



Prepared by Delaware Soil & Water Conservation District

March, 2019

INTRODUCTION

This brochure is a revision of Bulletin #482, a publication done by the Ohio State University Cooperative Extension Service originally published in 1981. The original publication was written by Byron H. Nolte, Extension Agricultural Engineer. The Ohio Revised Code sections dealing with the Ohio Drainage Laws Petition Procedures have been revised numerous times since Bulletin #482 was published. This brochure has been done to reflect those changes, and be a more accurate reflection of the laws as they exist today. Much of the text of the original publication not affected by revisions to the law has been reproduced here directly.

The Ohio drainage laws governing the Drainage Petition Procedure are very broad in scope and apply to a wide variety of situations and improvements. They are administered by Boards of County Commissioners, and their purpose is to provide for the better utilization of Ohio's soil and water resources.

WORK THAT MAY BE DONE

The improvements possible under the drainage laws include:

- The location, construction, reconstruction, reconditioning, widening, deepening, straightening, alternating, boxing, tiling, filling, walling, arching, or any change in the course, location, or terminus of any ditch, drain, watercourse, or floodway.
- The deepening, widening, straightening, or any change in the course, location, or terminus of a river, creek, or run.
- A levee, or any wall, embankment, jetty, dike, dam, sluice, revetment, reservoir, holding basin, control gate, breakwater, or other structure for the protection of

any outlet, or for the storage or control of water.

- The removal of obstructions such as silt bars, log jams, debris, and drift from any ditch, drain, watercourse, floodway, river, creek, or run.
- The vacating of a ditch or drain.

SINGLE COUNTY PETITION PROCEDURES

Summary of steps necessary to make improvements:

1. A petition is filed by an owner or a public body.
2. The proposed improvement is viewed by the Board of Commissioners, the County Engineer, and other interested parties.
3. The 1st Hearing is held, and the County Engineer files a preliminary report which includes a statement of opinion as to whether benefits from the project are likely to exceed the estimated cost.
4. The County Engineer makes surveys, plans, and specifications for the improvements; prepares a schedule of assessments of benefits and damages; and files this information with the Clerk of the Board of County Commissioners.
5. The Final Hearing is held. Any exceptions to the Engineer's schedules of benefits and damages must be filed on or before the date of the Final Hearing. The Board hears evidence, amends, corrects, and approves assessments, or orders the Engineer to let contracts for construction.

6. The Engineer receives bids at the time fixed, if no appeal has been taken to the Court of Common Pleas.
7. Upon completion of the contracts, the assessments are adjusted pro rata from the estimated to the final cost, plus the maintenance for one year, is levied upon each parcel of land as stated in the schedules.
8. The improvement is maintained by the County with funds obtained by an annual assessment upon the benefited lands.

Who may petition?

Any benefiting owner(s) may file a petition with the Board of County Commissioners to begin the legal steps necessary to finance, construct, and maintain an improvement.

“Owner” means any owner of and right, title, estate, or interest in or to any real property. “Owner” also includes any public corporation and the director of any department, office, or institution of the state affected by an improvement, not owning any right, title, estate, or interest in or to any real property.

Filing the petition

Petitions are filed with the Clerk of the Board of County Commissioners. The petition must state that the construction of the improvement is necessary and will be conducive to the public welfare. It also must state the nature and location of the work petitioned for. It must contain a list of the names and addresses, where known, of all the owners of the land which the petitioner or County Engineer claims will be

benefited or damaged by the construction of the proposed improvement. The petition must be signed by one or more owners as petitioners.

A \$500 bond plus \$2 for each parcel of land in excess of 200 as listed in the petition as being benefited must be filed with the petition. The bond is released 21 days after the 1st Hearing or at the termination of any appeal; however, if the petition is dismissed, the bond is used to pay the cost of notices and any other incidental expenses, and it may be used to pay the cost of the preliminary engineering report.

Some counties may have specific forms already prepared for the petition and bond.

The View

The date, hour, and place where the View will start must be set by the Board of County Commissioners. The date shall be no less than 25 and not more than 90 days after the date on which the petition was filed.

The Clerk will prepare and mail notices to all owners of legal record affected by a petition at least 20 days prior to the date set for the View. The notices are marked “Legal Notice”, and must contain the date, hour, and place of the View and the content of the petition. These notices are often sent via certified mail. The same is also required to be advertised in at least one newspaper of general circulation in the area affected by the proposed improvement.

The View gives the County Commissioners and the County Engineer an opportunity to gather field information about the proposed improvement. Also, any owner may present proof of how they will be affected by the proposed improvement.

The 1st Hearing

The date and hour of the 1st Hearing will be given on the notice announcing the View. The date shall be not fewer than 10 nor more than 90 days following the date of the View.

At the 1st Hearing, the County Engineer must file a preliminary report including an estimate of cost, comments on feasibility of the project, and a statement of opinion as to whether benefits from the project are likely to exceed the cost.

The Board of Commissioners shall hear any evidence offered by any owner for or against the granting of the proposed improvement, or for or against any proposed changes in the improvement. No change shall be made in the nature of work proposed after the 1st Hearing, except upon application of an interested owner affected by the proposed improvement, and upon notice given to all owners affected by such change.

The Board of Commissioners is directed by law to consider the following in making a decision to grant or deny the prayer of the petition:

- Is the improvement necessary?
- Is the improvement conducive to the public welfare?
- Is it reasonably certain that the benefits of the improvement will exceed the costs?

The law also directs the Board of Commissioners to give consideration to the protection of environmentally significant areas when making the decision to grant the petition.

Any owner who is affected by the dismissal of a petition may appeal to the court of common pleas of the county in which said petition was filed.

Plans and Benefits

The County Engineer is responsible for making surveys, developing plans, and estimating the cost of construction. Bridges and culverts are evaluated. The cost of construction includes the actual cost to build the project, the cost of rights-of-way, the cost of engineering, and the cost of notices, publication, and other incidental expenses.

Plans are reviewed by the Director of the Ohio Department of Natural Resources, the Ohio Department of Transportation (where a state highway is affected), and the board of directors of any conservancy district within which part of the lands or streams affected by the proposal may lie. The County Engineer shall also estimate the benefits accruing to public corporations, and department, office, or institution of the state of Ohio, and to private landowners.

In determining the estimated drainage assessments for a parcel, the Engineer shall give primary consideration to the potential increase in productivity that the parcel may experience as a result of the improvement and shall also give consideration to the quantity of drainage contributed, the relative location of the property to the project, the portion of the project through which the drainage from the parcel flows, the value of the project to the watershed, and benefits as defined below.

“Benefit” or “benefits” means advantages to land and owners, to public corporations as entities, and to the state of Ohio, resulting from drainage,

conservation, control and management of water, and environmental, wildlife, and recreational improvements. Factors relevant to whether such advantages result include:

- The watershed or entire land drained or affected by the improvement.
- The total volume of water draining into or through the improvement, and the amount of water contributed by each parcel.
- The use to be made of the improvement by any owner, public corporation, or the state of Ohio.

Also, benefits include any or all of the following factors:

- Elimination or reduction of damage from flood.
- Removal of water conditions that jeopardize the public health, safety, or welfare.
- Increased value of land resulting from the improvement.
- Use of water for irrigation, storage, regulation of stream flow, soil conservation, water supply, or any other purpose incidental thereto.
- Providing an outlet for the accelerated runoff from artificial drainage whenever the stream, watercourse, channel, or ditch under improvement is called upon to discharge functions for which it was not designed by nature; it being the legislative intent that uplands which have

been removed from their natural state by deforestation, cultivation, artificial drainage, urban development, or other man-made causes shall be considered as benefited by an improvement required to dispose of the accelerated flow of water from said uplands.

The County Engineer must estimate the value of land or other property necessary to be taken and the damages to be sustained by any owner as a result of the construction of the proposed improvement and subsequent maintenance of such improvement.

The Final Hearing

Upon the filing by the County Engineer of the reports and schedules, the Board of Commissioners must fix a date not less than 25 and not more than 90 days thereafter for the Final Hearing. The Clerk of the County Commissioners must give notice of the hearing, as for the 1st Hearing. The notice must include the date of the Final Hearing on the report of the Engineer, the assessment or the estimated damages, if any, and compensation for any land or other property necessary to be taken. It must also include that any claims for compensation or damages must be filed with the Clerk on or before the date fixed for the Final Hearing.

At the Final Hearing the Board of Commissioners will hear all evidence offered and consider all schedules and reports filed by the County Engineer. It will reaffirm its former order granting the petition or it shall set aside the former order and dismiss the petition.

If the petition is dismissed at the Final Hearing, all costs in said proceedings, including the cost made by the engineer in making surveys, reports,

and schedules, may be distributed to the benefiting owners or they may be paid from county funds. The petition, or any owner in favor of the improvement, may appeal within 21 days to the court of common pleas from such order of dismissal.

The Board of Commissioners, as part of an order to grant, or approve, the petition, must confirm or perfect the schedule of assessments and damages, determine when the assessments are to be paid, and whether bonds are to be issued. Also, they will order the County Engineer to let the contracts.

Assessments

Assessments are levied on each parcel of land benefited, to pay the cost of construction and maintenance of improvements. These assessments are paid in semi-annual installments as taxes are paid. The Board of Commissioners may set any period not to exceed 15 years for the repayment of assessments.

Any owner may pay the estimated assessment on his land in cash within 30 days after the Final Hearing without paying any interest. Notice of intent to pay in cash must be given within 21 days after the Final Hearing.

If an assessment is \$25 or less, or whenever the unpaid balance of any such assessment is \$25 or less, the same will be paid in full, and not in installments, at the time the first or next installment would otherwise be due.

Upon completion of the improvement, the assessments are reduced pro rata by the difference between the estimated cost and the final cost. The assessment will include the cost of location, engineering, compensation, damages,

contingency, and the assessment for maintenance for one year. The minimum assessment for construction is \$10 and the minimum assessment for maintenance is \$2.

The original schedule of benefit assessments upon owners must be maintained by the County Auditor as the permanent base for maintenance assessments.

Maintenance assessments will be made as needed by the Board of Commissioners upon substantial completion of an improvement, and in each year thereafter. Assessments will be placed on the next succeeding tax duplicate and paid as other special assessments are collected and paid.

Such maintenance assessments are to represent a percentage of the estimated benefits as estimated by the Engineer and found adequate by the Board of Commissioners. No maintenance fund may have an unencumbered balance exceeding 20% of the construction costs.

After six such annual maintenance fund assessments have been made upon the owners benefiting from an improvement, the Board of Commissioners must review the permanent base for maintenance fund assessments and may increase or decrease the respective benefit apportionments in accordance with the changes in benefits that have occurred during the intervening six years. When changes are made, the owners will be notified, and a hearing will be held. This review will be conducted at six-year intervals thereafter.

Owners along a drainage improvement may form an advisory committee for the purpose of notifying the County Engineer of needed repair and maintenance work.

Appeals

Any owner opposed to the dismissal or granting of the petition, or any owner opposed to further proceedings in the improvement, or any owner who claims that the assessment levied against a property is excessive or not in proportion to the benefits, may take an appeal to the court of common pleas. The minimum appeal bond is \$500 plus \$2 for each parcel over 200.

Construction

If no appeal has been taken to the court of common pleas, the Engineer must proceed to receive bids, determine the successful bidder, and enter into contract for the construction of the improvement. If appeals have been taken to the court, they must be settled before construction can begin.

Maintenance

The Board of Commissioners must establish and maintain a fund for the repair, upkeep, and permanent maintenance of each improvement constructed under the provisions of the drainage laws.

The County Engineer has general charge and supervision of the repair and maintenance. The Engineer must make an inspection of the drainage improvements annually, and on or before the first day of June, in each year, must report to the Board of Commissioners the condition of said drainage improvements and an estimate of the probable amount of funds required to repair and maintain them.

Persons who perform maintenance may go upon land abutting or adjoining drainage

improvements as necessary. In the case of open ditches, the area used must be not more than 25 feet from the top of the bank, except in an emergency up to 75 feet may be used. For closed ditches (tile or pipe), not more than 80 feet centered on the ditch may be used.

When performance of maintenance requires the damage of existing crops beyond the permanently established sod or seeded strip, the owner of the crops shall be granted damages equal to market value, to be paid from the permanent maintenance fund established for the improvement.

Any owner may make application for reduction in their maintenance assessment due to work they propose on any portion of an improvement. Such application must be filed with the County Engineer on or before the first day of May, and must state the nature of the work to be done. The County Engineer must recommend the percent reduction of maintenance assessment, if any, to be granted. The Board of Commissioners must either confirm or reject the allowances recommended the Engineer.

The Board of Commissioners may grant to any owner a reduction of not more than 50% of their annual maintenance assessment if such owner has filed with the County Engineer a certificate of the Board of Supervisors of the Soil and Water Conservation District of the county in which the land is located, certifying that they are following practices in the cultivation or management of agricultural land that will reduce the runoff of surface water and the erosion of sediment and silt into drainage channels. Such certificate will remain in effect until cancelled by the Board of Commissioners. The County Engineer will have the right to inspect the premises of any owner claiming assessment reduction due to soil and water conservation and to ask the Soil and Water

Conservation District for review of any certificate on file.

If the cleaning out or repair of an improvement is made necessary in whole or in part by the negligent acts or the omissions of any owner, the Board of Commissioners, after a hearing in accordance with provisions of the law, may add to the maintenance assessment of such negligent owner an additional repair assessment in an amount sufficient to rectify the damage.

MULTI-COUNTY PROCEDURE

The primary difference between making improvements in one and in two or more counties is in the group that conducts the proceedings. The procedure for the owner is essentially the same.

The petition for an improvement that is proposed to be located in, or benefits or damages land in, two or more counties must be filed with the Clerk of the Board of Commissioners of the county with the majority of the actual proposed improvements.

The proceedings are conducted by a Joint Board of County Commissioners consisting of the member of the boards of the several counties. One member of the Joint Board is elected president. The Clerk of the Board of Commissioners where the petition is filed acts as clerk of the Joint Board.

A majority of the Joint Board constitutes a quorum. All decisions of the Joint Board require a vote of a majority of the county commissioners on the Joint Board.

The Director of the Ohio Department of Natural Resources is an ex-officio member of the Joint

Board. The Director may attend in person or through a designated representative, they may vote only in the case of a tie.

The Clerk of the Joint Board calls a meeting of the Joint Board within 30 days after the petition is filed. The meeting is held in the county in which the petition is filed.

The Joint Board designates the Engineer of the county with the majority of the improvement to do the field work necessary to plan the improvement. The Engineer of each county interested must assist in making the reports and schedules, and must sign and approve them.

All applications, remonstrances, claims for compensation or damage, reports, schedules, certificates, statements, contracts, bonds, and other papers must be filed with the Clerk of the Joint Board.

NOTE

This publication outlines the main provisions of the Ohio Drainage Laws Petition Procedure. It is not intended to be a complete transcript of Ohio Revised Code Sections 6131, 6133, and 6137. In specific cases, direct reference should be made to Ohio Revised Code Sections 6131, 6133, and 6137. In many instances, the assistance of a qualified attorney may be necessary.

REFERENCES

The Ohio Drainage Laws Petition Procedure: Bulletin #428, The Ohio State University Cooperative Extension Service, Nolte, Byron H. April 1981.

Ohio Revised Code, Sections 6131, 6133, 6137

