for annual maintenance should be established.

In order to provide the necessary reconstruction funding, the annual assessment per acre and lot benefited should be $38.00 with a $20 minimum over a five (5) year period. In order to provide the necessary maintenance funding, the annual assessment per acre and lot benefited should be $5.75 with a $20.00 minimum for a period of eight (8) years. Maintenance assessments should start AFTER the five (5) year period of reconstruction is complete.

The assessment list filed herewith should be amended as follows:
The parcel owned by David & Rose Ann Loser (Parcel P) will be damaged in the amount of $3,886.36 for the present value of trees which will be removed due to reconstruction.

The assessment list filed herewith as amended above is fair and equitable and should be adopted.

The assessment should be collected with the May 2020 taxes.

NOW, THEREFORE, IT IS ORDERED THAT:

The John Bone drain is hereby accepted as a Tippecanoe County regulated drain.
(2) A reconstruction and maintenance fund is hereby established for the John Bone #129 Regulated Drain. The reconstruction fund is established at the annual rate of $38.00 per acre and a $20.00 minimum and the maintenance fund is established at the annual rate of $5.75 per acre and $20.00 minimum for a five (5) year period. Maintenance assessments should start AFTER the five (5) year period of reconstruction is complete.

(3) The Schedule of Assessments filed herewith are adopted and made a part thereof.

(4) The first annual assessment shall be collected with the May 2020 taxes.

Dated at Lafayette, Indiana this 5th day of June 2019.

Thomas Murtaugh made a motion to approve the Findings and Order as read by the Attorney. Tracy Brown seconded the motion. Motion carried.

Tracy A. Brown, President

Thomas P. Murtaugh, Vice President

Brenda Garrison, Executive Administrator

David S. Byers, Member