**SPECIAL MEETING OF THE VANDERBURGH COUNTY**

**BOARD OF COMMISSIONERS**

 **PIGEON CREEK WATERSHED DEVELOPMENT COMMISSION**

**JULY 12, 2023**

The Vanderburgh County Board of Commissioners met in special session on July 12, 2023 at 10:00 a.m. in Browning Event Room A of the Evansville-Vanderburgh County Public Library, Central Branch for the purpose of discussing the possibility of creating a Pigeon Creek Watershed Development Commission.

**Those in Attendance:**

Cheryl Musgrave, Vanderburgh County Commissioner

Ben Shoulders, Vanderburgh County Commissioner

David Jones, Vanderburgh County Attorney

Craig Emig, Assistant Vanderburgh County Attorney

Alyssa Nilssen, Vanderburgh County Commissioner-Chief Deputy

Madelyn Grayson, Vanderburgh County Commissioner Recording Secretary

Linda Freeman, Vanderburgh County Surveyor

Mike Ward, Vanderburgh County Chief Deputy Surveyor

Dan Saylor, Warrick County Commissioner

Jason Baxter, Warrick County Deputy Surveyor

Steve Sherwood, Warrick County Stormwater Director

Warren Fleetwood, Gibson County Commissioner

Scott Martin, Gibson County Surveyor

Kenneth Page, Gibson County SWCD Chairman

Siavash Beik, Christopher B. Burke Engineering-Principal Engineer

Ian Hahus, Christopher B. Burke Engineering-Water Resources Engineer

David Brenner, Vanderburgh County Farm Bureau President

Kenneth Smith, Indiana Dept. of Natural Resources-Division of Water Asst. Director

Gary Seibert, Gibson County Farmer & Retired Dept. of Agriculture

Eldon Maasberg, Vanderburgh County Farmer

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| **Summary Minutes of Meeting Discussion** |

Vanderburgh County Board of Commissioner President, Cheryl Musgrave, called the meeting to order and asked everyone to introduce themselves. It was noted that Vanderburgh County sent out the required media notice of this special meeting of the Vanderburgh County Commissioners/Drainage Board.

**Discussion of HEA 1639: Creation of Watershed Development Commissions:**

The State Legislature passed HEA 1639, which allows watersheds commissions to be created in Indiana. If this Pigeon Creek Watershed Commission (WDC) is created, it would be the first to do so in Indiana. Ken Smith of IDNR stated that there are currently no administrative rules in place for this process. Should this group choose to proceed forward they will need both legal counsel and engineering assistance. Chery Musgrave explained that the watershed would be like a legal drain, but much bigger, and defined completely by statute, and have authority of its own, even up to and including the ability to make counties pay for their assessment in it. The whole goal behind HEA 1639 is to manage, in this case, Pigeon Creek. Pigeon Creek is not a regulated drain in Vanderburgh County. Pigeon Creek is a regulated drain in both Warrick and Gibson Counties. This meeting is being held to consider contemplating forming a Pigeon Creek Watershed Development Commission, which has taxing authority, creates budgets and includes cooperation from each member county. The main question going into this meeting is, do all three counties (Vanderburgh, Warrick & Gibson) need to agree to set up this Development Commission? The answer is no, one county can set up a Watershed Development Commission. Craig Emig, Assistant Vanderburgh County Attorney gave a summary of HEA 1639. Craig Emig stated that the County Executive would pass an ordinance choosing to opt in to the Watershed Development Commission. That ordinance then goes to the Natural Resources Commission (NRC). Ken Smith of IDNR explained that the NRC is like the board of directors over the Department of Natural Resources. There is a group of administrative law judges that are employed by the NRC who help the NRC and IDNR do their work. This group of administrative law judges would review ordinances passed by the County Executives to opt into the Watershed Development Commission. Craig Emig explained that the review would include; review of the designated area of the watershed, they would be responsible for setting public hearings for any county that wants to opt in. On initial review of this new statute, Craig Emig stated, that it appears there would be an application to create & certify the watershed, and can be done by an individual county or by joint counties. There is a specific provision that states if one county qualifies and meets the standards of the NRC and another doesn’t, that leads legal to contemplate that one county could do this on their own. Once a watershed is certified and created, then if the other counties within that watershed want to join at a later time, they have to then apply to that watershed and the NRC. The other counties would not be allowed to create a new watershed, due to the fact that the original watershed would define the entire watershed and not only the watershed in that particular county. Only a county that has adopted the watershed once created and certified by the NRC would be permitted to levy a tax. Once a watershed is created, in the statute they have funding mechanisms for all taxable parcels of real property that are located in the county and within any part of the watershed. For residential parcels of property within the watershed, the maximum tax would be up to $7.00 per parcel; Ag is per acre and commercial with at least one structure on it is a maximum of $50.00 per parcel; commercial parcel with no structure the maximum tax is $2.00 per parcel; for an industrial or public utility parcel of real property the maximum is $360.00 per parcel. Steve Sherwood asked what defines a watershed? Ken Smith of IDNR defined a watershed as the entire watershed that drains through this, the HUC 8 boundaries. Linda Freeman stated that the shape file for the Pigeon Creek watershed has already been created from the Hydrologic Unit Codes (HUC). Steve Sherwood mentioned that Warrick County still operates out of a Cumulative Drain Fund and they are not in a watershed system. The County Assessors for each county would determine if a parcel is residential, agricultural, commercial or industrial. Ken Smith noted that when the NRC is looking at whether it is reasonable for a Watershed District to be created, that detail would need to be included in the application. The NRC looks at what the plan is and what are you trying to solve by creating this district and how are you going to accomplish the plan. Also, the NRC would review the plan to see if it is reasonable to effectively address the reason for which the watershed district was being created. Ken Smith of IDNR stated that this statute is similar in this fashion to the Conservancy District laws.

**Christopher B. Burke Engineering Summary of Vanderburgh County Pigeon Creek Flood Risk Management Study (2023):**

In 2023, Christopher B. Burke Engineering (CBBEL) prepared a Pigeon Creek Flood Risk Management Study for Vanderburgh County. Ian Hahus of CBBEL explained that the study was focused in Vanderburgh County, but they did observe Pigeon Creek at pretty much all of the crossings up through Warrick and Gibson Counties as well. Within Vanderburgh County as you get close to the Ohio River, Pigeon Creek is levied off and most of the flooding is kind of contained within that area. Once you get a little bit further up around like Green River Road or towards Warrick County, the creek does get out a little bit more, especially right around the county line with Warrick. Pigeon Creek is a very sinuous stream and there has been lots of historic observations of log jams and things of this nature that periodically occur and may lead to some minor localized flooding. Once CBBEL got up into Warrick County, most of Pigeon creek has been straightened, versus the historic condition, but it is not very developed, it is a lot of woods and wetlands around the stream for most of the Warrick County reach. Once CBBEL got to Gibson County, the wooded and wetland corridor kind of disappears to a certain extent, and it is managed as a regulated drain, and it is much more of an Ag ditch once you get into Gibson County. There were some stream bank instability issues contributing lots of sediment to the stream, but Gibson County has their own drainage issues with just trying to get the water off the fields so they can farm it. So, the issues are a little bit different in all of the counties, but the complaints CBBEL heard and what they observed is mostly related to agricultural areas, both at the Vanderburgh-Warrick County line and also up in Gibson County, trying to get the water off of the fields.

**CBBEL Findings of the 2023 Study in Vanderburgh County:**

Siavash Beik explained that prior to this study beginning, he expected to see a lot of problems that did not materialize in the study in Vanderburgh County. Pigeon Creek is healthy, for the most part. There are some recreational opportunities which are not currently there and could be enhanced. There could be some access to do log jam removal, but Vanderburgh County does not have the same issues as Gibson where the banks are unstable, or Warrick County which log jams affect local farm lands. CBBEL did not see huge flooding potential, but in the future as the rains are increasing, the streams are going to see more and more and this is increasing for the entire State of Indiana. This is especially true for areas near the Ohio River. There is a recent report that just came out from the First Street Foundation which talks about areas that would receive a dramatic increase in precipitation (20%-30%), and this area near the Ohio River is one of them. How this relates to the issues of Pigeon Creek is that we will see more frequent flooding, and the banks like in Gibson County are going to be hit more and may impact drainage; a possible increase in log jams. Ian Hahus added that one point specifically to Vanderburgh that CBBEL saw was the influence of the Ohio River almost damming up Pigeon Creek to a certain extent when the river is up. No matter what is done to Pigeon Creek in Vanderburgh County or elsewhere, the water just cannot get out because the river is up and that sets the outlet elevation. The creek is very flat anyway, so once the water gets in there, it is not really flushing out because it cannot get the velocity because the slope is so low. The end result of the study would be for Vanderburgh County to work with Warrick and Gibson county to try to reduce the flows upstream.

**Discussion of the Types of Flooding that is Occurring:**

Ken Smith said that it was mentioned earlier that Vanderburgh County may not have been doing as much as some of the other counties, but he disagreed with that statement. Ken Smith of IDNR stated that when he looks at what has happened over decades is that Vanderburgh County took a different path than the other counties. The upstream counties from Vanderburgh took more of the traditional path, straightening every stream and turning every stream into a winding ditch and to do stuff. Vanderburgh County took a path of let’s step back and give the streams a little bit of room. Let’s step back and leave the corridors in place that are there and where levees were built they were built a little bit back further away from the streams. Vanderburgh County gave the river room to do what the river does; to sometimes flow in the channel and sometimes put water into the overbank and keep the development away from the stream and let the stream have more of a natural setting than the straightened and dredged streams that are up north. Ken Smith also said that there are two different kinds of flooding going on in these counties. Vanderburgh gets two types of flooding (1) flooding where the Ohio River backs water up into the stream and creates flooding all of its own and limits the ability of floods to go downstream (2) when the Ohio River is down Vanderburgh County also gets the downstream flood wave of water moving through the stream. The upstream two counties (Warrick and Gibson) don’t see the Ohio River effect. They just get rainfall over the counties over the watershed, it hits the stream channel and it moves downstream. Ken Smith of IDNR stated that the kind of flooding all over the Midwest is experiencing a pattern change in rainfall in the last 30 years. The total amount of rainfall that shows up over a year’s time is increasing a little, but when we do get rainfall it is more intense rainfall events in the spring time. We are also experiencing periods of extreme droughts more often as well.

**Discussion of Flooding Issues for Gibson & Warrick Counties:**

Siavash Beik of CBBEL mentioned that the study was for Vanderburgh County and they do not really understand all of the issues happening in Gibson & Warrick Counties. CBBEL thinks that these issues need to be explored further for these two counties, what exactly are the issues that these two counties are having. Ken Smith of IDNR reiterated that a plan for all three counties be formed for the entire watershed is a great idea. A lot of problems and unintended consequences can be created for other counties when the planning is not done jointly. There is not a good understanding of the issues in Warrick & Gibson Counties and what sort of work needs to be done in these two counties. If there is not a good understanding of the issues of all three counties and the work that needs to be done in all three counties, Ken Smith does not see this process getting past the first step in order to defend the creation of the Watershed Commission to begin with.

**Discussion of Current Funding in All Three Counties:**

Cheryl Musgrave stated that part of the issues is financial. Gibson & Warrick Counties implemented legal drain procedures years ago, and they have funding to deal with the issues that their Drainage Board’s address. While they are not working in a coordinated fashion, they are at least working on their issues. Cheryl Musgrave stated that Vanderburgh County took a different path for unknown reasons and Pigeon Creek was not made a legal drain, so there is no local funding to do anything with what is a state body of water. Cheryl Musgrave also stated that Vanderburgh County does not have jurisdictional access to Pigeon Creek, nor does Vanderburgh County have physical access to Pigeon Creek. This Watershed Development Commission process gives the counties a way to create something and the ability to work in a group format if the group wants to join in. David Jones stated that something unique to Vanderburgh County and not the other two counties is that they do not have a municipality that controls the banks of parts of Pigeon Creek. Vanderburgh County has two separate governmental entities. The City of Evansville looks at Pigeon Creek as the banks along the golf course, the greenway, which is the Parks Department, as part of the Water & Sewer Utility. This Development Commission will bring this under one entity and force the City of Evansville to go along. David Jones also talked about that the Vanderburgh County Soil & Water Conservation District had done water testing on tributaries of Pigeon Creek and the results found things like high levels of chlorine, e-coli, Ph, turbidities. Those things will eventually become issues for the EPA and they will mandate that things be done to rectify these situations. This is another reason to form this commission and develop a multi-county plan, because if we can show the EPA that we are doing something to rectify these situations, they tend to back off.

**Discussion of Attempts to Organize Regulation of Pigeon Creek in Vanderburgh:**

Gary Seibert asked for clarification on whether or not Vanderburgh County receives assessments on Pigeon Creek. Linda Freeman stated that they do not. There have been efforts in the past to try to make Vanderburgh County a regulated drain, but there were jurisdictional issues with the Corps of Engineers. Gary Seibert told the group that some of the attempts began in 1937 under the Roosevelt Flood Control Act, but then in the early 1960’s is when an attempt was made at forming a Conservancy District. The idea was starting to take hold when a bunch of developers got involved and the whole thing fell apart. This was in the days of the PL 566’s. There were several other attempts to organize, one was when Shirley James started the Pigeon Creek Greenway, but there was never success in organizing a group to regulate anything. Gary Seibert stated that he did not know the answer, but that doing nothing is not working and to not repeat the mistakes from the past.

**Discussion of County Drainage Boards in Our Area (Formation & History)**

Ken Smith of IDNR said that it is good that we have County Drainage Boards that are working down here. He stated that south of U.S. 40 in the State of Indiana, County Drainage Boards do not exist other than in this area. If there is not a functioning County Drainage Board, then no one is in charge to oversee drainage. All three counties; Vanderburgh, Warrick and Gibson have functioning Drainage Boards comprised of the three County Commissioners of each county. Eldon Maasberg said that as far back as the 1950’s the farm fields were staked off with white stakes of which the farmers had to mow between. Scott Martin stated that the Gibson County regulated drains started back in the early 1900’s and there are records in their Gibson County Circuit Court. Prior to the 1960’s there was an allotment system, that Eldon Maasberg was describing, put into place. Eldon Maasberg stated that in 1965 is when the law changed from each farmer mowing between stakes and it became a county assessment.

**Discussion of What are the Main Needs for Each County:**

Siavash Beik asked each county to verbalize what their county’s needs are. Cheryl Musgrave brought up that both Gibson and Warrick Counties have legal drains established that bring in revenue. Cheryl Musgrave asked legal if these counties were required to eliminate their legal drain assessments if they joined the Watershed Commission. Siavash Beik stated that he believes they are allowed to keep their legal drain assessment. Ken Smith of IDNR said that he hopes they would get to keep it, because the funding mechanisms in the statute has caps on things and the amount of assessment collected under the caps may not be sufficient into the future, and it doesn’t appear that the statute has a mechanism for funding to do substantial, major project work. Scott Martin of Gibson County asked about the 75’ right-of-entry that is currently part of the regulated drain in Gibson County, how would this statute affect that? Would the Pigeon Creek Watershed Commission then have exclusive authority? Ken Smith of IDNR stated that he did not see anything concerning accessibility in the statute. Scott Martin of Gibson County inquired about the portion of the following statute, would the governmental entity, which presumably would be the Drainage Board, continue to perform and the Watershed Development Commission or will it relinquish its authority to perform the activity or activities set forth in the exclusive authority that they normally have? David Jones stated that each county has options, and each county gets to adopt its own method. Siavash Beik stated that the set up of this law was patterned after the Kankakee River Basin Commission, and there were set dollar amounts set in. Siavash Beik sees this as a problem as each area may have different needs. Scott Martin inquired about the portion of the following statute, will the Watershed Development Commission will relinquish its authority to receive the assessment or will appropriately reduce the assessment of the parcels? Cheryl Musgrave stated that the statute sounds like there would be a lot of flexibility. David Jones stated that the concerns in previous Joint Drainage Board meetings were that Vanderburgh would take in all of the revenues that Gibson and Warrick are currently receiving, but this new law states that everybody keeps their independence and that there are three different options of which each county can pick their own funding mechanism. Siavash Beik said the general idea is to coordinate the funding so that good can be done for the entire watershed, for example; two stage ditching or creating some sort of pond to add storage, based on core plans which are done to meet the needs of all of the counties versus each county doing their own thing. It is required to understand what the individual needs of each county are and if they coincide then there is a basis for forming the Watershed Development Commission. Craig Emig stated that the statute states that the board of the Watershed and the board that wants to retain control, or already exists, would enter into an interlocal agreement that specifically outlines everything that is going to stay and everything that is going to come over to the Watershed Development Commission, as far as jurisdictional and control of assessments and tax revenue. Scott Martin stated that one of the concerns of Gibson County was that the Kankakee statute read more like drainage code and this Watershed Development Commission statute refers to recreational purposes, and there is interest in that for Gibson County. Ken Smith said that the Little Cal Commission might be where some of the recreational language was picked up. So, this legislation was a merger of parts of the Little Cal Commission, Kankakee and MRBC and a little bit of St. Joe Basin Commission on the environmental and recreational stuff. Scott Martin said that Gibson County has what they call the "main” and they have laterals off of that. Sometimes there are laterals off of those laterals. So, if Gibson County was to join this commission, at some point could there be a possibility of the commission having authority on certain portions of the “main”? The answer is that those details would be flexible and would be set out in the interlocal agreement. The application to become a Watershed Development Commission would include all memorandum, interlocal agreements, etcetera. Dan Saylor, Warrick County Commissioner, stated that he believed that they would want to keep their current assessment in place and the WDC assessment would be in addition to that. Siavash Beik asked if Warrick County could see the benefit of the WDC for the entire watershed. Dan Saylor said that he did see the benefit, because he believes that the Warrick County Surveyor’s Office struggles with the massive amount of responsibility they have and the limited amount of funds they have to deal with all of their issues. Dan Saylor said that conversations have been held about creating a big reservoir in northern Warrick County similar to Patoka Lake. Would that help Vanderburgh County and Warrick County and Gibson County with flooding? In Kankakee they developed a 40-year work plan that was to be implemented in stages based upon funding revenue.

**Discussion of Jurisdictions:**

There was discussion about jurisdiction (city/state), and Ian Hahus stated that as a guide they had a map that showed the extent of the Levee Authority’s district, then the state has jurisdiction from the mouth of the Ohio up to about six or seven miles upstream. Ken Smith of IDNR said when it is stated “state jurisdiction” that we need to think about two different things; there is state jurisdiction that relates to is it a navigable stream and what does that really mean? But, there are jurisdictions beyond navigable stream, there are state jurisdictions regarding floodways, which are basically jurisdiction over a square mile of drainage area, and there may be some jurisdictions that would require floodway permits. There is also a jurisdiction pertaining to dams with a different set of state jurisdictions related to that.

**Discussion of HUC 8 and Pigeon Creek:**

Someone brought up that one of the criteria that is supposed to be considered by the NRC is if the territory of the proposed commission is at least as large as the HUC 8 basin, which Pigeon Creek is not. Ken Smith stated that he was surprised when CBBEL stated that Pigeon Creek was not a HUC 8, but they were looking at federal agencies maps that showed the HUC. Ian Hahus stated that the USGS Basin includes Pigeon Creek, a little bit of Posey and then Highland Creek in Kentucky. Ian Hahus stated that Pigeon Creek itself is three HUC 10’s stapled together, but it does not occupy a whole HUC 8. Ken Smith stated that he did a search on what is a HUC 8 in Indiana, and it showed an independent HUC 8 for Pigeon Creek. What determination will the NRC make when faced with what the feds think a HUC 8 is and what the state says a HUC 8 is? Ken Smith will get clarification on the HUC 8 issue.

**Discussion of Legislative Change in Next Session:**

Ken Smith of IDNR stated that the language of the WDC law is talking about the federal HUC 8, but he does not believe that that language would be fatal to the creation of a Pigeon Creek Watershed Development Commission. Each of the three County’s Commissioners should reach out to their State Legislators and get them to change that wording in the next legislative session if that is going to be the cause of this WDC failing.

**Discussion of Possible Next Steps:**

1. Ken Smith of IDNR would need to find out if we can even move forward if Pigeon Creek is not a HUC 8.
2. Each County Executive Body would need to vote to move forward. Cheryl Musgrave stated that the Vanderburgh County Commissioners voted on this and that they want to move forward. Vanderburgh County wants Warrick and Gibson counties to be a part of this and asked if all counties would like to continue the dialogue.
3. Ken Smith said to pick some reasonable goals that we think we can achieve in a reasonable time frame for our purposes and what we are trying to do. We can add purposes later on after it is approved. Siavash Beik-the main thing is to develop a work plan, which is based on each county’s needs/problems, but the plan should be developed to benefit the entire watershed.
4. All three counties would like for Christopher Burke Engineering to work up a rough estimate of potential services with a scope of: creating an application for a Pigeon Creek WDC and developing the entire work plan for the Pigeon Creek WDC, water quantity. That rough estimate of potential services would be due to all parties by August 2, 2023. Gibson County has a 2014 Upper Pigeon Creek Master Plan that may be able to be partially used by CBBEL in their cost estimate.
5. Cheryl Musgrave stated that after each county votes to move forward a consultant would need to be hired to develop the plan and application. Ken Smith stated that if a consultant were not hired, he was not sure how we would get through the WDC creation process.
6. Ken Smith stated that both engineering and legal counsel assistance would be required to help create the Watershed Development Commission. The WDC would need to hire their own attorney so that there is cooperation between the WDC attorney and all three County Attorneys.

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| **Pigeon Creek Watershed Development Commission Meeting****Wednesday, August 9, 2023 @ 10:00 a.m.** |

Everyone present agreed that the next Pigeon Creek Watershed Development Commission meeting would be held on Wednesday, August 9, 2023 at 10:00 a.m. at the Evansville-Vanderburgh Public Library, Central Branch, in Browning Event Room A, and that each county would bring their legal counsel to the meeting as well.

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| **Adjournment** |

The meeting was adjourned at 11:26 a.m.

VANDERBURGH COUNTY

BOARD OF COMMISSIONERS

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Cheryl A.W. Musgrave, President

\_\_ (Not present at meeting.)\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Justin Elpers, Vice President

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Ben Shoulders, Member

(Recorded and transcribed by Madelyn Grayson)