

**IC 36-9-27-52****Reconstruction of drains; notice and hearing on surveyor's report and schedules; objections; final order**

Sec. 52. (a) When the schedules of damages and assessments are completed and marked filed, the board shall fix a date, time, and place for a hearing on the reconstruction report of the county surveyor and on the schedules of damages and assessments, and shall prepare a notice for each owner of land affected by the reconstruction. The notice must state:

- (1) the name and identifying number by which the proposed reconstruction is known;
- (2) that the reconstruction report of the surveyor and the schedules of damages and benefits as determined by the board have been filed and are available for inspection in the office of the surveyor;
- (3) that the land of the owner is shown by the schedule of damages to be damaged in the sum of \_\_\_\_\_ dollars;
- (4) that the land of the owner is shown by the schedule of assessments to be assessed \_\_\_\_\_ percent of the total cost of reconstruction, and that \_\_\_\_\_ percent of the estimated total cost of the reconstruction is in the sum of \_\_\_\_\_ dollars;
- (5) that the land of the owner is shown by the schedule of assessments to be annually assessed in the sum of \_\_\_\_\_ dollars for estimated periodic maintenance of the reconstruction; and
- (6) the date, hour, and place of the hearing on the surveyor's reconstruction report and on the schedules of damages and assessments.

(b) Not less than thirty (30) nor more than forty (40) days before the date of the hearing, the board shall mail a copy of the notice in a five (5) day return envelope to each owner named in the schedules of damages and assessments.

(c) The board shall publish a notice in accordance with IC 5-3-1. The notice must:

- (1) identify the proposed reconstruction;
- (2) be addressed to whom it may concern and to the addressee on each letter that was mailed under subsection (b) and was returned undelivered; and
- (3) state that:
  - (A) the reconstruction report of the county surveyor and the schedules of damages and assessments made by the board have been filed and are available for public inspection in the office of the county surveyor; and
  - (B) a hearing will be held before the board on the report and schedules, specifying the time and place of hearing.

(d) Not less than five (5) days before the board's hearing on a reconstruction report, an owner of lands affected by the report or by the schedules of damages and assessments may file with the board written objections to the report, schedules, or both. The objections may be for one (1) or more of the following causes:

- (1) The costs, damages, and expenses of the proposed reconstruction will exceed the benefits that will result to the owners of all land benefited.
- (2) The objector is the owner of land assessed as benefited, and the benefits assessed against his land are excessive.
- (3) The objector is the owner of land damaged by the reconstruction, and:
  - (A) the board failed to find that his land is damaged; or
  - (B) the damages assessed to his land are inadequate.

Each objector may file written evidence in support of his objections. The failure of an owner to file objections constitutes a waiver of his right to subsequently object, on the grounds stated in this subsection, to any final action of the board.

(e) On or before the day of the hearing, the county surveyor shall, and any owner of land affected by the proposed reconstruction may, cause written evidence to be filed in support of or in rebuttal to any objection filed under subsection (d).

(f) The board shall consider the objections and evidence filed, may adjourn the hearing from day to

day or to a day certain, and may issue an order permitting additional written evidence to be filed in support of or in rebuttal to the objections and evidence previously filed.

(g) After considering all of the objections and evidence, the board may amend the schedules of damages and assessments, and the county surveyor may modify his report, as justice may require.

(h) Before final adjournment of the hearing, the board shall determine in writing whether the costs, damages, and expenses of the proposed reconstruction will be less than the benefits accruing to the owners of land benefited by the construction. If the board answers this question in the negative, it shall dismiss the proceedings. If the board answers the question in the affirmative, it shall adopt the

reconstruction report of the county surveyor and the schedule of damages and assessments, including annual assessments for periodic maintenance, as originally filed or as amended, into its findings, and issue an order declaring the proposed reconstruction established. The board shall mark the findings and order filed and publicly announce the findings and order at the hearing. Immediately after that, the board shall publish a notice in accordance with IC 5-3-1. The notice must identify the drainage proceedings and state that the findings and order of the board have been filed and are available for inspection in the office of the surveyor.

(i) If judicial review of the findings and order of the board is not requested under section 106 of this chapter within twenty (20) days after the date of publication of the notice, the findings and order become conclusive.

*As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981, P.L.45, SEC.78; P.L.180-1995, SEC.6.*