

# GRANT COUNTY DRAINAGE BOARD

401 South Adams Street  
Marion, Indiana 46953

The Grant County Drainage Board held a special session regarding the assessment for Bocock Land Development LLC on November 10, 2022 in the Grant County Council Chambers. Mark Bardsley, Chairman called the meeting to order at 11:02 a.m. Other members present were Vice-Chairman Gordon Gough, Kenny Cates, Pat Pinkerton, Grant County Surveyor Jim Todd and Drainage Board Secretary, Mary Weesner. Richard Cox was not in attendance.

Mark Bardsley stated that the reason for the special session is due to a petition to reschedule the hearing that was scheduled. Mark added that Mr. Ott and his attorney, Matthew Doss are present today as well. This session is for review of the charges that we are asking for collection for the engineering process to obtain the proper permits for work done at the Hummel Creek obstruction. Mark Bardsley asked that Surveyor Jim Todd give a brief history as to what has led us up to this point. Jim Todd stated that after a court order that the obstruction was to be removed, we (the Drainage Board) has accrued \$90,299.70 to get all the permits to get this out through our easement. Jim added that the purpose of today's hearing is regarding the ditch tax that has been applied to cover the cost.

Joe Leone, attorney for the Grant County Drainage Board is present and has stated the following:

Mr. Leone stated that he and Matthew Doss, Gary Ott's attorney, has had numerous conversations and has appreciated the candor that he has displayed in also attempting to come to a resolution. He stated that the statute of *Indiana Code 36-9-27-46 sub-section C which states that if the obstruction is caused by the owner of the land affected by the drain that the Board may, after a hearing with written notice, which this hearing is add the amount that is sufficient to pay the damages to the next annual assessment made against the land of the owner.* He added that the amount of \$90,299.70 are costs that occurred primarily for engineering in preparing the documents and design and obtaining permits in order to put the Board into a position, and the surveyor in the position to remove the unauthorized structure.

Mr. Leone added that it has been in two courts that stated specifically that the Board's actions in order to bring the unauthorized structure to be removed. The most recent court acknowledged that the costs of removing the obstruction is to be borne by the property owner, Bocock Land Development LLC; so, the issue before us today is what is the amount that the

Board is entitled to assess against the property. Mr. Leone gave Mr. Ott and Mr. Doss a copy of all the invoices that the Drainage Board is seeking reimbursement of. He continued, stating that this has been going on a long time. Right as the Board was awarding the contract to a contractor to come on to the property to remove the unauthorized structure, the property owner performed some work to remove what was there, whether it was sufficient or not, is not why we are here today, but the costs so far that have led up to that, the \$90,299.70 is what we are here to discuss today. Mr. Leone addressed Matthew Doss stating that the whole sticking point all along was how the Drainage Board was going to gain access to the structure to remove it. The court that was held in 2020 said that it was Bocock Road Land Developments right to require the Grant County Drainage Board to enter Mr. Ott's land through there statutory, however, the impetus's behind most of these costs is the result of that. He added that it is the result of the engineering time and effort it took to be able to access the structure. The big component is the distance from the border of the property to the structure within that easement is a pretty long distance. The waterway, which involved permits that were time consuming to get and a lot of effort through Christopher Burke Engineering. Mr. Leone informed Mr. Ott that he may present to the Board as to why he thinks the \$90,299.70 should not be assessed against the property or if should be an amount less than that.

Mr. Gary Ott of Bocock Land Development LLC is before the Board to speak. Mr. Ott stated that through his perspective, is does understand why the Board is so frustrated and that this has gone way way way way beyond what any of us thought it would ever go. He added that understands and that he is frustrated too. Mr. Ott stated that he would have never bought the property to begin with. He added that a friend of his, Rob McCoy and himself had bought the property thinking that they could do things with it and develop it into a place where people could bring motorhomes and trailers to park in the woods and enjoy the woods. But, in order to do that, you have to get across the creek, and you cannot bring a motorhome or trailer down through that creek and that is why he needed the access across there. Mr. Ott stated that when he was buying the property, he had the purchase agreement and found out that there was a problem with the bridge (crossing) with DNR (Department of Natural Resources). He found out that there was a litigation going on between Mr. Warren Thomas and the Department of Natural Resources. Mr. Ott stated that he, right away, put into his purchase agreement that they had to take care of this issue before he will buy it. He said that he is not going to buy something that is in the middle of litigation and stuff. Mr. Ott said that at no time was there any word about the Drainage Board, just DNR. Mr. Warren, along with an engineer, was able to come up with a solution of the problem of

if there is a blockage that would cause flooding. The engineer's solution was to take the land back down because they had a bridge built in there and built up the road and the water would not go past the drainage tile. Mr. Ott stated that he spent the money and expense, thinking it would take care of all of this, brought it down to the level that it originally naturally was before that (obstruction) was put in there. He added that he also watched a flood come, there was a couple of big floods during that time and he could actually see the water, not only going through the pipes, but going around the pipes as well, so it was not an obstruction. He took a video of this. Mr. Ott stated that he thought everything was fine, so he completed the purchase. After the Department of Natural resources came, he did not have to take out the drainage pipes; then he started hearing that the Drainage Board had a problem with it. He was told to build a bridge and they did not want the three pipes. He began the process of looking into a bridge by calling Jason Miller to help with the problem of the water flow. He added that he also hired Lisa Crandell, who designs bridges. He paid for her to design a bridge. He said that many years ago he has talked to the Drainage Board about sharing the cost of building a bridge since it was the Board's desire to build a bridge. Mr. Ott felt that he had solved the problem by enabling the water to go around the pipes. He said that in response of sharing the cost of a bridge, the Drainage Board told him that he would have to bear the cost of the expense. He said that he kept submitting the application for the bridge. Mr. Ott said that the reason that he restrained the Board from coming onto the property is because he wanted to use this as leverage since that was the only leverage he had to get the Drainage Board to approve a bridge. He again said that he kept submitting ideas for a bridge, but the Board would never approve it. He said that he got word that the Board was going to have a person come down through the right of way and now we are charging him \$90,000.00 which is a very absorbent fee and that is three or four times the money that it cost to do the work. He then added that he had to hurry up and get the work done and said that he did that to the specs. Mr. Ott said that he thought it was over and done and that the Drainage Board had won because the pipes are out, and he had to pay for all that. He now does not have access to get across the creek now and therefore the land is useless to him. Then he gets a bill that says he owes \$90,000.00 and it goes way back to the beginning of time and he said that it just doesn't feel right to him. Mr. Ott asked that the Board do what they feel is right if they were in his situation.

Matthew Doss, attorney for Gary Ott approached the Board. He stated that he and Joe Leone has met and tossed around different options, ultimately, they did not get as far as they had wanted. Mr. Doss added that at the time that Mr. Ott had purchased the property, he did not have any kind of idea that there were concerns with the Drainage Board and reasonably thought the

issue was direct with DNR. Mr. Doss wanted the Board to know that Mr. Ott did make a timely objection to the assessment, for the record. He is concerned because the statement was written up as a maintenance, but he is being charged for engineering fees that seem like \$90,000.00 is over-engineered for work that was never actually done by anyone but Mr. Ott. Mr. Doss added that the costs include Safety Solutions, Redman Excavating and the Chronicle Tribune and he nor Mr. Ott have had a chance to look at them yet. In light of the work that was done, it seems as though the Board has spent \$9.00 for every \$2.00 that has actually needed to be spent. He added that the notice was assessed to Mr. Ott's property and that he understands what the statute says, but the obstruction wasn't created by Mr. Ott but cleared by Mr. Ott. He said that he is just now seeing the bills today as opposed to 2016 when they were being incurred. Mr. Doss said that they could have addressed some of the costs earlier on instead of speculations of may or could. He also wanted to point out that because of the obstruction, he has been denied the use of that part of land. Mr. Ott now has no access of getting through that creek and they really do not have an answer of whether a bridge could be approved to cross. Mr. Doss said that he did not want to ask the Drainage Board if it's acceptable to go through the creek because, he said, we all know the answer to that and it's probably beyond their authority to grant that kind of authority. He said that in contrast to the amount that is being assessed here it really almost looks like a penalty towards Mr. Ott; he asks that the Board consider that in light of the work that would have needed to be performed and also the fact that, note the reason that there was a slight delay in removal because he did it when the weather was compatible.

Mark Bardsley read Gary Ott's objections aloud for the record and they are as follows:

1. This notice is a "Notice of Assessment for Maintenance" for which all land subject to assessment for Hummel Creek #653 should be assessed, not just the land of Bocock Road Land Development, LLC
2. The noticer was not given prior to providing the maintenance.
3. The notice does not describe the work done, material and equipment furnished, or why it was necessary.
4. The Grant County Drainage Board agreed that it would be sufficient compliance with the needs of the Grant County Drainage Board if Bocock Road Land Development, LLC provided the maintenance required by the Indiana Department of Natural Resources, and Bocock Road Land Development, LLC provided the maintenance required by the Indiana Department of Natural Resources. At no time prior to or

during the maintenance did the Grant County Drainage Board notify Bocock Road Land Development, LLC that Bocock Road Land Development, LLC would be responsible for payment of any expenses incurred by the Grant County Drainage Board, that it reserved the right to charge for such expenses or that it had any intention to charge Bocock Road Land Development, LLC for such expenses.

5. The expenses are barred by the statute of limitations and failure to comply with the laws of the State of Indiana for maintenance for drains.

Mark Bardsley then went on to read the responses to Mr. Ott's objections; they are as follows:

1. The amount of \$90,299.70 is derived from the invoices for the expenses since the verdict in favor of the Drainage Board per the Findings and Order signed and dated by Judge Thomas M. Hakes, Special Judge of Grant County Superior Court 1 on August 27, 2015. The charges in which collection is being sought is for the engineering and process of obtaining the proper permits necessary from Indiana Department of Natural Resources, Indiana Department of Environmental Management, and Indiana Army Corps. In order to try to work with Mr. Ott, the Grant County Drainage Board is not seeking reimbursement for legal fees in the amount of \$66,550.25 to date since the judgement ruled in the Grant County Drainage Board's favor and accruing since. There will be a maintenance hearing for all landowners that are benefiting from Hummel Creek on November 29, 2022.
2. Notice was mailed to Mr. Ott via certified mail on September 2, 2022 and signed as received by Adrian R. White on September 8, 2022. The notice was mailed 39 days before the hearing and received 33 days before the hearing.
3. There are copies of invoices that would have been given to Mr. Ott and presented at the hearing as well.
4. Multiple meetings were held with Mr. Ott and his attorney whereas they were informed that incurred expenses could be assessed against him.
5. Mr. Ott is the one that did not comply with the laws of the State of Indiana and the Indiana Drainage Code in a timely fashion.

Mark Bardsley added that these are court allowed expenses based off of the 2015 hearing. He added that the actual cost, had we completed the work, would have been around \$250,000.00; Jim Todd added that is for the construction work, having to go down the easement. Mark asked the Drainage Board if they had any questions for Mr. Ott, his attorney, or our attorney.

Gordon Gough began by stating that when you buy the obstruction or not, it is the landowner's responsibility to remove the obstruction and Mr. Ott is the landowner. When he purchased the land, the obstruction became his and it needed to be removed so he does not hurt other landowners upstream.

Gary Ott responded by stating that he agrees with what Gordon said and said that when he bought that land he had his due diligence period and during that time he was told that this is what you got to do and nothing was said about the fact, adding that he is not the one that put the obstruction in, he is the guy that came along after the fact and bought it. He added that he did everything he was told he had to do, even putting it in his purchase agreement. There error that was there was the Grant County Drainage Board would have said you got to get the pipes out of there, he would have put that in the purchase agreement too.

Matthew Doss said that this Board had met regarding this issue before Mr. Ott purchased the property and had an opportunity to make that happen but did not do that.

Gordon Gough disagreed stating that at a meeting, the Board spoke to Mr. Ott stating that we can solve this very easily, but he would not speak to the Board, only through Randy Miller.

Joe Leone spoke stating that while we are empathic to this argument, unfortunately, that argument has been heard already by two courts who have both found against your defense to remove the structure. Mr. Leone added that they can speak all they want about what happened before, but that is not the purpose of today. These arguments have already been made to the right people who have already decided against those arguments.

Matthew Doss respectfully disagreed stating that the amount of Mr. Ott had coming in and in light of the amount that is being assessed towards him. He agreed that the courts have decided twice that they had to be removed. But the factor that needs to be considered.

Joe Leone responded to Mr. Doss saying that the first court said that it had to be removed and the second court ruled that the costs are to be paid by the property owner. He added that we need to just focus on the cost itself because that seems to be the issue. Mr. Leone pointed out that there seemed to be an issue with the notice. Any problem with the notice was resolved when we had to reschedule this meeting because Mr. Doss and himself

discussed when the hearing would take place. We provided options for your availability and we agreed on the date and time that it would be, which is now, and you guys are present. Mr. Leone addressed the notice of the costs, there is no obligation that the Drainage Board has to notify the property owner of the costs once the property owner failed to remove the unauthorized structure as required by the statute.

Gary Ott stated that the property owner did remove it and he does not understand when Mr. Leone said that the court said that you must remove the drainage tiles. He did not think that was what the court said, he said that he thinks the court said that you have the right as the Drainage Board to make him comply. Mr. Ott said that this is totally the Drainage Board's decision, not the court's decision to make him remove them.

Joe Leone stated that the reality is, by statute, the Board has the right to tell you to remove the obstruction and if you don't, the Board has the obligation to remove the obstruction and then to charge those costs against the property; that is what Section 46 of the statute states. Mr. Leone addressed Mr. Ott regarding his statement that the owner did remove the unauthorized structure; the costs that regarding removing the unauthorized structure also includes professional services that are required before a contractor ever gets on site. Mr. Leone asked if it is his belief that in no circumstance, whether the Board removes the obstruction or the property owner removes it, are those professional service costs assessed against the property owner.

Mr. Doss's response was that Mr. Leone pointed out that the first order was to remove the obstruction and the second order was to remove the obstruction, the cost to be assessed to the owner, that is what the court said.

Mr. Leone told him that the second court order had to do with access and the Board's right to access. Ultimately it was against the Board to gain access through Mr. Ott's access road. Once that decision was made, that the Board had to follow the easement, the cost of getting there is much higher than it would have been otherwise. Mr. Leone stated that regardless of who removed it, once the property owner does not remove the obstruction, it is the Board's obligation to remove the obstruction. In order to carry out that obligation, they have to incur professional services costs in order to access the unauthorized structure to remove it.

Gary Ott asked Mr. Leone if he is saying that this \$90,000.00, if we brought Christopher here to testify that the cost is totally because we had to come through the easement, and he is just sitting there charging year after year.

Joe Leone informed Mr. Ott that Matt Mead of Christopher Burke Engineering is present here today and he can talk about what actually the professional services are. Mr. Leone added that the costs that can be assessed against the property are the costs incurred by the Board once the property owner fails to

remove the obstruction, ten days after the order to so; that is what Section 46B says, it says that it is the property owner's obligation to remove the obstruction in ten days of the order. And if they fail to do so, it is the Surveyor's obligation through the Drainage Board, to remove obstruction. Mr. Leone added that as soon as that ten day period ends, those costs start to accrue.

Matthew Doss again stated that this is the first time he has seen the invoices and has a question for the representative from Christopher Burke Engineering. He would like to know which invoice had to do with the engineering that was done specific to getting private access to the private road to get to the obstruction.

Matt Mead, engineer for Christopher Burke Engineering. Mr. Mead said that he will explain the overall costs. He stated that there is a process in getting the permits because it is more than one square mile of watershed and it is a DNR regulated stream and is within a Zone A flood plain which, for regulatory purposes, considered a floodway. Therefore, this required a construction of floodway permit, that requires hydraulic modeling to determine the impact of the project. They model and determine what the impact is currently and what it will be after the removal of the structure occurred. There was also additional survey work. They did sight surveys around the structure itself to make sure they would be able to have an accurate representation of the sight conditions. Mr. Mead added that when the permission to use the access road was denied, they had to go in through the easement. The easement is about 2,000 feet long path to get down there via access by Bocock Road. He said that there was about \$25,000.00 in surveys alone to identify the easement through that area, get the topography for that area because they would have had to put in an access road through there to get all of their equipment down there. Because it is in the flood plain, he had to do a wetland inspection; there is a significant amount of wetlands in both the easement area and also in the access area itself. Mr. Mead stated that they had to identify those wetland areas because they cannot be damaged. He had to identify where these areas were so that they can be avoided, if they couldn't be avoided, he had to determine mitigation measures to make sure the equipment going through the area would cause the least harm possible. Mr. Mead stated that they also had to identify any trees that could potentially have to be removed to provide that access road. He had to do a tree inventory; certain trees with a certain diameter or larger had to be mitigated. He said that he did identify a route through there that would not require any tree removal; this was all involved in the construction in a floodway permit. There is also IDEM and the US Army Corps of Engineers that both have their own permits because you are doing modifications within the channel; both for the removal of structures themselves, but also putting in protective armoring to protect the



embankments that have been degrading due to the velocity of the water going through the culverts. These two permits also required additional coordination with government agencies and their own submittal specifications. Mr. Mead said that they got the protective floodway permit, the 401 and the 404 which are IDEM and Army Corps permits. He added that when Mr. Ott and/or his representatives went in there to remove the structure they technically used, because we did not have this discussion with DNR because when the crew went in there, it was a surprise that was not anticipated so we needed to verify with DNR that those actions were not detrimental. He was told that because of the duration of the project, the removal, was going to be carried out so quickly and that basically it would take longer to go through the violation process to issue violations for not being fully compliant with the permits than to just have Mr. Ott finish the work. So, none of we did was actually used, technically, Mr. Ott used our permits for the work you did while not discussing this with us. You (Mr. Ott) are kind of skating by having a permit having been in place for that ultimate result. Mr. Mead went on to state that as far as identifying, he does not know exactly what was used prior to the access being required through the easement, but he could get that information if desired.

Gary Ott spoke to Matt Mead stating that the stuff from 2016, that was not access, Mr. Mead agreed stating that the project for the removal of the structure is 2019 and newer.

Matthew Doss stated that the reason he is bring this up is that certain costs are attributed (inaudible) and some of the costs are costs that the Board has decided to put on themselves to get the access to the private land and all of the engineering costs that are associated with that should be the Board's responsibility. Mr. Doss went on to say that the second order says that damages is to be paid by Mr. Ott. He said that if this is going to be charged, which it probably is, please take into consideration that this was not a problem created by Mr. Ott and that the Board has been frustrated as well. The attribution of the cost for bringing that second legal action, the engineering costs, shouldn't be solely bore by Mr. Ott.

Joe Leone stated that the second court order simply acknowledged that the costs would be ultimately bore by the property owner. The rights to cover the costs accrues once that ten day period ends after the Board's order to remove the obstruction. Once the court made the order in 2015 which Mr. Doss was not a part of, then ten days from there the costs are assessed against the property owner. Mr. Leone again stated that the statute states that the costs begin to accrue once the property owner makes the decision not to follow the Board's order to remove the unauthorized structure.

Mark Bardsley stated that at this particular point, the question is before them, do we access the \$90,299.70 as noted, since 2016 since we have been accruing those particular expenses that the court would allow. Mark asked the Board if they had any questions or statements.

Kenny Cates spoke. He said that the Drainage Board has incurred a lot of expense. He added that the first time of meeting Mr. Ott, Richard Cox and himself went out there to look at this and Mr. Ott came through with a four-wheeler. Kenny added that they discussed this then, around 2013, and he asked Kenny how he could get through here and Kenny explained to him that he could put down a stone bed in the creek. Kenny Cates said that Mr. Ott seemed awful close to being acceptive of this and then he came to a Drainage Board meeting and had Randy Miller, land surveyor, with him; Kenny tried to get Mr. Ott to talk to them but Randy Miller stated that Mr. Ott can't, he is his attorney, and then it went downhill from there. We could have cleared this thing out, very minimal compared to what we are dealing with now. Kenny Cates stated that we had a bid for less than \$20,000.00 to remove the unauthorized obstruction. Kenny went on to say that after we got a judgement against him, if we could have went in on the access road, we could have solved all these problems, but he refused, so we had to go this route.

Mark Bardsley asked Mary Weesner what the amount is that the Drainage Board has spent in total so far; Mary stated it is about \$236,000.00; Mark responded that it is \$236,000.00 and we are only asking for the \$90,000.00 in return.

Jim Todd added that this has been paid for out of the General Drain Improvement Fund, which is supported by the taxpayers.

Mark Bardsley said that the question that they have to wrestle with is that we have asked for some consideration on the final ticket and we feel that we are asking a reasonable amount to recover and asked the Board their likes on this;

Kenny Cates stated that they would like their money, Gordon Gough agreed adding that this could have been solved so easily but has drug on for years because he would not cooperate.

Gary Ott said that they are right, but he could never get approval to build a bridge across there, no one ever wanted to approve it and that was his only thing he could hold with was that he wanted to have an access to cross; but it never got approved.

Jim Todd informed Mr. Ott that this Drainage Board has never had a meeting nor an application for a bridge.

Gary Ott said that he sent something in; Jim responded that it was way after the court judgement; Gary Ott said that it doesn't matter if it was after the judgement.

Mark Bardsley added that this was during negotiations when we were talking about how we could work with Mr. Ott on a private crossing; Jim Todd added that we are still willing to do that. Mark went on to say that this was never brought to an open session. Jim agreed saying that it has never come before the Drainage Board at a meeting.

Kenny Cates said that the problem was that there was three tubes, trees and stuff would get there down on there and catch and then back the water up. Mark Bardsley stated that at this point, he is ready to close our public hearing portion for discussion and action. He asked the Board if they had any objection to that; they did not. Mark said that it is now time for the Board to deliberate and act.

Kenny Cates said that in his opinion that we should collect the \$90,299.70. Gordon Gough stated that in light of the fact that we have considerably more expenses because there was not cooperation, Kenny added that we are \$140,000.00 over the \$90,000.00 we are seeking, this could have been avoided.

Pat Pinkerton stated that all of this \$90,000.00 we incurred after the court order.

Kenny Cates made a motion to assess the amount of \$90,299.70 to Gary Ott; seconded by Gordon Gough. Gordon added that we would not have had all this expense if there had been cooperation, stating that he feels the \$90,299.70 does not near cover the expenses that we have had. Kenny Cates said that our loss is coming out of the county taxpayer's money. The Board voted 4-0 in favor of the motion.

Mark Bardsley informed the secretary, Mary Weesner, that the Board has voted in favor of the assessment of \$90,299.70. He then asked Grant County Surveyor, Jim Todd, if there is anything that needed to be addressed to Mr. Ott regarding their rights; Jim Todd said that they have a right to appeal this decision. Mark Bardsley asked for the time frame that an appeal has; Joe Leone stated that it is in the statute.

Jim Todd asked Joe Leone if there is an appeal, is the cost we are going to incur, having to go to a third court and they lose, is this amount assessable. Mr. Leone stated that it is in the statute.

Mark Bardsley recessed the meeting at 12:13 pm.

Minutes recorded by:  
Mary R. Weesner  
Drainage Board Secretary

*The Grant County Drainage Board has approved the minutes for the special session on November 10, 2022 as presented:*

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Mark Bardsley

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Gordon Gough

\*\*\*ABSENT\*\*\*

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Richard Cox

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Kenny Cates

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Pat Pinkerton