

TIPPECANOE COUNTY DRAINAGE BOARD

RESOLUTION NO. 2016 - 01 - DB

RESOLUTION ESTABLISHING RECONSTRUCTION FINANCING ASSISTANCE PROGRAM

WHEREAS, proper and sufficient drainage is vital to the public health and economic development in Tippecanoe County;

WHEREAS, the Tippecanoe County Drainage Board is responsible for drainage matters in Tippecanoe County including, without limitation, reconstruction of regulated drains;

WHEREAS, the Drainage Code (IC 36-9-27) provides flexibility in financing reconstruction. IC 36-9-27-50, 84 and 85 provide for financing through assessments paid over a period of up to five years with interest at ten percent (10%). IC 36-9-27-97.5 provides for financing through a construction loan repaid over a period of up to five years. IC 36-9-27-94 provides for financing through issuance of bonds repaid over a period in excess of five years. IC 36-9-27-73 provides for payment of reconstruction costs from the general drain improvement fund. IC 36-9-27-75 provides for payment of reconstruction costs from grants or gifts accepted by the Drainage Board;

WHEREAS, the County is given flexibility in the uses available for funds from the Economic Development Income Tax, specifically the ability to spend such funds “for any lawful purpose for which money in any of its other funds may be used.” IC 6-3.5-7-13.1(b)(3);

WHEREAS, the Home Rule Statute, IC 36-1-3 grants units the powers they need for the effective operation of government as to local affairs;

WHEREAS, from time to time, there may arise reconstruction projects wherein repayment in five years and/or wherein repayment at 10% interest on assessments is unduly onerous to landowners;

WHEREAS, for such projects, if the County has sufficient funds available, the

transaction costs associated with taking out construction loans and/or issuing bonds would be wasteful; and

WHEREAS, the Drainage Board wishes to create an alternative process for reconstruction financing for appropriate projects and subject to available funds;

NOW THEREFORE BE IT RESOLVED:

Section 1. Fund Creation (a) There is now created a separate fund to be known as the Drainage Reconstruction Financing Assistance Fund (“the Fund”).

(b) Monies may be expended from the Fund by the Tippecanoe County Drainage Board and Tippecanoe County Surveyor, following a reconstruction order on a regulated drain, to pay a landowner’s reconstruction assessments provided that such payment must be subject to a written, secured agreement for repayment by the landowner as approved by the Drainage Board.

(c) Monies may be deposited into the Fund from donations, transfers from other County funds (including, without limitation, the General Drain Fund and the Economic Development Income Tax Fund), repayments pursuant to repayment agreements, and from such other sources as may as determined by the County from time to time.

(d) Interest on the Fund shall be deposited to the Tippecanoe County General Fund.

(e) Money in the Fund shall not revert to the General Fund.

Section 2. Application Reconstruction Financing Assistance shall be available only in conjunction with a reconstruction order specifying such availability, only with respect to those reconstruction projects deemed by the Drainage Board to require such assistance, and only if the Drainage Board determines that the Fund has sufficient funds to support such availability. When a Landowner wishes to take advantage of such Assistance, the Landowner must enter into a repayment agreement specifying the terms under which the money advanced to pay the

Landowner's reconstruction assessment shall be repaid. After entering into an agreement acceptable to the Drainage Board, the Landowner's reconstruction assessment shall be paid from money in the Fund. Money repaid pursuant to a repayment agreement under this section shall be deposited in the Fund.

Section 3. Criteria Criteria the Drainage Board shall consider when determining whether to make Reconstruction Financing Assistance available for the project shall include funds available for such Assistance, the cost per acre of the reconstruction, the necessity of the project, whether the project is feasible without such assistance, and the overall cost of the project.

Section 4. Terms (a) For a given project, the Drainage Board shall make Reconstruction Financing Assistance available to landowners subject to a written financing agreement and subject to the following terms:

- a. Availability is subject to a minimum assessment for the Landowner of one thousand dollars (\$1,000) or such greater amount as the Drainage Board determines is appropriate for the project. Additionally, Assistance shall not be available if the Landowner has outstanding property tax delinquencies.
- b. Repayment may be specified for equal annual or biannual payments or such other schedule as gives due regard for the convenience of the Treasurer.
- c. Repayment agreements may not extend for a period greater than five (5) years except that, where the Drainage Board determines that the extraordinary nature of a project requires more than five (5) years, it may so specify. A repayment agreement may not extend for a period greater than ten (10) years.
- d. Repayment agreements shall provide for simple interest at the rate of five percent (5%) per annum. There shall be no penalty for early repayment.
- e. Repayment agreements shall be a personal obligation of the Landowner and shall also be secured by a lien on the real estate benefitted by the reconstruction project. If the benefitted real estate is sold or otherwise transferred while obligations under the repayment agreement remain outstanding, repayment in full shall be made prior to or at the time of sale. In the alternative, at the discretion of the Drainage Board, the person or persons acquiring the benefitted real estate shall become an additional obligor on the repayment agreement. The Landowner shall remain personally liable as to the obligations imposed by the Repayment

Agreement.

f. By entering into the agreement, Landowners shall waive any right they have to challenge the reconstruction order, the amount of the assessment, and/or the determination of benefits and costs under the order.

g. In the event of default on an agreement, a penalty for late payment in the amount of ten percent (10%) of the installment due shall be imposed, and the Drainage Board shall be entitled to bring suit personally against the Landowner, against the land benefitted, or both as it determines to be in its best interest. The Drainage Board shall be entitled to attorney's fees reasonably incurred enforcing the terms of the agreement.

h. In the event the repayment agreement is deemed unenforceable or void then any funds advanced by the Drainage Board toward the reconstruction assessments shall be repaid to the Drainage Board and such assessments shall be the obligation of the Landowner.

i. Availability is subject to a Landowner executing a repayment agreement in a form acceptable to the Drainage Board and returning it to the Treasurer within sixty (60) days of the Notice of Reconstruction Assessment to the Landowner under IC 36-9-27-86.

PASSED AND ADOPTED THIS 3rd day of MARCH, 2016.

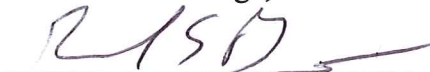
TIPPECANOE COUNTY DRAINAGE BOARD



Tracy A. Brown, President


Absent

Thomas P. Murtaugh, Vice President



David S. Byers, Member

ATTEST:



Brenda Garrison, Secretary

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