**SPECIAL MEETING OF THE VANDERBURGH COUNTY**

**BOARD OF COMMISSIONERS**

**HIGHLAND-PIGEON WATERSHED DEVELOPMENT COMMISSION**

**OCTOBER 11, 2023**

The Vanderburgh County Board of Commissioners met in special session on October 11, 2023 at 10:00 a.m. at the Evansville-Vanderburgh Public Library, Central Branch, Browning Event Room A, Evansville, Indiana for the purpose of discussing the possibility of creating a Highland-Pigeon Watershed Development Commission.

**Those in Attendance:**

Cheryl Musgrave, Vanderburgh County Commissioner

Craig Emig, Assistant Vanderburgh County Attorney

Madelyn Grayson, Vanderburgh County Commissioner Recording Secretary

Linda Freeman, Vanderburgh County Surveyor

Mike Ward, Vanderburgh County Chief Deputy Surveyor

Colin Ward, City of Evansville-Vanderburgh County Floodplain Administrator

Dan Saylor, Warrick County Commissioner

Jason Baxter, Warrick County Chief Deputy Surveyor

Holly McCutchan, Warrick County SWCD

Michael Bell, Town of Chandler Storm Water Director

Marybeth Feutz, Indiana Farm Bureau Board of Directors

Scott Martin, Gibson County Surveyor

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

David Brenner, Vanderburgh County Farm Bureau President

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

Eldon Maasberg, Retired Vanderburgh County Farmer

Michael Stevenson, SJCA & Former Gibson County Surveyor

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| **Summary Minutes of Meeting Discussion** |

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

Cheryl Musgrave acknowledged the passing of a Resolution by the Warrick County Commissioners in support of Vanderburgh County’s $62,500 appropriation for the funding of further study of the watershed and exploring the formation of the Highland-Pigeon Watershed Commission.

The Christopher B. Burke Engineering (CBBE) proposal was based on three counties applying. Since the last meeting, Vanderburgh County has formulated a plan for moving forward, since Vanderburgh County will be the sole applicant to the Natural Resource Commission (NRC).

Craig Emig, Vanderburgh County Law Department, stated that since there is no administrative guidance for the application process, there is no form, no application and Vanderburgh County does not anticipate that any of those documents will be available before Vanderburgh County submits their application, and that Vanderburgh County needs to move quickly in this application process because Pigeon Creek is unregulated in Vanderburgh County. Vanderburgh County understands that other counties (Warrick & Gibson) have discussions that they need to have internally because they already have legal drains set up and funding coming in, but Vanderburgh County needs to proceed with all due haste. Vanderburgh County’s thought is that if they proceed quickly to be the first applicant under this new law, then DNR would hopefully give us some leeway into making a proposal that will allow the Watershed Commission to be established, take a pause, not collect any assessments, and not propose any detailed plans. CBBE has already provided studies from Gibson County (2014), and Vanderburgh County, and Vanderburgh County would like to use this existing data to submit as supporting documentation showing the need to create the Commission on their application. Once the Watershed Development Commission (WDC) is established, the plan would be to then use the $62,500 appropriation to hire CBBE to do further studies to come up with a detailed plan. The plan would be to not start tax assessments in Vanderburgh County until after public hearings are held and the soonest the assessments would start to be collected would be 2025. This plan would give the neighboring counties time for them to decide about how much participation they want to commit to.

**Vanderburgh County’s Proposed Model of the WDC: Per State Statute:**

**Voting Members:**

* Vanderburgh County Commission Appointee
* Vanderburgh County Surveyor
* City of Evansville Appointee
* DNR Appointee

**Non-Voting Members (Counties who have not joined the WDC):**

* Warrick County Commissioners
* Town of Chandler
* Gibson County Commissioners
* City of Princeton

**Observers (Non-Voting):**

* HUC 8 Representative(s)
* Kentucky Counties Representative(s) (Henderson, Webster & Union Counties)
* Posey County Representative
* Illinois County Representative (Gallatin County)
* Pike County Representative

**Advisory Committee (Non-Voting):**

* Soil & Water Conservation District Member from: Vanderburgh County, Warrick County & Gibson County

Cheryl Musgrave reiterated that until the WDC’s voting members decide to raise an assessment, that there will be no assessment. The purpose of the time the WDC would be taking is to study, to develop lists of things to do, concur on those projects, cost those projects out, and then the WDC will be able to tell the residents why they are raising the money.

Dan Saylor, Warrick County Commissioner, asked if Henderson County could join the WDC? Cheryl Musgrave stated that by statute Henderson County would be a non-voting member. Craig Emig stated that it is unclear how that would work because the statute is an Indiana law. Craig Emig stated that at the Drainage School webinar in September of 2023, the speakers stated that they hoped that there would be some type of collaboration with responsible jurisdictions outside of the State boundaries (HUC 8), that they are at least brought to the table and apprised of the situation. Ken Smith of DNR stated that the intent is for everyone in the HUC 8 to coordinate and cooperate. All across the State, every HUC 8 that borders the State-line has counties from another state in those HUC 8’s. The HUC 8 concept is something that is a federal concept, done by the U.S. Geological Survey, and delineated by the U.S. Geological Survey.

Cheryl Musgrave stated that the observers are simply that, observers. The voting members set the agenda and pay for everything. The advisory committee and any other committees are set up by the voting members. Annually, any of the non-voting, non-joined members (Warrick and/or Gibson) can decide to join the WDC and become voting members.

Marybeth Feutz asked what the percentage of land was for Posey County. Craig Emig and Mike Ward both confirmed it was under 10%.

Dan Saylor stated that Pigeon Creek is a legal drain in Warrick County and they have a right-of-entry to perform maintenance work. He asked if once Vanderburgh County starts collecting assessments, does the WDC have to secure right-of-entries and pay for them? Cheryl Musgrave stated that the right-of-entry issue is still TBD (to be determined). She stated that the WDC would have to follow State law. Craig Emig stated that the statute established a 75’ right-of-entry for the WDC over the covered jurisdiction. Ken Smith stated that he did not think the WDC would have to pay for the right-of-entry, and that the statute does not envision dual taxing authority over the same stream. The State statute envisions the county with taxing authority over the stream and the WDC will have to work together with some sort of agreement stating who will collect the tax and who will be doing the work.

Cheryl Musgrave stated that the way the WDC is being proposed to be set up that there will be no dual taxing authorities, because Vanderburgh County will be the sole applicant. If Warrick or Gibson would want to join the WDC, they would have to sort out those dual taxing issues before they would ever join the WDC. Craig Emig stated that the WDC would not have to pay for the right-of-entry along Pigeon Creek in Vanderburgh County, and that before any assessments could be imposed, public hearings would have to be held. So, a notice of public hearing would have to be published and a series of public hearings held prior to imposing any assessments. Craig Emig reiterated that at the Drainage School seminary they emphasized that this is not a double taxation situation, and that if one or more of the county’s are currently collecting an assessment, an interlocal agreement will have to be entered into delineating what the WDC will be responsible for and what responsibilities the individual counties would retain.

Dan Saylor stated that if Warrick County were to join the WDC, he envisions the WDC taking care of the main channel, and the Warrick County Surveyor’s Office maintaining the laterals. The current assessment would continue for the maintenance of the laterals, and the special assessment for maintenance of the main channel would go to the WDC. Craig Emig stated that he believed that is the “default” or the intent of the statute for the WDC to maintain the main stream.

“Subject to an interlocal agreement, the Commission would have the authority to perform drainage and flood damage reduction activities within the channel of the river that is the surface water outlet that is the designated watershed, or each river that flows directly into the surface water outlet, if the surface water outlet of the Commission’s designated watershed is a lake or impoundment.”

Ken Smith added that there is additional language that states, “and within 75’ of the top of the bank.”

Dan Saylor said that he did receive a letter from the Warrick County Farm Bureau stating that the farmers could get behind the collecting of additional assessments if those funds would be use to clear the major blockages to help alleviate some of the flooding in Warrick County.

**Vanderburgh County’s Proposed Plan for Watershed Application:**

**Step 1:**

* Create the Watershed Development Commission.
* Establish projects and costs of projects.
* No assessments will be collected for the first year at least.

**Step 2:**

* After formation of Watershed Development Commission, CBBE will begin the action plan/study for the entire watershed (HUC 8).

Cheryl Musgrave stated that where we are right now is developing the application to create the Pigeon Highland Watershed Development Commission. Those other details will have to be worked out after the WDC is formed.

Dan Saylor stated that Warrick County still has questions that they have to get answers to before they can commit to joining the WDC. Craig Emig & Ken Smith stated that this is such a new law that even DNR and/or the NRC may not have the answers to some of these questions at this point.

Cheryl Musgrave stated that she informed Ian Hahus of CBBE that Vanderburgh County is not ready to engage CBBE for the full $62,500 watershed study for the initial application process. Cheryl Musgrave stated that the application process is legal work and that Vanderburgh County’s Law Department, with the help of the Vanderburgh County Commission, will be working on and submitting the application. CBBE did offer to oversee the Vanderburgh County Law Department’s work for a $15,000 fee.

Ken Smith stated that the application is not just legal work, because it does require some presentation of evidence to the hearing officer. Craig Emig stated that Vanderburgh County is hoping to rely upon what work has already been done. Ken Smith said that testimony from CBBE may be required stating that their work aligns and makes sense with the application. Ken Smith also said that this law was formed with the intention that each county would have all of their issues worked out prior to joining, but it also very specifically outlines how one county can form the WDC on their own. Dan Saylor said that Warrick County can’t move that quickly, but they fully support Vanderburgh County moving forward with the WDC application. Cheryl Musgrave stated that Vanderburgh County will outline in their application a future course of action for the other counties to join at a later date. Dave Brenner of Farm Bureau stated that now that the Legislature has provided us an avenue to help alleviate an issue that is over 100 plus years old, we should definitely take advantage of it. Cheryl Musgrave stated that it is possible that the NRC/DNR may deny the petition, but she cannot at least try to get the WDC created.

Gary Seibert, Gibson County farmer, stated that the ash borer problem in Southwestern Indiana is now creating an even bigger issue with bigger logjams, which creates more urgency to get this WDC created to be able to take care of those logjams.

Ken Smith stated that the application would go to the Division of Hearings, which are the Administrative Law Judges (ALJ). The ALJ will hold hearings and write up a report that will go the NRC, which is sort of the Board of Directors of DNR. Dan Saylor asked if it would be a good idea for each county to call their State Representatives stating that they support this application. Cheryl Musgrave said, yes, they should definitely do that, and each county should also pass resolutions in support of this application as well.

Craig Emig stated that the first step is the Commissioners pass a resolution, containing exhibits, attachments, previous studies, letters of support, etcetera. Ken Smith stated that it would be beneficial for the other counties to testify at the hearings that will be held in Vanderburgh County by the Administrative Law Judges. Dan Saylor suggested that we also have an arborist give testimony about the impending issues Vanderburgh County will be facing due to the ash borer problem.

Scott Martin, Gibson County Surveyor, asked how long this application process will take. Ken Smith said a guesstimate of how long it would take the ALJ’s to make their report would be 3-4 months. This is what the ALJ’s do all year long, and there is a legal process they will follow; receiving petitions, scheduling hearings, making decisions and passing that report on to the NCR/DNR. Ken Smith stated that approximately two months after the application is received, he would expect a hearing to be scheduled in Vanderburgh County, and another two months for the ALJ’s to write up their report. Craig Emig stated that the statute requires that if NRC does not find Vanderburgh County’s application to have affirmative answers to all seven (7) categories of the statute, that they must give a reason as to why it does not meet the requirement. The statute does not state as to whether the applicant will be able to rebut the NRC’s findings or not. Ken Smith stated that the statute is very clear about what has to be proven in order to be recommended for approval. Cheryl Musgrave stated that Vanderburgh County will ask the ALJ & the NRC to suspend at least one of the requirements, which is the part they have outlined in Step 2. The application will be asking the NRC to create the WDC as an entity that is not taxing anyone, and allow the newly created WDC to take some time to work through how it will proceed. Craig Emig stated that the Legislature would also have the opportunity to possibly amend the statute during that time as well. Ken Smith stated that the application could state that Vanderburgh County has the opportunity to say we do have the information (previous studies) and we have some ideas, and the other counties would be able to join the WDC in time. Ken Smith stated that he did have an informal chat with the ALJ’s to just get this on their radar and to help prepare them for what is coming.

Dan Saylor asked if it would help the application process if Warrick County submitted a letter from their legal counsel stating Warrick County’s position and the reasons why they aren’t joining the WDC right now. Cheryl Musgrave stated to include that Warrick County would like to see the WDC in existence and operating to have the experience of how it will work. Craig Emig stated that he didn’t know how the other counties could be expected to know how much their current assessments would need to change until there is some type of plan developed. The other two counties have a need for further information and studies and that takes time. Cheryl Musgrave asked Craig Emig to contact Gibson County’s legal counsel and ask for a letter of support from them as well.

Mike Ward, Vanderburgh County Chief Deputy Surveyor, asked who was going to contact the counties that are out of the state. Cheryl Musgrave stated that would come in Step 2. Mike Ward asked if the out of state counties could form committees for different watersheds within the HUC 8. Ken Smith stated that the WDC has to form on the HUC 8, Ad Hoc committees could get formed where the other counties could work together on some of their problems and make it part of the big vision.

Gary Seibert stated that Gibson County is having a public hearing on this subject on October 12, 2023 at 5:00 at the Annex. Dan Saylor said that the only thing he had heard from Gibson County was their concern over how quickly this was transpiring. Dan Saylor reiterated to Gibson County that Vanderburgh County is in a different position than the other two counties, and this is an opportunity for Vanderburgh County to get something fixed. Marybeth Feutz & Gary Seibert said that they both intended to attend the 10/12 meeting in Gibson County to help squelch any misinformation and to encourage them to participate, at least as a non-voting member.

There was some discussion about the caps on the assessments that the statute outlines. Cheryl Musgrave explained that the statute outlines the maximum assessments that can be charged, but the WDC would not be required to assess to the maximum, and those decisions would come in Step 2 after the action plan/study has been completed, and each county would decide what assessments would work best for their own county. Ken Smith stated that even though the statute is 43-pages long, this is the simplest process he has seen, and believes this statute was created to help to give the counties the flexibility to figure out how to work together. Craig Emig & Ken Smith both stated that it is in the best interest of the potential WDC to strike while the iron is hot and on the radar of the DNR and the Legislators, rather than waiting a couple of years to conclude all of the studies, analyze all of the assessment rates, and develop plans. Cheryl Musgrave stated that the problems with Pigeon Creek will continue well after everyone present is gone, if something is not done, and with the weather patterns causing increased, more intense rainfalls and flooding, now is the time. Dave Brenner questioned with the Corps of Engineers having jurisdiction at the mouth of Ohio would they be an obstacle. Cheryl Musgrave stated that with the creation of the WDC the area would have a greater voice with the Corps. Even though the statute, as currently written, seems to want the studies to be completed and paid for prior to the application, Ken Smith stated not to dwell on that. Ken Smith also said that in the future more studies may be needed in other areas, but this area already has some studies that have been done, and that information can be used in the application process, along with testimonies declaring the spirit and the intent of this application so that the WDC can move on, and by working together can eventually do more. But, for now at least, have everyone come to the meetings, listening to the discussion and giving their thoughts when the WDC is formed.

Cheryl Musgrave stated that the draft application will be made available to the other counties either just before it is filed or when it is filed. Vanderburgh County will be reaching out to the other counties asking them what they think should be included in the application. If a study exists that the other counties think needs to be included, they should go ahead and forward to Vanderburgh County to support their application. Craig Emig stated that we should probably have another meeting after the application is drafted.

**Setting of Next Highland-Pigeon Watershed Development Commission Meeting:**

A decision was made to hold the next meeting at the Evansville-Vanderburgh County Public Library, McCullough Branch located in Washington Square Mall in Evansville, Indiana on Wednesday, December 13, 2023 at 10:00 a.m.

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| **Adjournment** |

The meeting was adjourned at 11:25 a.m.

VANDERBURGH COUNTY

BOARD OF COMMISSIONERS

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Cheryl A.W. Musgrave, President

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

Justin Elpers, Vice President

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

Ben Shoulders, Member

(Recorded and transcribed by Madelyn Grayson)