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MEMORANDUM

TO: Cheryl Musgrave
Vanderburgh County Commissioner

FROM: Craig R. Emig

DATE: July 12, 2023

RE: Vanderburgh County - Surveyor - Drainage
Our Client No. 2019.014-001

1. Can the individual counties have separate per parcel/acreage rates?

YES, w/ conditions

IC 14-30.5-5-1 Annual special assessments imposed within designated watershed; maximum amounts or lower amounts; alternative methods of financial support

...

(b) Except as provided in subsections (c) and (d), a watershed development commission may impose in the designated watershed in each calendar year an annual special assessment against each taxable parcel of real property that is located in the county and within any part of the commission's designated watershed, as follows:

- (1) For a residential parcel of real property, seven dollars (\$7).
- (2) For an agricultural parcel of real property, the product of:
 - (A) one dollar (\$1); multiplied by
 - (B) the number of acres in the parcel.

(3) For a commercial parcel of real property on which no structures are situated, the product of:

(A) two dollars (\$2); multiplied by

(B) the number of acres in the parcel.

(4) For a commercial parcel of real property on which at least one (1) structure is situated, fifty dollars (\$50).

(5) For an industrial or public utility parcel of real property, three hundred sixty dollars (\$360).

(c) The amounts of the special assessment set forth in subsection (b) are maximum amounts. The annual special assessment that may be imposed in a calendar year against each taxable parcel of real property that is located in the county and within the watershed development commission's designated watershed may be set by the board of the watershed development commission at amounts lower than those set forth in subsection (b). If the board of a commission determines that the anticipated financial needs of the commission in the approaching calendar year do not require the full amount of revenue that would be generated by the special assessment at the amounts set forth in subsection (b), the board, before the first of the public informational meetings held under section 2 of this chapter, may adopt a resolution providing that the special assessment for the approaching calendar year for each class of property described in subsection (b)(1) through (b)(5) will be equal to the amount set forth in subsection (b)(1) through (b)(5) for the class of property, reduced by a percentage determined by the board. The same percentage shall be used to reduce all of the assessment amounts set forth in subsection (b)(1) through (b)(5). The board shall set the reduction percentage so as to produce revenue expected to be sufficient to meet the anticipated financial needs of the watershed development commission in the approaching calendar year.

(d) The taxable parcels of real property located in a county are not subject to the special assessment imposed by subsection (b) or (c) if the fiscal body of the county adopts a resolution opting to implement one (1) of the following methods of supporting the watershed development commission:

(1) The county may pay direct support to the watershed development commission from any resources available to the county. Direct support paid under this subdivision in a calendar year must equal at least ninety percent (90%) of the total amount that would otherwise be due in the annual special assessment against taxable parcels of real property in the county under subsection (b) or (c).

(2) The county may:

(A) impose a special assessment against one (1) or more of the classes of property to which subsection (b)(1) through (b)(5) would otherwise apply that is less than the special assessment that would otherwise apply to the class or classes of property under subsection (b) or (c);

(B) consider the factors listed in IC 36-9-27-112(a) in preparing the allocation of special assessments under clause (A) to be imposed on each property within a class of property to which subsection

(b)(1) through (b)(5) would otherwise apply, and use any methods authorized by IC 36-9-27-112(b) to make determinations related to those factors; and

(C) supplement the special assessments imposed under clause (A) by paying direct support to the watershed development commission from any resources available to the county;

if the total of the special assessment imposed under clause (A) and the direct support paid under clause (C) in a calendar year at least equals the total amount that would otherwise be due in the annual special assessment against taxable parcels of real property in the county under subsection (b) or (c).

(3) The county may impose a schedule of special assessments under which:

(A) a special assessment for one (1) or more of the classes of property described in subsection (b)(1) through (b)(5) is greater than the special assessment that would otherwise apply to the class or classes of property under subsection (b) or (c);

(B) the county may consider the factors listed in IC 36-9-27-112(a) in preparing the allocation of special assessments under clause (A) to be imposed on each property within a class of property to which subsection (b)(1) through (b)(5) would otherwise apply, and use any methods authorized by IC 36-9-27-112(b) to make determinations related to those factors; and

(C) the total amount of revenue in the calendar year from the special assessment imposed under clause (A) is greater than the total amount of revenue that would otherwise be produced by the annual special assessment against taxable parcels of real property in the county under subsection (b) or (c).

(e) Payments of direct support under subsection (d)(1) are due at the same time that special assessments would otherwise be paid to the watershed development commission under section 3(e) of this chapter.

2. Can one county charge and the others not charge?

NO.

3. Can the Commission allow individual counties to keep their funds generated?

NO.

IC 14-30.5-5-4 Procedure if county fails to pay special assessments or direct support

(a) If:

(1) a county fails to pay direct support or special assessments to the watershed development commission when due under section 1(e) or 3(e) of this chapter; and

(2) more than thirty (30) days have elapsed since the due date;

the watershed development commission shall notify the auditor of state of the county's failure to pay and the amount due from the county. The commission may request that the auditor of state pay the amount due from local income taxes otherwise distributable to the county under IC 6-3.6. The auditor of state shall immediately contact the county auditor and the commission to confirm whether the county is unable to make the required payment. Upon confirming the county's inability to make the payment, the auditor of state shall deduct the amount due from the next distribution of local income taxes allocated to the county under IC 6-3.6.

(b) This section shall be interpreted liberally to ensure that the obligations of the watershed development commission are paid to the extent legally valid. However, this section does not create a debt of the state.

4. Can each county adopt its own per parcel or acreage standard?

NO

(b) Except as provided in subsections (c) and (d), a watershed development commission may impose in the designated watershed in each calendar year an annual special assessment against each taxable parcel of real property that is located in the county and within any part of the commission's designated watershed, as follows:

- (1) For a residential parcel of real property, seven dollars (\$7).
- (2) For an agricultural parcel of real property, the product of:
 - (A) one dollar (\$1); multiplied by
 - (B) the number of acres in the parcel.
- (3) For a commercial parcel of real property on which no structures are situated, the product of:
 - (A) two dollars (\$2); multiplied by
 - (B) the number of acres in the parcel.
- (4) For a commercial parcel of real property on which at least one (1) structure is situated, fifty dollars (\$50).
- (5) For an industrial or public utility parcel of real property, three hundred sixty dollars (\$360).

(c) The amounts of the special assessment set forth in subsection (b) are maximum amounts. The annual special assessment that may be imposed in a calendar year against each taxable parcel of real property that is located in the county and within the watershed development commission's designated watershed may be set by the board of the watershed development commission at amounts lower than those set forth in subsection (b). If the board of a commission determines that the anticipated financial needs of the commission in the approaching calendar year do not require the full amount of revenue that would be generated by the special assessment at the amounts set forth in subsection (b), the board, before the first of the public informational meetings held under section 2 of this chapter, may adopt a resolution providing that the

special assessment for the approaching calendar year for each class of property described in subsection (b)(1) through (b)(5) will be equal to the amount set forth in subsection (b)(1) through (b)(5) for the class of property, reduced by a percentage determined by the board. The same percentage shall be used to reduce all of the assessment amounts set forth in subsection (b)(1) through (b)(5). The board shall set the reduction percentage so as to produce revenue expected to be sufficient to meet the anticipated financial needs of the watershed development commission in the approaching calendar year.

5. How is the watershed determined now and under the new statute? (Hydrologic Unit codes?)

IC 14-30.5-1-3 "Designated watershed"

"Designated watershed" means the watershed:

- (1) within which a watershed development commission may exercise the powers conferred by this article; and
- (2) after which a watershed development commission is named under IC 14-30.5-2-3(c).

IC 14-30.5-1-8 "Surface water outlet"

"Surface water outlet" means the river, stream, lake, impoundment, or other body of water into which the water in a watershed naturally drains.

IC 14-30.5-1-10 "Watershed"

"Watershed" means the area of land from which water naturally drains into a particular surface water outlet.

IC 14-30.5-2-1 County ordinance designating county as a member of a proposed watershed development commission

...

(b) An ordinance adopted under this section must do the following:

- (1) Identify the designated watershed within which the proposed commission would exercise its powers by:
 - (A) identifying the surface water outlet of the designated watershed; and
 - (B) setting forth the geographic boundaries of the entire area, both inside and outside the county, from which water drains into the surface water outlet.
- (2) Specify the area or areas of the county that are inside the geographic boundaries of the designated watershed, as identified under subdivision (1).
- (3) Set forth the flood damage reduction, drainage, storm water management, recreation, or water infrastructure purposes for which the proposed commission would be established.

(4) State the flood damage reduction, drainage, storm water management, recreation, or water infrastructure needs of the county that would be addressed through the county's membership in the proposed commission.

6. If one county refuses/declines to participate, can the others proceed?

YES

7. Can Vanderburgh County create a Watershed on its own?

YES

IC 14-30.5-2-2 Natural resources commission decision whether to recognize proposed watershed development commission

(a) If one (1) county executive submits an ordinance and a written request for recognition of a proposed watershed development commission under section 1(c) of this chapter, the natural resources commission shall decide under subsections (c) through (e) whether to recognize the proposed commission.

...¹

(e) In deciding whether to recognize a proposed commission, the natural resources commission shall determine the answer to each of the following questions:

- (1) Are the purposes for which the proposed commission would be established, as set forth in the ordinance or ordinances under section 1(b)(3) of this chapter, within the purposes set forth in IC 14-30.5-3-1 for which a watershed development commission may be established?
- (2) Do the purposes of the proposed commission, as set forth in the ordinance or ordinances under section 1(b)(3) of this chapter, correspond to legitimate flood damage reduction, drainage, storm water management, recreation, or water infrastructure needs of each county seeking establishment of the commission, as set forth under section 1(b)(4) of this chapter?
- (3) Is it reasonable to expect that the establishment of a commission having powers under this article only in the county or counties from which the ordinance or ordinances were submitted under section 1(c)(1) of this chapter would effectively address the flood damage reduction, drainage, storm water management, recreation, or water infrastructure needs of each county that submitted an ordinance under section 1(c)(1) of this chapter?
- (4) Is it reasonable to expect that the establishment of a commission that has powers under this article only in the area or areas inside the geographic boundaries of the designated watershed would effectively address the flood damage reduction, drainage, storm water management, recreation, or water infrastructure needs of each county that submitted an ordinance under section 1(c)(1) of this chapter?
- (5) Is the territory of the proposed commission at least as large as the entirety of the same eight (8) digit U.S. Geological Survey hydrologic unit code?
- (6) Has a regional watershed study or watershed management plan been conducted in consultation with the Indiana finance authority and the department of natural resources that assesses water use, water quality,

¹ (c) & (d) pertain to public notice and hearing.

drinking water systems, wastewater management systems, storm water management, flood control, drainage management, recreational uses, natural resources, and water infrastructure needs of the watershed of the proposed commission? If so, can the establishment of the proposed commission be expected to address the needs identified in that study or management plan?

(f) If:

- (1) one (1) county's executive submits an ordinance and a request for recognition of a proposed commission under section 1(c) of this chapter; and
- (2) the natural resources commission answers all of the questions set forth in subsection (e) favorably;

the natural resources commission shall issue an order recognizing the watershed development commission and recognizing the county referred to in subdivision (1) as a member of the watershed development commission.

8. What is each county's scope of work?

IC 14-30.5-3-1 Potential purposes for establishment of watershed development commission

(a) The flood damage reduction, drainage, storm water management, recreation, and water infrastructure purposes for which a watershed development commission may be established include the following:

(1) Planning, taking, and promoting action to prevent or mitigate flooding through generally accepted structural and nonstructural means, including the following:

- (A) Bank stabilization.
- (B) Expansion of water storage capacity.
- (C) Erosion control.
- (D) Sediment reduction.
- (E) Logjam management.
- (F) Selective construction, maintenance, and removal of berms.
- (G) Construction of levees.
- (H) Bridge and structure removal and replacement.

(2) Taking and promoting action to enhance drainage in ways consistent with storm water management requirements.

(3) Taking and promoting action to address water infrastructure needs related to flood damage reduction, storm water management, recreation, and drainage.

(4) Setting voluntary water quality goals.

(b) Subject to subsection (c), the purposes for which a watershed development commission may be established, in addition to those set forth in subsection (a), may include one (1) or more purposes related to water quality within the boundaries of the designated watershed, such as:

- (1) reducing the runoff of nutrients and soil into streams and bodies of water by promoting the use of improved ditch design and the reestablishment of strategically located wetlands; and
- (2) reducing ground water contamination by promoting the use of improved septic system technology.

However, a water quality purpose, goal, or project does not convey water quality regulatory authority to a watershed development commission.

(c) A watershed development commission may not have a purpose described in subsection (b) unless:

- (1) the board of the commission, in addition to developing a flood damage reduction and drainage plan under section 4 of this chapter, develops a water quality improvement plan that:
 - (A) describes water quality problems within the boundaries of the designated watershed; and
 - (B) proposes one (1) or more actions that the watershed development commission could take to address those problems;
- (2) the board of the watershed development commission submits the water quality improvement plan to the natural resources commission; and
- (3) the natural resources commission, after:
 - (A) determining whether the water quality problems described in the water quality improvement plan truly exist within the boundaries of the watershed development commission's designated watershed; and
 - (B) considering whether it is likely that the efforts of the watershed development commission would be a practically effective and cost effective means of addressing the water quality problems;approves the commission's water quality improvement plan.

9. Can a county withdraw from the Watershed?