

DUBOIS COUNTY DRAINAGE BOARD

March 6, 2023

The Dubois County Drainage Board held a public hearing in the Commissioner/Council Room of the Courthouse Annex in Jasper, Indiana on March 6, 2023 beginning at 10:30 a.m. Present were Drainage Board members Chad A. Blessinger, Nick Hostetter and Serice Stenftenagel. Also present were County Auditor Sandra L. Morton, County Attorney Gregory S. Schnarr, and County Surveyor Kenneth R. Brosmer. Also in attendance was Petitioner PGE Farms LLC by member Patrick Eckerle with Counsel Philip C. Schneider, and Respondent A & G LLC by members Jeffery G. Schitter and Denise A. Schitter with Counsel David P. Fritch. The meeting was called to order by Board President Chad A. Blessinger.

RE: PETITION

A Petition of Landowner for Removal of Obstructions from Drain was filed on November 23, 2022. Pursuant to Indiana Code 36-9-27.4-12, the Drainage Board was to direct the county surveyor to investigate the petition and after receipt of the report, was to set a date and time for hearing on the Petition, giving notice to all owners of real estate, and thereafter enter such orders as are appropriate under Indiana Code 36-9-27.4.

County Survey Kenneth R. Brosmer submitted his report to the Drainage Board on January 3, 2023. (Handout #1) A supplement to the report was provided to the parties on January 24, 2023. (Handout #2)

RE: PUBLIC HEARING

The public hearing was set for February 6, 2023 at 10:30 a.m.; however was vacated and continued until March 6, 2023.

RE: STIPULATION

The parties stipulated to the Respondents clearing of debris or obstructions from "Grist Run", a portion of which runs across the Respondent's property, and no further evidence was considered regarding the clearing of debris or obstructions from "Grist Run".

RE: SURVEYOR TESTIMONY

Surveyor Kenneth R. Brosmer was called to testify regarding his report previously submitted to the board. Grist Run and Side Ditch of Grist Run were identified on maps included in the report. (Handout #1) A map of the elevations was also included in a supplement to the report. (Handout #2) Neither Grist Run or the "Side Ditch" is categorized as a legal drain in Dubois County. Pictures were distributed. (Exhibit #2) The beginning point of Side Ditch was questioned. Brosmer looks at the connection between the ditches and feels it is one drainage system.

RE: PETITIONER TESTIMONY

Michael Haase, a neighboring landowner, was called to testify.

Petitioner Patrick Eckerle was called to testify. An email received from Thomas Sowinski, IDEM, dated June 27, 2022 was submitted. (Handout #3)

RE: RESPONDENT TESTIMONY

Brad Eckerle of Brosmer Land Surveying and Engineering was called to testify. The Drainageway Existing Profile maps were presented. (Exhibit #1)

Respondent Jeffery Schitter was called to testify. (Exhibit #2) (Exhibit #3)

Tim Werner of Werner Sawmill was called to testify.

James Fischer of Huntingburg was called to testify.

RE: CLOSING COMMENTS

Closing comments were made by Petitioner and Respondent Counsel. (Handout #4)

The Public Hearing was closed at 1:39 p.m.

RE: EXHIBITS & HANDOUTS

The following items are available in the Dubois County Surveyor's office:

Exhibit 1 – Drainageway Existing Profile prepared by Brosmer Surveying and Engineering

Exhibit 2 – 45 pictures taken by Respondent Jeffery Schitter

Exhibit 3 – 3 printed pictures displayed on card board

Handout 1 – Ditch Inspection of Grist Run and Side Ditch of Grist Run report prepared by Surveyor Kenneth Brosmer

Handout 2 – Addendum Elevation Map prepared by Surveyor Kenneth Brosmer

Handout 3 – Petitioner Patrick Eckerle email from Thomas Sowinski from IDEM

Handout 4 – Various copies of Indiana Code 36-9-27.4 were provided by both Petitioner and Respondent Counsel.

RE: RECESS

A 10 minute recess was called for the members to review the information.

RE: FINDINGS

Following discussion, a motion was made to deny the petition, was duly seconded and carried 2-1. Blessinger was the dissenting vote. A formal Findings of Board was prepared as follows:

FINDINGS OF BOARD

This matter came before the Drainage Board of Dubois County, Indiana ("Board") on March 6, 2023, for a hearing on Petitioner's Petition of Landowner for Removal of Obstructions from Drain. Petitioner

The Board having heard testimony and evidence and being duly advised, by a vote of 2-1, hereby FINDS as follows:

1. The parties stipulated to the Respondent's clearing of debris or obstructions from "Grist Run".
2. The Board has jurisdiction to hear the Petition regarding an obstruction in a mutual drain or natural surface watercourse.
3. Pursuant to I.C. 36-9-27.4-4, "Obstruction" means a condition that: (1) exists within or near a drain; and (2) prevents or significantly impedes the flow of water through the drain.
4. The majority of the Board does not find that an "Obstruction" exists as defined by I.C. 36-9-27.4-4.
5. As the majority of the Board has found an "Obstruction, as defined by I.C. 36-9-27.4-4, of a drain or natural surface watercourse that is alleged in the petition does not exist, the majority of the Board denies the Petition, in accordance with I.C. 36-9-27.4-14(b)

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SO DETERMINED AT A PUBLIC HEARING ON THE 6th DAY OF MARCH, 2023.

RE: PUBLIC HEARING TRANSCRIPT

Recordings of the Public Hearing are available at the following locations:

Audio and Video are available on a flash drive in the County Surveyor's office.

Video is available on the Dubois County Government You Tube Channel at <https://www.youtube.com/watch?v=qlZS76DGuGg&t=10848s>

RE: ADJOURNMENT

With no further business to come before the Drainage Board, the meeting was adjourned at 2:10 p.m.