

Drainage in Montgomery County

League of Women Voters of Montgomery County Indiana

September 2005

(photo deleted for PDF file size)

Jesse Snoddy Drain, North of Alamo, 1907, Courtesy of Crawfordsville Public Library and Mr. Cecil Dunlap



The League of Women Voters, a nonpartisan, multi-issue organization, open to all citizens 18 or older, works to promote informed and active participation in government and to influence public policy through education and advocacy. For information about the League or for the complete text of this report, visit the web site www.lwvmontgomerycounty.org or voice mail 765-339-3188

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Findings of the Study:

- The system of drainage in Indiana was designed to increase farm productivity. When the system does not work well, farmers lose valuable soil and crop profits. Homes now built on former farmland near failing drains experience low real estate values, property damage and health problems such as mold and bacteria.
- Poor drainage compromises the county's economic development. Potential investors desire good infrastructure and the stability that planning for drainage assures.
- Drainage record keeping in the offices of the surveyor and the auditor is sometimes incorrect and incomplete or not up-to-date.
- Poor communication by the surveyor leaves many landowners unaware of their rights and responsibilities and leaves problems unsolved.
- The drainage board would be more effective if it received from the surveyor the reports and information required by law concerning the condition of drains and the status of their maintenance funds.

Purpose of the League of Women Voter's Study:

The League of Women Voters, a nonpartisan, multi-issue organization open to all citizens 18 and older, works to promote informed and active participation in government and to influence public policy through education and advocacy. For over twenty-five years, the League of Women Voters in Montgomery County (LWVMC) has observed the county commissioners and the drainage board. The League's observer of the drainage board noticed that problems brought before the board often were not resolved. As a result, in May 2004, the membership of the LWVMC authorized a committee to study the issue on their behalf.

The committee's objectives were to understand the roles and responsibilities of the participants in the administration and operation of drainage in the county: the drainage board, the surveyor, landowners, the county auditor, and drainage contractors. The committee also studied the nature of the problems, their causes and potential solutions. An evaluation of the surveyor's technical expertise was beyond the scope of this study. The committee's findings will be used to educate the public and to advocate for more effective drainage administration in Montgomery County.

During the study period, the committee attended drainage board meetings, interviewed over 40 individuals, studied the Indiana Drainage Code, attended the Farm Bureau Drainage 101 seminar, reviewed records from the offices of the county auditor and the county surveyor, observed the drainage boards in three counties similar to Montgomery County in geography, and reviewed the Montgomery County drainage board minutes from 1966 to present.

Background:

Good drainage contributes to the agricultural, residential, and industrial health of a county. Because of the swampy terrain of west central Indiana, Montgomery County was one of the first counties in the state to drain farmland. Our county's first drains were built before 1870 and the last was constructed in 2002.

Montgomery County has 200 regulated drains that total 360 miles in length. When a drain becomes regulated, it is subject to Indiana drainage laws and administration by the county drainage board and the county surveyor.

A drain bears the name of the person who first carried the petition to construct it. Anna C. Campbell, Elijah Fugate, and Ebenezer McClaskey, the ancestors of many county citizens, are a few of the names of drains.

It is important that drains be maintained. When drain tiles (concrete tunnels from 8 to 48 inches in diameter) fail, our county's fertile soil washes into the drains below, sometimes filling them up. If soil doesn't clog the drains, it becomes silt in Sugar Creek or even part of the Louisiana delta. Many of the public drains are beginning to fail. Some of the tiles are over one hundred years old and they are stressed by the weight of increasingly large farm equipment.

Good drainage is also an argument for some level of planning in the county. Neither residential nor industrial developers want to invest in areas where water might become a problem because of unplanned and uncontrolled development.

Developing the drainage system and keeping it functioning properly are responsibilities assigned by law primarily to an elected county surveyor and a county drainage board. The law specifies the duties of the surveyor and the drainage board. It also specifies the processes for building, maintaining, reconstructing, and vacating a public drain. Since many drains span more than one county, the process for decision making in those instances is also specified. The law, also known as the Indiana Drainage Code (IC 36-9-27), provides for the cost of the system to be borne by the landowners whose property is drained rather than by taxpayers in general.

Each drain has its own maintenance fund comprised of semi-annual landowner assessments collected with the property taxes. The surveyor determines the assessment for each drain based on the estimated costs to maintain it. A per acre cost is calculated and landowners pay based on their acreage. Reconstruction costs are also borne by the affected landowners. The maintenance assessments for all the county's regulated drains total approximately \$50,000.00 each year. Sixty of our 200 drains do not collect assessment because they were removed from assessment by the surveyor in 1968. In addition, the county has a general drainage improvement fund that is used for drains that do not have an assessment or when the funds in a drain's maintenance fund are inadequate. The general drainage improvement fund is paid back when the drains are put on assessment or when assessed drains collect enough money to pay it back.

The public drains are not the same as the tile installed in fields to drain surface water. Public drains are usually much larger and often are as much as ten feet under the ground. Even the grassed areas in fields or the culverts we can see under roads are likely private rather than public drains.

Five Case Studies:

Five cases have been chosen to illustrate the problems of drainage administration in Montgomery County.

Case One: Raymond Weliever Drain

Anita Hardwick first called the surveyor over two years ago to request repair of her drain, the Raymond Weliever. Initially, she was told the drain would be repaired. However it was not and her numerous phone calls to the surveyor's office were not returned. Ms. Hardwick gave up about a year ago when she read about the county's financial problems, assuming there was no money to repair her drain. What she did not know is that the funding for drainage comes from assessments she pays twice a year and not from county general tax revenues.

Anita Hardwick appeared at the drainage board again in July 2005 after seeing articles in the newspapers that suggested increased board activity. As a result, the drainage board, the contractor and the surveyor apologized for not following through on the repair. In August 2005, the surveyor reported that the Raymond Weliever has been repaired on Ms. Hardwick's property.

The Raymond Weliever Drain illustrates the all-too common problem of the failure of the surveyor to return phone calls. In addition, had the surveyor been supervising work as called for in (IC 36-9-27-29), the code section that delineates the duties of the surveyor, he would have known that the drain had not been repaired.

The Raymond Weliever is one of the drains that does not collect enough money to pay for its maintenance. Over the past ten years, the drain has been repaired frequently. The Raymond Weliever drainage maintenance fund carries a zero balance and it owes \$2,390.51 to the general drainage improvement fund. In our opinion, the Raymond Weliever debt to the general drainage improvement fund, like many other drain funds, is high enough to merit an increase in landowner assessments. (Source: General Drainage Improvement Fund, Auditor's Office, July 2005)

The drainage board has a responsibility to increase assessments when they are insufficient to maintain the drain; however, the board must be told when this is necessary. Sixty-nine regulated drains show negative balances in the general drainage improvement fund, a clear sign that maintenance assessments are not sufficient. (Source: General Drainage Improvement Fund, Auditor's Office, July 2005)

The drainage board can increase assessments once by 25% without public notice. This was done with many county drains in 1992 or 1998 depending on which of the surveyor's reports is used as a resource. Assessments can be raised at any time, with landowner notice. While doing so may not be a popular action by elected officials, it is the responsible thing to do.

The Raymond Weliever drainage fund illustrates another problem. It is difficult to track the ledgers and spreadsheets kept by the surveyor and auditor. The auditor's ledgers are not up-to-date and figures vary at the surveyor's office depending on which spreadsheet is consulted.

Case Two: Anna C. Campbell Drain

Mr. George Cox lives "at the end of the line" on the Anna C. Campbell drain. In the spring of 1998, a hole developed at the side of the county road over the drain at Mr. Cox's property. Mr.

Cox left messages at the surveyor's office that were not returned. However, in the fall, Mr. Kenneth Cain, a drainage contractor, repaired the hole and was paid by the county. We were unable to determine whether the payment was made by the surveyor or the highway department.

In 2002, a large hole occurred in the road over the drain at about the same site. Again Mr. Cox contacted the surveyor and was not called back. Mr. Cox's call to the highway department resulted in a warning sign being posted at the hole. Fearing that someone would have an accident, Mr. Cox asked Kenneth Cain, the contractor who repaired the 1998 hole, to look at the new one. Mr. Cain agreed that it had to be fixed and did so at a cost of \$9,000. That money is still owed to Mr. Cain.

One can understand why, in 2002, Mr. Cox contacted Mr. Cain, a person who had solved a problem in the past. However, work on a regulated drain must be approved by the drainage board and supervised by the surveyor. Mr. Cain, an experienced contractor, should have known the procedure, unless, approvals for repairs of this nature have been routinely handled after the fact. In any event, we believe Mr. Cox and Mr. Cain acted in the best interests of the county and the drainage administration failed them both.

The surveyor contends that the Anna C. Campbell is not a legal or regulated drain. We believe it is. Anna C. Campbell was removed from assessment in 1968 by the surveyor, but we could find no record of it being "vacated." In our review of the minutes of the drainage board, we found three of the 60 drains that were legally vacated: Anna L. Busenbark on 8/19/68; William Yelton on 10/8/68; and Giles W. Pattison in March, 1970. Removal from assessment, or vacation, is provided for by the drainage code (IC 36-9-27-44). Until such time as a regulated drain is vacated, it remains a regulated drain. If other drains had been vacated, the process would have been recorded in the minutes.

Since the surveyor believes Anna C. Campbell is not a legal drain, his refusal to take action is reasonable. For him not to return phone calls and for him not to help Mr. Cox find a solution is not. The drainage board can also be faulted for its failure to investigate the case thoroughly. We were unable to learn why the drain repair was paid for in 1998 and not in 2002.

While there is no money in the Anna C. Campbell drainage maintenance fund, the drain can be put back on assessment, even to repay repairs. (IC 36-8-27-45)

The problem illustrated here could easily happen to any one of the 60 drains taken off assessment but never vacated in 1968. We believe each of these drains should be evaluated and put back on assessment or vacated where appropriate. The cost of the repair of any drain that is not on assessment is paid from the general drainage improvement fund (IC 36-9-27-45). This fund could quickly be exhausted if just a few of the 60 drains require maintenance.

Case Three: Country Club Road and Big Four Arch Road

People who live in the area of 2300 West Country Club Road are not on a public or regulated drain. They are in the two-mile city radius and drainage is a problem for them. Their problem increased when private tiles were installed in fields across their road. Because the drain is not a public or regulated drain, the drainage board has no jurisdiction. However, these citizens need positive suggestions from the surveyor and the drainage board about their options. Case law (rulings of the Indiana Supreme Court that interpret the application of state law) may offer remedies to their problem. The county health department might be able to help if water standing on the property causes a health concern. The landowners might organize and petition to become a

regulated drain (IC 36-9-27-54). While the drainage administration has no responsibility for this problem, their advice would be appreciated by the landowners.

Case Four: The Shelly Drain

If you knock on the door at Brian Collum's home, you can hear the pump that removes water from his basement. The paint is peeling and damage to the basement walls have left Mr. Collum with a house of little value that he cannot sell. Mr. Collum says he could not live there if he had a family.

Collum lives in a little dip in the land in the Shelly Drain area. He says there was no problem until the Meadowood Apartments were built just feet from his property. He assumes they were built before the county had requirements for developers to put in retention ponds or to use other strategies to mitigate the effect of parking lots and roofs on drainage. In 1998, the Montgomery County drainage board designated the Shelly Drain watershed an "Impact Drainage Area," and listed special requirements that had to be met prior to the approval of any future development. The resolution of the board is commonly referred to as the "No Build Ordinance." In 2000, the city assumed responsibility for the two-mile zone around the city. Mr. Collum lives within this zone.

The drainage board has struggled for years with the problem of the Shelly drain. The drain was one of the 60 drains removed from assessment in 1968. The most recent verdict by the Army Corps of Engineers is that the cost to fix the problem is higher than the problem merits. Tell that to Mr. Collum and his neighbors. When Mr. Collum recently investigated the gurgling in the basement of an elderly neighbor, he found that the furnace was "pumping water."

The city and/or the county may not be able to solve problems caused by past innocent or unregulated actions, but we can keep problems like Mr. Collum's from occurring in the future by administering a building code that never allows a development to inflict more water after construction than before. Meanwhile construction continues in the Shelly Drain area.

In the early 1800s, drains and drainage laws were designed with farms and farm productivity in mind. Over time farmland has yielded to residential, commercial, and industrial uses. We were told that houses, businesses, industry, and roads are now on top of and/or along side of the Shelly Drain. As these were built, little thought was given to the impact on the drain itself or on the function it serves. Then, to further complicate the issue, the city assumed some responsibility for the two-mile zone around Crawfordsville that includes the Shelly drain area. City governance was never designed to deal with farmland drains or the drains now beneath homes and businesses. It will take a coordinated approach, involving local, state and federal officials to solve the Shelly Drain problem.

Case Five: Six Priority Drains for 2005

The surveyor is required by law to submit a report to the drainage board by July 1 of each year. The report is to list the drains in need of maintenance, drains in need of reconstruction, and drains that should be vacated. The surveyor has not routinely submitted such a report. However, in 2005, he submitted a one-page memo listing six priority drains. We do not believe this memo meets the intent of the drainage code nor does it compare with annual reports in the neighboring counties we visited. (The surveyor was not available to explain why he prioritized these particular six drains.) He and the drainage board subsequently held informational meetings with the landowners to explain the condition of the drains and determine interest in proceeding toward

reconstruction. All of the drains have been repaired frequently in the past few years and four of them have borrowed heavily from the general drainage improvement fund.

Landowners of the Smith Elmore Drain and the Stanford Elmore Drain asked the surveyor to simply keep repairing the drains until all the tiles have been replaced rather than to reconstruct them. Were they to have accepted the surveyor's proposal to reconstruct the drains, they would be faced with an increased maintenance assessment to repay the general drainage improvement fund as well as an additional assessment for reconstruction. Several landowners said they could not afford the expected level of increase. The Smith Elmore Drain owes the general drainage improvement fund \$18,895.47 and the Stanford Elmore Drain owes it \$6,846.56.

The board may increase the annual assessment when it finds that the county surveyor's estimate for the cost of maintaining the drain was insufficient (IC 36-9-27-42). Had the surveyor been telling the drainage board the condition of drains and the inadequacy of the maintenance fund, these drains would not have become so heavily indebted to the general drainage improvement fund. The drainage board would likely have suggested reconstruction and/or an increase in assessment when a solution would not have been so costly.

Desirable Outcomes and Action Steps:

To have a drainage system in Montgomery County that protects and advances the residential, agricultural, industrial, and developmental interests of the county, the LWVMC submits the following outcomes and action steps for consideration by elected officials. The outcomes are shown in bold with action steps indented beneath each. The LWVMC encourages the drainage board to adopt any or all of the outcomes and action steps and then revisit them at drainage board meetings in February and September of 2006.

The drainage board will know the condition of drains and drainage in the county.

- The surveyor will submit to the drainage board a classification of drains and a long-range plan to be updated each year by June 1 as required by IC 36-9-27-34 and 36. At minimum the yearly plan should include drains in need of maintenance, drains in need of reconstruction, drains that should be vacated, and assessments that should be raised. Samples of yearly reports from other counties have been submitted to the surveyor and the drainage board.
- The surveyor will submit a monthly report to the drainage board. This report should include the balance in each drain maintenance fund, money owed to the general drainage improvement fund by each drain, the total balance in the drainage maintenance fund and the general drainage improvement fund and a listing of any problems that have not been resolved. In addition, the drainage board should be told when a drain exceeds its maintenance fund balance so that members might evaluate the need to increase assessments.

Record keeping in the offices of the surveyor and the auditor will be accurate, up-to-date, and designed for the informational needs of the surveyor, the drainage board, landowners and contractors. All record keeping and procedures will be in accordance with state law.

- The surveyor and the auditor will balance their books and assure that they are up-to-date and agree at least quarterly, preferably monthly. Our review of records in the offices of the surveyor and the auditor found some of them to be inconsistent, incorrect and not up-to-date. (Details of our review of the records have been given to the drainage board members, the surveyor and the auditor.)
- A staff member in the auditor's office, in addition to the auditor, will be trained to manage the drainage ledgers. We were told that only the auditor knows the drainage ledgers. During our study period the auditor was on sick leave and therefore unable to provide relevant information.
- The drainage board will initiate a detailed review of the financial records in the offices of the surveyor and the auditor. A complete review of these records was beyond the scope of the LWVMC study and was compromised by our inability to obtain information.
- The drainage board will establish requirements for drainage contractors including contracts, liability insurance and other protections. The drainage board is currently working on this action step.
- The drainage board will arrange for staff from a neighboring county to assist the surveyor to create efficient and effective reports that meet the informational needs of the surveyor,

the drainage board, landowners, independent land surveyors and drainage contractors. We are confident that staff in one of our neighboring counties would be willing to share these strategies.

The surveyor will take the lead in the work of the drainage board, in the planning for the health of Montgomery County drains, and in the supervision of drainage maintenance and reconstruction.

- The surveyor, as an ex officio member of the drainage board, will sit at the front of the room with the commissioners with a nameplate to identify him. In our visits to drainage boards in other counties, we observed surveyors taking much more active roles in drainage administration. Drainage boards in our neighboring counties serve as a jury or mediation body. Members call the meeting to order, ask questions, discuss, make final decisions on the issues before them, and adjourn the meeting. The surveyor creates the agenda, knows the details of the issues being discussed, and provides technical advice when it is requested. More leadership on the part of the surveyor would relieve some of the burden on the commissioners who are routinely called by landowners about problems that should have been resolved by the surveyor.
- The surveyor will supervise drainage work. The LWVMC recommends that all claims by contractors for drainage work be subject to an on-site review by the surveyor as required by IC 36-9-27-29.
- The drainage board will put selected drains taken off assessment in 1968 back on assessment. In at least one instance, the general drainage improvement fund has been used to repair one of these drains. There is no way to repay the improvement fund without putting the drain back on assessment.
- The surveyor will make the drainage board aware of any drain that is borrowing from the general drainage improvement fund. Landowners will be invited to an informational meeting at which time they will be apprised of the physical and financial condition of their drain and invited to participate, in partnership with the drainage board and the surveyor, in finding cost effective solutions. The drainage board recently learned that another county uses an advisory committee for selected drains. The committee, composed of landowners on that drain, becomes an active partner, with the surveyor and the drainage board, in decisions about costs and maintenance.
- Job descriptions for the surveyor and his staff will be prepared and approved by the drainage board.

The surveyor will be a source of accurate and timely response by phone, in written documents and in person.

- The surveyor will note all phone calls and provide a follow up response to each within the day or as soon as possible if circumstances prevent a within-the-day response. He will distribute pamphlets, prepared by the Indiana Farm Bureau, that give useful information to landowners about drains and the remedies for problems.
- The surveyor will attend all drainage board meetings and take care to attend other meetings he has arranged or agreed to attend.

- The surveyor will be available to provide advice to county landowners who seek his counsel.
- The surveyor and the drainage board, in partnership with the LWVMC, will conduct an informational meeting for landowners, preferably around June 1 when the surveyor's annual report is due. At the meeting, landowners will learn about their drain, the assessment process, how to solve problems, their responsibilities and more. We saw great interest by landowners at the August 2005 informational meetings about the six priority drains. Drains belong to the landowners who pay assessments for them and they should be involved and informed partners with the surveyor and the drainage board in keeping drains healthy and in planning for the future.
- The surveyor and the drainage board, in partnership with the LWVMC, will conduct an informational meeting for contractors that will cover contractor requirements, bidding process, and other issues.

The surveyor and the drainage board will stay abreast of developments in drainage technology.

- The drainage board and the surveyor will attend state-level training to learn about drainage technology.
- The county commissioners will continue to explore the wisdom of changing to a three or five member citizen drainage board. Having one or more members appointed by the commissioners who bring specialized expertise to the deliberations of the drainage board might be an advantage. While the current commissioners have much interest and expertise in drainage matters, another election might bring someone to the drainage board, in its current composition, who would not contribute in expertise or interest. (IC 36-9-27-5)

The City of Crawfordsville, in partnership with the drainage board and the surveyor, will clarify responsibility for drainage in the two-mile city radius including provisions and enforcement of the no-build ordinance in the Shelly Drain.

- A meeting with responsible officials and affected citizens will be facilitated by the LWVMC to identify the problems and develop solutions to the ambiguities involved in the two-mile city radius. The meeting will also clarify the meaning of the no-build ordinance and place responsibility for granting exceptions and monitoring compliance.

The leadership of the Montgomery County will work with other individuals and entities to create a plan, to include drainage, for the thoughtful development of Montgomery County.

- A series of meetings, facilitated by the LWVMC, will provide a public forum for debate about a plan for the county. The meetings and newspaper articles about the meetings and issues will allow all sides of the debate to be heard in a respectful format as a plan is formulated.