

MINUTES OF THE HAMILTON COUNTY DRAINAGE BOARD

February 28, 2022

The meeting was called to order Monday, February 28, 2022 at 9:07 a.m.

The members of the Board present were Ms. Christine Altman-President, Mr. Mark Heirbrandt-Vice President and Mr. Steven C. Dillinger-Member (Virtually). Also present was the Hamilton County Surveyor, Kenton C. Ward and members of his staff: Mr. Steve Cash, Mr. Reuben Arvin, Mr. Sam Clark, Mr. Gary Duncan and Mr. Jerry Liston. The Board's attorney, Mr. Connor Sullivan, was also present.

Approval of Minutes of February 14, 2022:

The minutes of February 14, 2022 were presented to the Board for approval.

Heirbrandt made the motion to approve the minutes of February 14, 2022, seconded by Dillinger and approved unanimously.

Vermillion Drain - Northwest Fortville Subdivision (Hancock County) Shed Change:

There were neither landowners present nor objections on file.

Heirbrandt made the motion to remove this item from the table, seconded by Altman and approved unanimously.

The Surveyor presented his report to the Board for approval.

"December 15, 2021

To: Hamilton County Drainage Board

Re: Vermillion Drain, Northwest Fortville Subd. (Hancock County), Shed Change

Attached is a site map of Northwest Fortville Section 1 received by Susan Bodkin, Hancock County Surveyor. It shows that Lots 1 thru 13 and 70 thru 79 and CA A drain north into Hamilton County and the remaining part of the subdivision drains south and stays in Hancock County.

The portion the drains into Hamilton County drains to the Vermillion Regulated Drain in the Heritage at Vermillion Section 2 Subdivision within Hamilton County. The drains within Northwest Fortville will not be maintained by Hamilton County. They do benefit from the Vermillion Drain and will be assessed at the Un-Regulated Subdivision rate of \$5.00 per acre and \$35.00 per lot and minimum. This assessment is to be collected by Hancock County and the settlement to be forwarded to Hamilton County. The total to be collected is \$840.00.

I recommend the Board at a hearing for January 24, 2022.

Sincerely,

Kenton C. Ward, CFM
Hamilton County Surveyor"

The Surveyor stated this item was brought to the Board's attention on the 24th of January and at that time the Board asked this to be tabled and wanted more information as far as Hancock County and what the rights were. Since that time on February 14, 2022 we received a letter from Susan Bodkin, Hancock County Surveyor, explaining that the Hancock County Drainage Board had waived their rights to a Joint Board hearing and that what would happen is that they would collect the assessments and send them to Hamilton County to be put into the Vermillion Drain Fund. I don't know if this answers all of the questions the Board had or not, but this is the way we've done several of these.

Altman asked is it the Surveyor's Office recommendation that we adjust this shed change as requested?

The Surveyor stated yes.

Altman opened the public hearing; seeing no one present Altman closed the public hearing.

Heirbrandt made the motion to approve the Surveyor's report, seconded by Dillinger and approved unanimously.

"FINDINGS AND ORDER

CONCERNING THE MAINTENANCE OF THE

Vermillion Drain, Northwest Fortville Subdivision
(Hancock County) Shed Change

On this 28th day of February, 2022, the Hamilton County Drainage Board has held a hearing on the Maintenance Report and Schedule of Assessments of the **Vermillion Drain, Northwest Fortville Subdivision (Hancock County) Shed Change**.

Evidence has been heard. Objections were presented and considered. The Board then adopted the original/amended Schedule of Assessments. The Board now finds that the annual maintenance assessment will be less than the benefits to the landowners and issues this order declaring that this Maintenance Fund be established.

HAMILTON COUNTY DRAINAGE BOARD

Christine Altman _____
President

Mark Heirbrandt _____
Member

Steven C. Dillinger _____
Member

Attest: Lynette Mosbaugh
Executive Secretary"

Citizens Energy Group - Service Advisory Board Minutes:

The Surveyor presented the minutes of the Service Advisory Board from January 18, 2022 to the Board for their information.

Altman asked was there anything of note?

The Surveyor stated not in particular.

Non-enforcements:

Liston presented a non-enforcement request for the Bellewood Drain filed by Jamie Little for parcel #17-09-30-00-07-029.000 for a fence. The Surveyor's Office recommends approval.

Heirbrandt made the motion to approve the non-enforcement request presented, seconded by Dillinger and approved unanimously.

Liston presented a non-enforcement request for the Lynnwood Hills Drain filed by Verizon Wireless for parcel #17-10-25-02-01-012.000 for a small metal cell pole. The Surveyor's Office recommends approval.

Heirbrandt made the motion to approve the non-enforcement request presented, seconded by Dillinger and approved unanimously.

Clark presented a non-enforcement request for the W. R. Fertig Drain filed by Windsor Court Realty, LLC for parcel #16-09-35-00-01-035.001 for a building. The Surveyor's Office recommends approval.

Heirbrandt made the motion to approve the non-enforcement request presented, seconded by Dillinger and approved unanimously.

Construction Updates:

George Symonds Drain, Two Stage Ditch Reconstruction - Duncan stated construction has started. Clearing is almost done. I saw an email on Friday to coordinate when the contractor would actually start excavation.

Clara Knotts Drain, Park Broadway Arm Phase 1 - Duncan stated the contractor has completed the majority of the work along 103rd Street and up Broadway Avenue and Park Avenue. They are now working at 102nd Street and Broadway installing storm sewers there which would lead to the run on New Jersey Street between 102nd and 103rd as the last part of that project.

Ream Creek Drain Reconstruction, Orchard Park Arm - Duncan stated the contractor is still working on getting materials for this project. A portion of the project has a narrow area between two homes where we decided to jack and bore a steel pipe between those homes rather than open cut an excavation between the homes. Indications from the contractor, I have not had a chance to look at it completely, but he said there is a substantial increase in steel pricing. The steel plate that they make the pipe from there is a significant increase.

Altman asked, how deep is the pipe? Is it impossible to do a cut and put in an alternate?

Duncan stated yes, it is so narrow between those houses that the depth of the pipe, I can't say exactly how deep it is, but it's not shallow.

The Surveyor stated it's at least six feet deep.

Altman asked, and this is new pipe going in?

Duncan stated its new pipe.

Altman stated so it's not like we can line anything.

Duncan stated right. The area between those houses is really narrow. They're just barely outside of the existing easement. We actually had to purchase easement for this so we're right up against the houses. I don't have the numbers, but I can share that with the Board at the next meeting.

Altman asked, why are we putting new pipe between existing homes?

Duncan stated this is Orchard Park which drains south towards Ream Creek, so it drains from 106th Street to the south towards Sunrise. It all drains on the surface to a 12-inch culvert.

Altman stated it isn't as sufficient.

Duncan stated correct. Really, what we're doing by installing this drain we're going to allow Carmel then to do drainage work in the shed to finally get Orchard Park to drain.

Altman stated I don't think we have a choice then; you've explored all the opportunities.

Heirbrandt asked Duncan, you're going to bring the cost increase to the next meeting?

Duncan stated yes, we need to do a change order. I wanted Luther (Cline) to talk to the contractor first and get the full story, but we're hoping it's just straight up steel prices that are increasing, we hope that doesn't trickle to rebar and reinforced concrete pipe and other things. Morphey is really good. He asked to pass this along just because it's such a significant increase.

Intracoastal at Geist Drain - Liston stated the contractor has structures and one size of the pipe delivered. He's still waiting on pipe from Ohio because that size pipe is not made in the State of Indiana. We're still waiting on Comcast to move out of the way. Lumen, which is the other utility, told us they would come in and cut the line and then come back and repair it.

Mallery-Granger Drain Reconstruction - Liston stated we're still waiting for the weather to cooperate for the re-inspection.

Canal Place Drain, Strongbow Gate Arm - Liston stated the contractor has put in for the structures on this project and has been told they are a month out.

Pending Final Report (Ellis Barker Drain Reconstruction) - Duncan stated the report has been put together and I took a look at it yesterday and had some comments. We'll wrap that up pretty soon.

Altman stated I asked John Shuller, a friend of mine that's been in the business forever, he's given me some pipe companies in the area that do the 21" and some contacts if you want that information.

Duncan stated yes.

Attorney Pending Items:

Sullivan stated Wednesday of last week I sent the Board an updated status quo of all the pending items. Duncan and I met on Wednesday and went over all of them.

Stormwater Nuisance Ordinance - Sullivan stated I have a rough draft of it prepared. Mike (Howard) was out of the office last week so he will review it. It's pretty standard, a lot of it is pulled out of the Statute, there's not much wiggle room for it. I sent that to you as well, if you have any comments let me know.

Non-enforcement Forms for Utilities - Sullivan stated Duncan and I have gone through all the forms that would have any relation to our utility relocation ordinance, I've updated that language, but with the stormwater nuisance ordinance we're going to wait and see if that will add any language to the forms too before we send the forms to the Board.

Underwood Drain (Recorded Document for deferred assessments) - Sullivan stated the Surveyor and Howard have discussed this as well. Right now, part of it is the order that determines it is recorded in the Recorder's Office. The one thing that is not recorded is the triggering event. We've decided and discussed that it could either be when the property goes through second platting or ILP (Improvement Location Permit). Once we determine what would be appropriate, we can make sure that's recorded document as well.

Lake Stonebridge Agreement - Sullivan stated we sent the Board the agreement for it. Originally, we thought the only piece missing was the backflow preventer cost and installation. Upon reading the agreement it talks about how much the Drainage Board would like to reimburse their HOA (Homeowners Association) for annual expenses for different things. Duncan and I are inclined to say no cap since it would only benefit them.

Duncan stated the language in there is for if we expend any money maintaining what they are supposed to maintain there's a mechanism in there for us to recoup those costs, which I think we all would agree we should get that, but the draft language right now has a cap on that. It says limited to so much per year.

Altman stated no.

Sullivan stated we'll put language in there that says no cap then.

Underwood Drain (Continued) - Altman asked, are they bearing interest before the triggering event on most of these instances?

Sullivan stated I will have to double check.

Altman stated because we want them compelled to self-report because lots of times, we won't catch the triggering event. What I would suggest, if we can do this by Statute, is you start immediately imposing an interest rate, a rather hefty amount and have them specifically initial that affect so there's recourse and incentive for them to pay and get it taken care of. Otherwise, they'll use us as a bank and I'm not interested in that. Check that out and it should be significant and it could be something for the first thirty days to give them a little grace and then really ratchet it up and have them specifically acknowledge that in the instrument so that they don't come back and say "well, I didn't know".

Sullivan stated I'll look into that and report back.

Duncan stated I wanted to clarify, the conditions of the deferred assessments are entered into ProperTax so they are not recorded which is why we're looking to actually have a recorded document. There is an entry into ProperTax so if anybody were to look there as soon as the deferred assessment is approved and ordered Janet (Hansen) enters it into ProperTax.

Altman stated so it should be collected at the next tax cycle. It will show up as a special assessment.

The Surveyor stated it's showing as a deferred assessment.

Duncan stated there is a record of it.

Altman asked, so will it be automatically billed at the next tax cycle?

The Surveyor stated no, it just hangs out there.

Altman asked, is there a mechanism where we can actually cause that in ProperTax to flip on the tax bill at least on the first payment due?

The Surveyor stated yes, there would be.

Altman stated then lets do it, but let's cover that interim time period because you have six month intervals on collections and if you're treated as a property tax it's only five percent (5%) and people are using that as a bank and I don't think that's right personally, because the Legislature dropped down the interest rate from ten to five because they felt sorry for people.

The Surveyor stated however on assessments for drainage it's still at ten percent (10%). That has not changed.

Maintenance of Erosion Control Landscaping - Sullivan stated this one didn't have a date on it, but we do have Ordinance No. 05-09-05B. 327 IAC 15-5, which is commonly referred to as Rule 5 does kind of address erosion during construction and before construction. Without the meeting minutes its hard to tell if it's for post construction or just generally going forward.

Altman stated I'm trying to figure out why it says landscaping.

Sullivan stated I'm not sure.

Altman asked, was it treating landscaping as a dirt disturbing event in addition to construction?

The Surveyor stated I don't know. The Underwood would be whenever that drain went through reconstruction so we can back track it from that date back to 2018 and see if we can figure out through the minutes.

Utility Non-enforcement Performance Bond - Sullivan stated with our utility relocation ordinance and then Ordinance No. 10-12-20A which essentially deals with structures that are within our regulated drainage easements we can have them relocate and pay the expenses of their utility relocation one and then Ordinance No. 10-12-20A says we can fine them if they have structures in our regulated drainage easement without our permission. From the meeting minutes the Board was trying to figure out how we could put a bond on there, but if it's for a relocation it could be there indefinitely, if that's the case we can go ahead and do something like that.

Altman asked, when they apply for the non-enforcement are they required to do a performance bond?

The Surveyor stated no.

Altman stated then I think that is the issue. Can we require a performance bond when they start tinkering in the regulated drain?

Duncan asked, would it be to cover what they're requesting to be permitted for it to be installed?

Altman stated plus that there's no damage to the drain.

The Surveyor stated sometimes we don't know that until a few years later.

Altman stated we don't release the bond until it's proven.

Duncan stated if we have to establish a value would we look at if something happens to repair a box.

Altman stated if you have to regrade everything, I assume that would be the biggest damage. I assume if they want to come with a certified Surveyor's report that has topography on it showing that it has not altered post construction we could release their bond. There's got to be a way around it.

The Surveyor stated that or camera the pipes.

Altman stated there are ways they can prove they didn't damage the drain and if they want to incur that other than that we'll let it pend for whatever you think is appropriate. One other thing I was thinking was more utilities on road of right of way, but I think it applies here, is more and more utilities are using contractors to do work and you have no idea who's fiddling in it so as you're looking at these ordinances I think part of the permitting has to be what contractor they're using and that the contractor trucks be fully marked and that they carry paperwork with them when they go in.

The Surveyor stated that would help Jerry (Liston).

Altman stated because security of utilities is going to be our next big issue with respect to...

The Surveyor stated these people are gypsies, true gypsies that come in, a lot of them from Texas, put these lines in and then they're gone. Then utilities say, "we didn't put that in", but they're contractor did.

Heirbrandt stated when I was down at the State House a couple of weeks ago I was talking to State Representative Crider and brought up the concern with utilities being notified way in advance, months, sometimes a year and then they never show up. Then we have crews that have to leave and it's hard to get them back to remobilize and the cost that it implies on the taxpayers is significant. I asked Brad Davis (Highway Department) to go to ACEC and start asking around about delays and utilities, it's millions, millions and millions of dollars; different stories from people all across the state on delays of the utilities. I told Representative Crider that there needs to be some type of penalty fee.

Altman stated or mechanism to avoid the delay.

Heirbrandt stated yes, that if they are notified and they don't show up they get assessed a fee everyday they're not there.

Altman stated if we provide that information and they don't act, what a compelling story for the news to report that the intent of sharing right of way utility was to save everybody expense and now it's gone completely out of control in favor of shareholder utilities.

Heirbrandt stated I couldn't believe how many responses we got. Well into millions and millions of wasted taxpayer dollars.

Altman asked the Surveyor, if you'll poll something in your association.

The Surveyor stated we're doing it in the office right now, trying to pull that information.

Altman stated but put it out to the Surveyor's Association.

Heirbrandt stated put it out because what Representative Crider challenged me to do was to get scenarios and cases of this happening, so he has something to present to other Legislatures. He said he could carry a bill that would put more pressure on the utilities.

The Surveyor stated we had our kickoff meeting last week for Drainage 101 with Farm Bureau and that was discussed. That may be one of the items on this year's agenda.

Altman stated that should be the main legislative focus, in my opinion, for both Highway and drainage.

Heirbrandt stated you're going to get everybody to jump on board whether its AIM, AIC, IACC, every city, every town, everybody's in the same boat.

Altman asked, have they announced Drainage 101 to sign up yet?

The Surveyor stated not yet, but we do have the date, I can get that to you.

Altman stated or can Lynette (Mosbaugh) sign us up?

The Surveyor stated yes.

Altman stated just go ahead and sign us up if you would.

The Surveyor stated it's not out yet, but we can put that on our tickle list.

Altman stated it's a good program.

Duncan stated I looked at the Road School agenda and utility relocation is a discussion at Road School at one of the sessions.

Vermillion Drain (Rivas Lawsuit) - Sullivan stated we have a hearing on Thursday for a motion to dismiss their claims against the Drainage Board. Once we have that I'll provide an update to everyone.

Ordinance No. 99-26-16A - Sullivan stated this is about mitigation requirements for highway, bridge/road projects. I've reached out to Matt Lee; we've gone over it and I think he sent an email to Gary (Duncan) and Steve (Dillinger) to have a discussion about it.

Altman stated let's get that done as soon as possible.

Altman stated on the Rivas litigation, have they filed any pleadings to defend the motion to dismiss?

Sullivan stated they did. We filed one in 2020, that's when the Drainage Board made the determination. Howard sent a letter in March of 2020 saying time is about up and then they filed suit in April. By Statute you have to file the petition for judicial review within 20 days of the determination and that would have happened after the January one. Howard's subsequent letter was a friendly reminder saying times almost up. The determination was in January, Howard's letter was in March and it was more of a friendly heads up saying times almost up if you guys don't remove the fence, we'll do it for you at your expense. Just a reminder of what the determination was by the Drainage Board. That's their counter argument is that no, they filed it within 20 days after Howard's reminder letter.

Altman stated that was just a notice that we were going to go on their property.

Sullivan stated yes.

ARPA Projects:

Heirbrandt stated I spoke to Duncan yesterday and it might be a good idea to start putting something on here for ARPA updates so we know when these things are coming down the pipe and which ones we need to bring to the attention of the ARPA committee that are on a fast pace to be able to get done.

Altman stated in all fairness to the ARPA Committee we need to be given more lead time.

Heirbrandt stated I agree. I think it would be good practice to put something on our agenda each meeting, where we're at, the timelines so we can provide updates to the Committee about what's coming down the pipe and the dollar amounts so we can get these things to move through quicker.

Heirbrandt made the motion to adjourn, seconded by Dillinger and approved unanimously.

Christine Altman - President

Lynette Mosbaugh
Executive Secretary