

The Ohio Drainage Laws Petition Procedures ORC 6131/6137

DELAWARE SOIL & WATER CONSERVATION DISTRICT
DELAWARE COUNTY ENGINEER'S OFFICE

Contact Information

Bret Bacon

Resource Conservation Program Coordinator

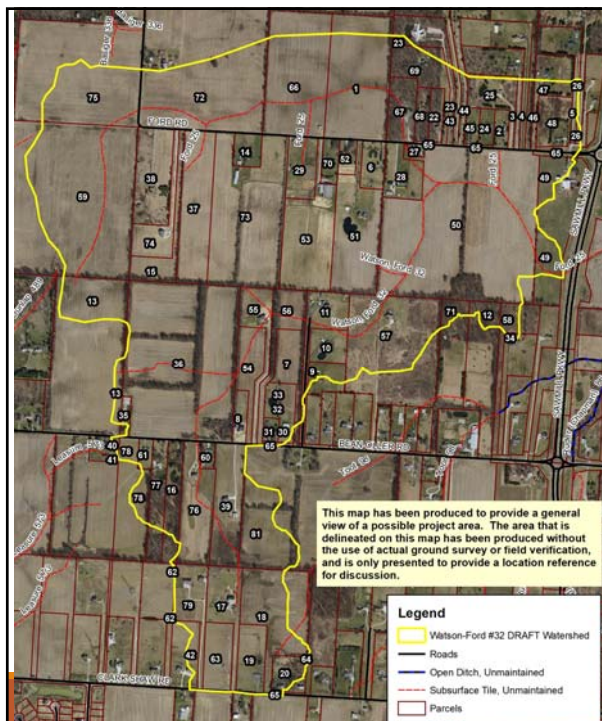
Delaware Soil & Water Conservation District

740-368-1921

bbacon@co.delaware.oh.us

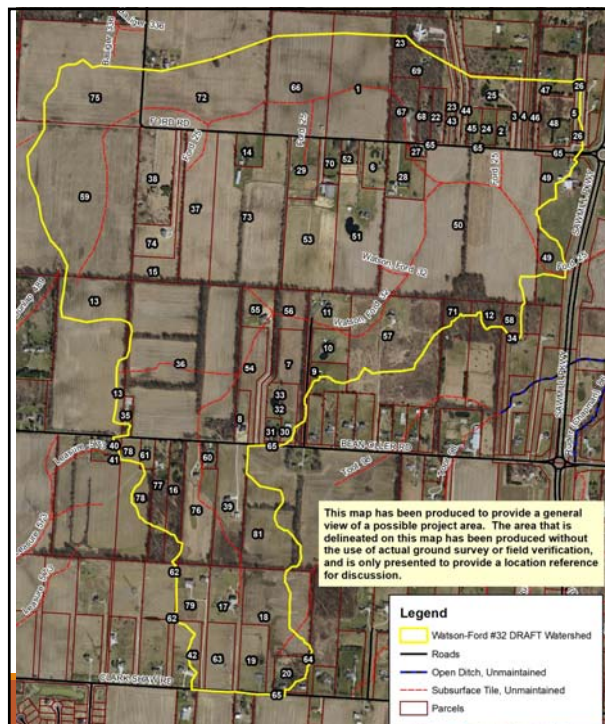
Why are we here?

- Landowners contacted SWCD seeking assistance with solving drainage problems
- The likely solution to the known drainage problems would require work on more than just a single property
- No project has been proposed and any potential scope is not known at this time
- This meeting is strictly informational in nature



Watson-Ford #25 Watershed

- Watershed area = 521 acres
- Work has been performed on various parts of the system in 1873, 1874, 1885, 1900, and 1915
- No comprehensive maintenance on any part of the drainage system



Watson-Ford #25 Watershed

- Watershed area determined by remote sensing and GIS tools
- Not surveyed or ground-truthed
- Watershed verification is part of the engineering process

What are the options for addressing drainage problems?

1. Landowners work together on a cooperative basis to enact a solution.
2. File a civil lawsuit
 - Usually only to recover damages from negligence
 - Neglect is not usually considered negligence
 - Wouldn't necessarily be a fix for a problem
3. Utilize the ORC 6131 petition procedure

What are the options for addressing drainage problems?

- The State of Ohio treats drainage as a civil matter between private landowners – Precedent case law governs, No “Drainage Police”
- To solve a drainage problem requires:
 1. Access
 2. Funding Source

What are the options for addressing drainage problems?

- ORC 6131 and its companion statutes are the only sections within the Revised Code that speak to drainage on private property
- It is the only section of Ohio law that gives any unit of government the authority to undertake drainage projects to benefit private properties
- It provides the Access and the Funding

ORC Chapter 6131

- Commonly known as the County Ditch Petition Law
- Intended for multi-property, watershed scale drainage improvements
- Provides a means for all landowners receiving benefits from a drainage improvement project to share in the construction and maintenance costs of the project
- There are separate sections that address multi-county and multi-state projects

ORC 6131: What improvements may be requested?

- Construction, reconstruction, or any change in the course, location, or terminus of any ditch, drain, subsurface drain, watercourse, or floodway
- The removal of obstructions such as silt bars, log jams, debris, and drift from any ditch, drain, watercourse, floodway, river, creek, or run

ORC 6131: What cannot be requested?

- Breaking watershed
- Punitive actions
- Parcel-specific improvements
- Making a jurisdictional stream straighter-deeper-wider (but we can do logjam removal)


ORC 6131: Single County Petition Procedures

1. Petition filed by landowners or public body
2. View
3. 1st Hearing
4. Preparation of plans and assessment schedule
5. 2nd Hearing
6. Bidding & Construction
7. Levying of Assessments
8. Maintenance

ORC 6131: Filing the Petition

- Filed with the Clerk of the Board of County Commissioners
- Requires a \$500 bond (plus \$2 for every parcel over 200 parcels), can be split between landowners
- May be amended up until the close of the 1st Hearing
- Consultation with SWCD and County Engineer recommended prior to filing any petition
- The petition request is a big factor in setting the scope of a project

Form A Page 1



Delaware County Ditch Petition
ORC 6131.04; 6133.02, 03

Single County }
Joint County }

RECEIVED
MAY 15 PM 1:05
MAY 8, 2018

Petitioner(s) _____ Date _____

To the Board of County Commissioners of Delaware County, Ohio:

The undersigned hereby petition your honorable body to: (Locate, close, remove obstructions from, construct, reconstruct, straighten, deepen, widen, alter, box, tile, etc. ORC Section 6131.04)

on the course hereinafter set forth.

The Construction of the improvement is necessary, will benefit the petitioner(s), and will be conducive to the public welfare.

The following is the course and termini of said proposed improvement, to wit:

Commencing
in Delaware County, Brown & Berlin Twp within English 346 Watershed and generally following, but not limited to the course and termini of the existing improvement.

All cost of engineering, construction, and future maintenance will be assessed to the benefiting parcels of land, except as ordered, under Section 6131.31 of the Revised Code.

Form A Page 2

The following is the nature of the work petitioned for:

To generally improve the drainage, both surface and subsurface, to a good and sufficient outlet, by replacing, repairing or altering the existing improvements as required and/or creating new surface and subsurface drainage mains or laterals as requested, by this petition.

A list of the names and addresses, where known, of all the owners of the land which the petitioner or the County Engineer claims will be benefited or damaged by the construction of the proposed improvement is as follows:

(See Attached Sheet)

Service of notice of the filing of the Petition shall be obtained by (Here insert "mailing notices and publication as provided in Sec. 6131.07 R. C.)

(See Attached Sheet)

Petitioners

Name/	Address
<input type="checkbox"/>	Valley S. 211 5th St. Delaware OH 43015
<input type="checkbox"/>	W. 111 5th St. Delaware OH 43015
<input type="checkbox"/>	Brown & Berlin Pk Delaware OH 43015
<input type="checkbox"/>	St. Rt. 37 E Delaware OH 43015
<input type="checkbox"/>	St. Rt. 37 E Delaware OH 43015
<input type="checkbox"/>	Sweeney rd Delaware OH 43015
<input type="checkbox"/>	St. Rt. 37 E Delaware OH 43015
<input type="checkbox"/>	St. Rt. 37 Delaware OH 43015

ORC 6131: Petition Scope

- Landowners set the upstream extent of a petition project, engineering sets the downstream extent
- Only by signing the petition can a landowner specifically request for the improvement to be brought to their property
- Signing the petition as a show of support is permitted
- Signing the petition does not obligate you to testify in favor of the petition if you change your mind

ORC 6131: Petition Filed

- Commissioners formally accept the petition
- View is scheduled not less than 25 nor more than 90 days after the date the petition is filed
- 1st Hearing is scheduled not less than 10 nor more than 90 days following the View
- Notices are sent via certified mail and official legal notice placed in the Delaware Gazette
- Notices are sent to address on record with County Auditor

ORC 6131: View

- View allows Commissioners, Engineers, and interested land owners to gather field information on the project
- Typically is held somewhere in the project area, but has been done by drone video as well
- Is considered a formal meeting of the Commissioners
- Questions can be asked but no testimony is taken
- Landowners are permitted to point out specific points of interest

ORC 6131: 1st Hearing

- County Engineer files a preliminary report which includes a cost estimate, statement of feasibility, and general cost/benefit analysis
- Testimony is taken by those both for and against the petition
- Commissioners vote to approve or dismiss the petition

ORC 6131: 1st Hearing

- Bond is returned if the project is approved at the 1st Hearing
- No changes may be made to the petition or the scope of a project after the 1st Hearing – Landowners have until the close of the hearing to add their name to the petition or amend the petition request

ORC 6131: Preparation of Plans

- County Engineer, or their representative (SWCD), surveys and develops plans and cost estimates for the project
- Engineering done per specifications of the USDA Natural Resources Conservation Service and the Ohio Department of Transportation
- Petition request determines the upstream extent of a project, engineering standards determine the downstream extent
- Goal is to develop the “Best, Least-cost solution” that meets the request of the petition

ORC 6131: Preparation of Plans

- Watershed is looked at in more detail as part of survey and design
- Important for proper engineering as well as schedule of assessments
- We use all and any available sources of data including consultation with landowners

ORC 6131: Schedule of Assessments

- Each parcel in the watershed is assessed a portion of the cost of constructing and maintaining the proposed improvement
- Determined on a parcel-specific basis
- Only assessed for improvement which is downstream
- All parcels assessed including rights-of-way, those owned by local or state government, utilities, schools, churches, etc.
- Parcels assessed for the amount of benefit that will be received from the project

ORC 6131: Benefits

- “advantages to land and owners,...,resulting from drainage, conservation, control and management of water, and environmental, wildlife, and recreational improvements.”
- “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 the uplands.”

ORC 6131: Benefits

According to the Ohio Revised Code

BENEFIT = USE

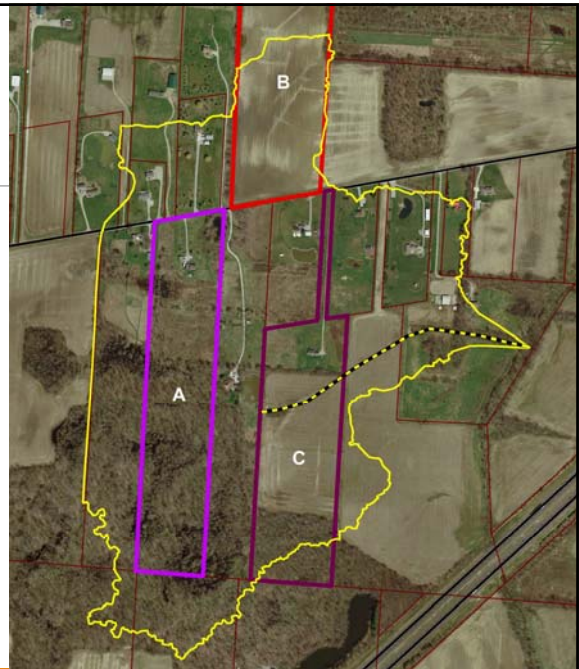
Delaware County Model for Assessments

- ORC does not specify the methodology for calculating assessments
- Delaware County uses a 4-factor method widely used throughout the state
- Acres Benefited, Land Use, Percent Use, Remoteness

- Factors applied on a parcel-specific basis

Delaware County Model: Acres Benefited

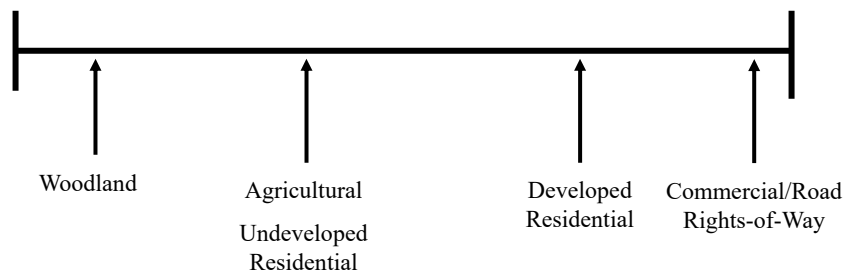
- Parcel A: 24 Ac, all in the watershed
- Parcel B: 25 Ac, but only 12 in the watershed
- Parcel C: 22 Ac, 20 of which are in the watershed



Delaware County Model: Land Use

Least Benefit

Most Benefit



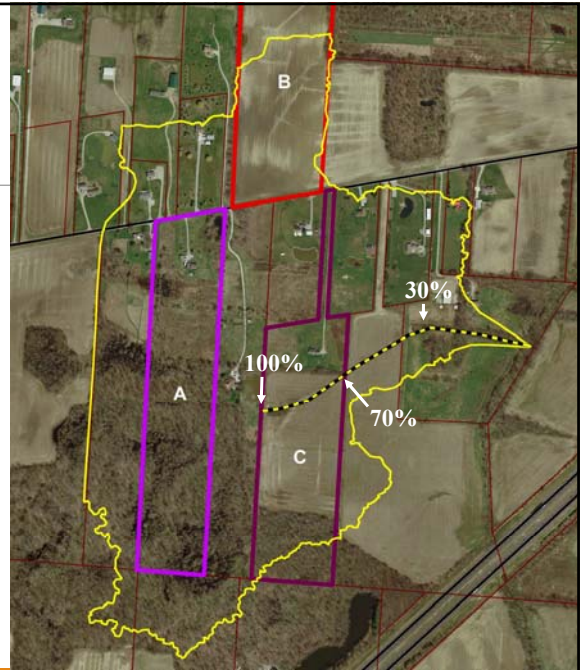
Delaware County Model: Land Use

- Parcel C: 20 Ac benefited
- 5 Acres Homesite
 - 1 Ac Developed Residential
 - 4 Ac Undeveloped Residential
- 11 Acres Agricultural
- 4 Acres Woods



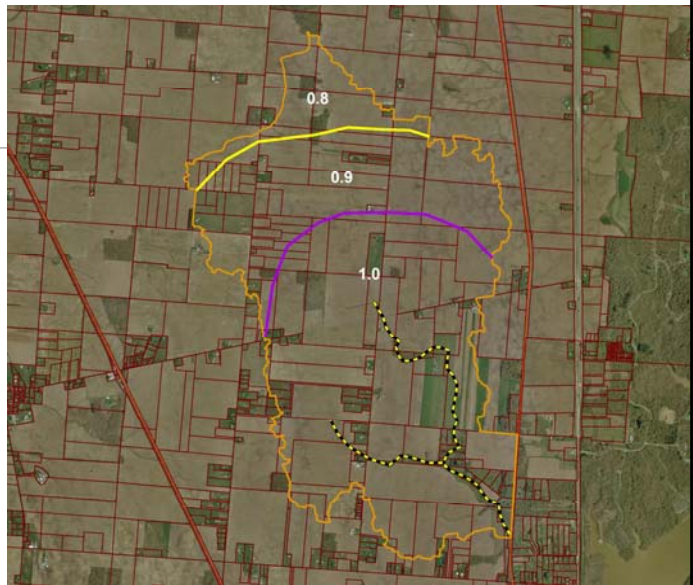
Delaware County Model: % Use

- Parcel A uses 100% of the improvement
- Parcel C uses 70% based on their downstream property line
- Parcel B's drainage enters further downstream thus it only uses 30% of the total improvement



Delaware County Model: Remoteness Factor

- Gives a reduction in assessments for parcels located further away from the constructed improvement
 - Assigned in ½ mile increments
- 0 – 0.5 miles: Remote = 1.0
 0.5 – 1.0 miles: Remote = 0.9
 1.0 – 1.5 miles: Remote = 0.8



Delaware County Model: Assessment Formula

Acres Benefited x Landuse Factor x % Use x Remote Factor =
Parcel Assessment Factor

Parcel Assessment Factor / Total of Assessment Factors = % Share

Parcel Assessment = % Share x Total Cost

ORC 6131: 2nd (Final) Hearing

- Commissioners hear all information, plans, and reports submitted by the County Engineer
- Testimony is again taken from those both for and against the project
- Commissioners vote to either approve the proposed improvement, including the project plans and schedule of assessments, or to set aside their original order and dismiss the petition
- Commissioners are the “judge and jury” – there is no vote taken among the land owners

ORC 6131: 2nd Hearing

Commissioners decision is based on 3 factors specified in the ORC:

- Is the project necessary?
 - (Is it needed, can it be solved without the petition process?)
- Is the project conducive to the public welfare?
 - (Is there a community benefit to be accomplished by improving the drainage)
- Do the benefits of the project outweigh the costs?

ORC 6131: Appeals

- Any owner opposed to the dismissal of the petition at the 1st or to the approval or dismissal at the Final Hearing may appeal the decision of the Commissioners to the Court of Common Pleas
- An attorney is often employed for an appeal

ORC 6131: Bidding & Construction

- County Engineer advertises for public bid
- Contract awarded to lowest and best bid
- County Engineer, or their representative (SWCD) supervises the construction of the project to certify that it is being completed according to the approved plans and specifications

ORC 6131: Bidding & Construction

- Bids cannot be accepted in excess of 2nd Hearing estimate
- Projects are not typically subject to prevailing wage
- Upon completion, the approved schedule of assessments is reduced pro rata by the difference between the estimated and actual cost
- Projects are not allowed, by law, to exceed the estimate presented at the 2nd Hearing

ORC 6131: Paying Assessments

- Can be paid in full up-front within 30 days of the 2nd Hearing
- Commissioners can extend payments up to 15 years – typically the repayment period in Delaware County is 8 years
- If they choose to bond, interest, financing fees, and Auditor/Treasurer collection fees are applied to any assessment not paid up-front

ORC 6131: Paying Assessments

- Why the 30-day period to pay upfront?
 1. It's what the law tells us to do.
 2. Allows the Commissioners to know the amount of Bond or General Funds needed to build the project.

ORC 6137: Drainage Maintenance

- ORC 6137 enacted in 1957
- All projects completed under ORC 6131 are placed on the County's Drainage Maintenance program following completion and easements for maintenance are created by Commissioners' resolution and recorded
- County Engineer has general charge and supervision of the Maintenance program
- Maintenance assessments are levied annually and are based on the final schedule of assessments for the constructed project – generally 3-5% of construction assessment

ORC 6137: Drainage Maintenance

- Maintenance funds are project-specific
- All projects on Drainage Maintenance are inspected annually (or more frequently if needed)
- Land owners may make requests to the Drainage Maintenance Program
- SWCD handles design, construction, and maintenance in partnership with the County Commissioners and County Engineer
- Purpose of Drainage Maintenance is to keep the project operating at its original design capacity

ORC 6131/6137: Summary

- No petition request has been made at this point
- A cost estimate of a potential project cannot be made yet
- The petition process is entirely landowner-driven and landowner-funded
- One signature and the \$500 bond is required to initiate the petition process
- Public participation is needed and encouraged throughout the process

ORC 6131/6137: Summary

- Signing the petition allows for improvements to be designed to a property
- Signing the petition does not obligate you to testify for a petition nor prohibit you from testifying against a petition
- All parcels are assessed regardless of whether they have signed the petition
- SWCD/County Engineer will not advocate for or against a project

ORC 6131/6137: Summary

How long does the process take?

- It depends on the complexity of the project, but on average 2-3 years
- Typically 6 months from the time a petition is filed to the 1st Hearing
- Engineering averages 2 years based on workload
- Petitions are generally addressed on a first-come, first-served basis

ORC 6131/6137: QUESTIONS?

This presentation has outlined the main provisions of the Ohio Drainage Laws Petition Procedure. It is not intended to be a complete transcript of Ohio Revised Code 6131 or 6137. In specific cases, direct reference should be made to ORC 6131, 6133, 6135, and 6137. In many instances, the assistance of a qualified attorney may be necessary.

Sources:

The Ohio Drainage Laws Petition Procedure: Bulletin #428, The Ohio State University Cooperative Extension Service, Nolte, Byron H., Revised April 1985.

Ohio Revised Code, Sections 6131, 6133 and 6137