

MINUTES OF THE HAMILTON COUNTY DRAINAGE BOARD

May 10, 2021

The meeting was called to order Monday, May 10, 2021 at 12:00 p.m.

The members of the Board present were Mr. Steven C. Dillinger-President, Ms. Christine Altman-Vice President and Mr. Mark Heirbrandt-Member. Also present was the Hamilton County Surveyor, Kenton C. Ward, and members of his staff: Mr. Andy Conover, Mr. Gary Duncan, Mr. Sam Clark, Mr. Jerry Liston, Mr. Steve Baitz, Mr. Reuben Arvin, Mr. Steve Cash and Mr. Luther Cline. The Board's attorney, Mr. Michael Howard, was also present.

Approval of Minutes of April 26, 2021 and April 30, 2021:

The minutes of April 26, 2021 and April 30, 2021 were presented to the Board for approval.

Altman made the motion to approve the minutes of April 26, 2021 and April 30, 2021, seconded by Heirbrandt and approved unanimously.

Ream Creek - Day Easement:

The Surveyor stated we have our last easement that's needed for the Ream Creek project. This is on the Christopher and Anne Day property. This is for the Board's acceptance today.

Altman made the motion to accept the easement on the Christopher and Anne Day property, seconded by Heirbrandt and approved unanimously.

Jonas Rogers Drain, J. M. Gustin Arm - Drain Petition:

The Surveyor stated we have a drain petition on the Jonas Rogers Drain on the Gustin Arm. This represents 62% of the drainage shed.

Heirbrandt made the motion to refer the petition to the Surveyor's Office, seconded by Altman and approved unanimously.

E. E. Cornthwaite Drain - Petition:

The Surveyor stated we have a petition on the E. E. Cornthwaite Drain. This represents 48.69% of the drainage shed.

Heirbrandt made the motion to refer the petition to the Surveyor's Office, seconded by Altman and approved unanimously.

Adam Ault Drain - Petition:

The Surveyor stated the last petition is on the Adam Ault Drain from the County Commissioners in Tipton County for 296th Street.

Altman made the motion to refer the petition to the Surveyor's Office, seconded by Heirbrandt and approved unanimously.

2021 & 2022 Proposed Projects:

The Surveyor stated I presented you a map of those I presented last time. We've got two projects in White River Township, two in Wayne Township, one in Noblesville Township, three in Fall Creek Township, two in Clay Township, two in Washington Township, two in Jackson Township and one in Adams Township. I've been looking at some others. I do want to get Arcadia on that.

Altman stated the only thing I'd bring up is a question of equity with respect to the people we have recently determined to reconstruct and have massive assessments against. It concerns me that now some folks are winners versus losers and whether we should request that at least they have contribution on these drains.

The Surveyor stated that's doable.

Altman stated I don't know what the pleasure of the Board is, but it does concern me.

Heirbrandt stated I understand your concern this is a different situation. Probably a once in a lifetime type opportunity. In a lot of these I know that the Surveyor has prioritized over the years what needs to get done and we've slowly been picking them off, some of the ones we never thought we'd get done. The way I look at it is on that priority list this is your opportunity; just like you said before, it's always been like that. I only see this as the place to finally get some of this stuff done.

The Surveyor stated we've not had this opportunity since the WPA and the CCC in the 1930's.

Altman stated I'm not disagreeing that this is a good opportunity, I'm just trying to figure how we weigh the equities because these monies could be spent in different ways also.

Heirbrandt stated I totally understand your point.

The Surveyor stated which Segway's into another subject, we are in the process of doing the first hearing request for this money on Ream Creek. We have a lot of questions. How do we word it, so it passes the federal and the state tests? The open ditch section does have to be spread over the drainage shed, but the other section is pipe.

Heirbrandt stated it follows along a whole other guideline. I think you need to stay in close contact with our Grant Administrator, Todd Clevenger, and make sure he has in writing from the Treasury what you can and can't do before we pull the trigger.

The Surveyor stated I'll pass it through Todd first and then we will bring that to the next Drainage Board meeting.

Altman stated we probably ought to talk with our consultants and the law firms whether there's anyone else that knows these regulations inside and out so we can get some help with that.

Howard stated the problem is the regulations aren't out there yet.

Altman asked weren't they supposed to come out on the 10th?

Heirbrandt stated the 11th is when the money is supposed to arrive, but they were supposed to have something prior to that. I haven't seen anything, and they brought it up at the AIC District meetings that I've been attending that there's really no clear indication as to what the set guidelines are yet.

Altman stated my concern, quite honestly, is that our grants people are piecing together old stuff trying to come up with guidance and I don't know if that's accurate. I have concerns about how we're approaching it.

Howard stated it wasn't in the guidance, but I actually read the Act and the Act talked about roads and public infrastructure were not included. That's your big stuff and that's going to be in the two or three trillion dollar deal this fall, but I think one of the things we looked at is that if brick and mortar or road infrastructure is excluded; there's grants and there's businesses and there's hardships, but we're talking about \$65.5 big ones and to start down the road if we've got projects that are going to provide public benefit and we know expressly they're covered. I don't know if you've done the calculation, but if all of your projects had the piping in them, how much could you spend?

The Surveyor stated \$16,000,000.00.

Altman asked is that just the pipe portion?

The Surveyor stated yes.

Howard stated and then with the special distribution being less than four you've spent twenty of your \$32.5 for this year and you've got the same thing coming next year. I think to let these projects wait a year; Todd's been through this stuff pretty well and he's got some people in bureaucracy and from what they've said I just don't see the uses expanding to where we could build 146th Street and Allisonville Road or something out of this grant.

Heirbrandt stated no, I agree. You've got broadband too that's included in this. We've got a Committee together already on broadband trying to identify the areas that we need help in. We'll be prepared for that, but on the water and the water distribution piece of it, the infrastructure, I think there's a green light on a lot of it at least everybody I'm talking around the State to.

Howard stated there is arguably, a windfall to these people in these watersheds that part of their costs gets paid from money falling out of the sky, but that's going to happen whenever money falls out of the sky.

Altman stated but have we gone through the process of how much is daylight and doesn't qualify within these projects. Do we have estimates?

The Surveyor stated that's on these numbers I'm giving you except for Ream Creek and we already know that some of that comes out.

Altman stated I see estimated cost, but I don't know how much pipe and daylight is.

Howard stated how much of it could be carved out and not subject to assessment. If you don't have that number, you're not going to be able to advertise because you don't know what you're selling.

The Surveyor stated Ream Creek is the only one.

Altman asked only one what?

The Surveyor stated that has any open ditch in it.

Heirbrandt stated all the other ones have pipe.

The Surveyor stated I specifically looked at that when I was putting this list together.

Altman stated the other question is, if we're doing just clear priority should we be looking at, just excluding what doesn't qualify, that's a no brainer, but should you open it up to mixed projects where you've got open and closed. To me the only way a straight face we can do this is what are the highest drainage priorities in the county regardless and then go through the process of what qualifies and what doesn't and to what percent does it qualify.

The Surveyor stated there's a lot of open ditches that would qualify for the next round, which is the infrastructure round that I left off here.

Altman stated I'd like to see the full list of, in your mind or the Surveyor's Office, what are our highest priorities and then go through the process of this qualifies, this doesn't qualify. You've got it, but I think that's what we need to vote on when we move forward. With a straight face if someone asks me, "how come I had to pay thousands of dollars" then I can say these were the highest priorities that we have not been able to touch and this one qualified for this or this didn't. It may be that if it's a high priority 50/50 on pipe and open, we do the advertisement and say this is your opportunity to get it half paid.

Howard stated the other clock that's ticking is that unless they come out with different regulations this needs to be spent by December 31, of 2024. All this stuff is ticking at the same time. You've got sixteen here, but if you've got some more coming out it would be important to know.

The Surveyor stated okay, I will put that list together for the next meeting.

Elwood Wilson Drain - 1532 South Street:

The Surveyor stated we had an odd request from the City of Noblesville. A tree fell from that slope onto this house. I think the insurance; it's in the floodplain.

Altman stated it's got the regulated drain going right next to the house, correct?

The Surveyor stated part of the foundation is exposed at the top of the bank there. The only benefit from us buying it would be unimpeded access, but then what would we do with it other than that?

Heirbrandt asked Howard, what are your thoughts?

Howard stated I looked at the memo early this morning and you've got a problem there. The city is not jumping up and down to permit repair of a nonconforming use. You've got an elderly person who's struggling to understand the facts. I don't know why; is there any value to the people in the watershed if we did buy this?

The Surveyor stated other than access, no.

Altman stated in theory we have the access if we need it.

Heirbrandt asked how in the world would they ever be able to get a permit to build on that?

Howard stated if you look at it the house was there before there were building permits.

The Surveyor stated this house was built by my great-grandfather prior to World War II for an aunt and an uncle to live in after they got married. After they passed it was sold.

Altman asked does the insurance company know the percentage of damage compared to the value?

The Surveyor stated that I do not have.

Altman stated get that and figure out whether Noblesville would kick in some and we would kick in some and just handle it assuming the owner wants to move. That's a bug assumption too if we're dealing with someone that's lived there a long time.

The Surveyor stated with her being in her 80's I don't know if there's a place she could move to that she could afford honestly.

Altman stated there could be a lot of moving parts, but just to buy it to buy it. She's probably insured and can get the thing fixed.

Howard stated I'm not sure if she's in floodplain. She's got insurance the question is she wouldn't have flood insurance, but it wasn't the flood that got her it was a tree. She's got insurance for a tree falling and whether or not they'd let the legal nonconforming use be rebuilt..

Altman stated it depends on percentage damaged I would hope.

Howard stated let me call Denise and get some more facts.

Altman stated it may be something we could take care of if she want's it taken care of with a little help from the city.

Howard stated if her insurance would make a payment to her in lieu of repair and then we could by it and it would probably be a win, win. I need more information.

Capital Asset Notification:

The Surveyor presented a Capital Asset Notification for the Little Eagle Creek Drain, Orris Brendell Arm to the Board for approval.

Heirbrandt made the motion to approve the Capital Asset Notification presented, seconded by Altman and approved unanimously.

Bankruptcy Court - Frontier Communications:

The Surveyor presented the notice to the Board for their information.

Altman asked when did we first start that project?

The Surveyor stated 2019.

Altman asked when did we have our first communication with Frontier to get their stuff out of the way?

Howard stated this doesn't give them discharge, it just orders the debtor to assume existing contracts and move forward. I read it when it came in. It does not preclude us from filing a claim to them for..

Altman stated I'm trying to figure it was post-petition obviously, but whether we have a stay because of that order and that's kind of the question.

Howard asked whether or not we'd have to deal with the trustee?

Altman stated yes.

Howard stated we had the other one that they paid on. Gary and I are going to get together. We're going to send them a bill and see if they pay it. We won't get real greedy on damages for delay, they'll be very objective.

Duncan stated we'll have the support of the change order from the contractor for the additional costs he realized.

Howard stated that needs to be the out of pocket additional that we pay not public inconvenience; that's a little bit subjective for bankruptcy courts.

Duncan stated we started with Frontier in early 2020 and now it's been a full year.

The Surveyor stated we came to a screeching halt in April or May of 2020. It was 30 feet of pipe and a manhole to finish it.

Big Cicero Creek Joint Drainage Board:

The Surveyor presented the minutes of the Big Cicero Creek Joint Drainage Board of March 24, 2021 to the Board for their information. He asked if there were any questions.

Altman asked Butler, Fairman and Seifert will be working with you?

Heirbrandt stated yes.

Duck Creek Bank Stabilization Project - Change Order No. 1:

Baitz presented Change Order No. 1 to the Board for their approval.

"May 6, 2021

To: Hamilton County Drainage Board

Re: Duck Creek Bank Stabilization Maintenance Project

Item: Change Order No. 1

The Duck Creek Bank Stabilization Maintenance Project was presented and approved at the November 23, 2020 Drainage Board Meeting. The contract was awarded to Van Horn Excavating at a cost of \$98,181.04.

Due to existing weather conditions at the time of work, Pan Handle Eastern Pipeline Company required the installation of an air bridge to cross the pipeline with equipment and materials. This resulted in the contractors need to rent crane mats to construct the air bridge at a cost of \$6,584.83. Heavy rain during this time eroded an additional section of stream bank. This required an additional 48.52 ton of Rip Rap at \$65.60 per ton installed costing \$3,182.91 and 4 triaxle loads topsoil to be purchased at a cost of \$400.00 per load delivered totaling \$1,600.00. The bid item mulch material at a cost of \$1,800.00 was not needed and should be deleted from the contract.

Change Order #1 Summary

Additional:

| | |
|--|--------------|
| Crain Mat Rental | \$ 6,584.83 |
| Additional Rip Rap - 48.52 per ton delivered | \$ 3,182.91 |
| Additional Topsoil - 4 Triaxle Loads @ \$400.00 per load delivered | \$ 1,600.00 |
| Total | \$ 11,367.74 |

Deletes:

| | |
|--|--------------|
| Mulch Materials - 1.2 ton @ \$1,500.00 per ton | -\$ 1,800.00 |
| Total Cost for Change Order #1 | \$ 9,567.74 |

| | |
|--------------------|--------------|
| Contract Bid Cost | \$ 98,181.04 |
| Change Order #1 | \$ 9,567.74 |
| Total Project Cost | \$107,748.78 |

The Surveyors office recommends the approval of change order # 1 at a cost of \$9,567.74 and these costs be paid from the Duck Creek Drainage Area maintenance fund and turned in to be applied for grant fund reimbursement. The Duck Creek Drainage area maintenance fund currently has a balance of \$121,152.87.

Sincerely,

Stephen Baitz,
Drainage Inspector"

Heirbrandt made the motion to approve Change Order No. 1, seconded by Altman and approved unanimously.

Violation Update - Duck Creek Drain - Huntzinger Property:

Mr. Jim Huntzinger, Ms. Pam Huntzinger and Mr. Ron Novitski were present for this item.

Conover presented his report to the Board for approval.

"To: Hamilton County Drainage Board

May 5, 2021

Re: Rescind Violations - Deer Walk Subdivision Lot #2

Parcel # 07-03-34-00-01-020.000

11915 Deer Walk Drive

Cicero, IN 46032

Owners:

James R. Huntzinger & Pamela B. Rider jt/rs

16304 Oldenburg Cir.

Westfield, IN 46074

On February 18, 2021 two Violations and a Stop Work Order was issued by the Hamilton County Surveyor's Office for Lot 2 in Deer Walk Subdivision, located at 11915 Deer Walk Drive, Cicero, IN 46032.

Violation # VIO-2021-00002 was issued because erosion control measures shown on the approved site plan was not in place. The Hamilton County Surveyor's Office is requested that a new Storm Water Pollution Prevention Plan (SWPPP) be submitted for this site.

Violation # VIO-2021-00003 was issued as the result of an inspection of the site on February 10, 2021 when it was found that fill has been placed within the 100-year floodplain on the site.

"The Hamilton County Surveyor's Office requested that the floodplain on the site is to be restored back to the original condition and to the elevations as shown on the site plan that was submitted to and approved by the Hamilton County Plan Commission. The restored area of floodplain will require a topographic survey stamped by an Indiana Licensed Civil Engineer or Indiana Registered Land Surveyor to certify that the flood plan has been restored to the original elevations and capacity. The certified survey shall be submitted to the Hamilton County Surveyor's Office for review and approval."

As of May 5, 2021, the builder has met all the requirements set forth to correct the original violations as stated above.

The builder submitted a new SWPPP for the site and has installed the erosion control measures as shown on the approved submitted SWPPP.

The fill has been removed from the floodplain and the removal to the pre-fill elevations has been verified by a field survey stamped by an Indiana licensed engineer.

The fill and sediment removal is completed in the regulated drain and natural stream.

This office recommends rescinding the Stop Work Order for this site.

Submitted by:



Andrew D. Conover
Inspector"

Dillinger asked is this the one we had a discussion on a few meetings ago.

Howard stated the contractor didn't know much. Did this contractor hire a subcontractor that knew what he was doing?

Conover stated Stacey's did the erosion control work.

Heirbrandt asked this meet's the Surveyor's Office satisfaction?

Altman made the motion to rescind the violation order on Deer Walk Subdivision, Lot 2, seconded by Heirbrandt and approved unanimously.

Non-enforcements:

Clark presented a non-enforcement request for the Hunters Creek South Drain filed by John and Victoria Musick for parcel #17-09-24-03-06-005.000 for a fence. The Surveyor's Office recommends approval.

Altman stated one of the photos depicts the manhole inside the fence.

Clark stated we are allowing the fence to encroach fully into the 15' drainage easement on the east property line and fully encroaching into the 10' drainage easement on the north property line.

Altman asked was this a request for forgiveness rather than permission?

Clark stated there were several replacements that are being done and that might have been one of them.

The Surveyor asked Cline, isn't this the one on the neighbor and you're just showing where the manhole was?

Cline stated yes, the manhole is on the neighbor's property.

Altman asked but did they have permission to do that?

Cline stated no, it's been there for twenty years.

Altman stated understood, but shouldn't we be talking to them about; unless it's actually acting like a screen and keeping debris out. It might be okay.

The Surveyor stated yes, it might be keeping the neighbor's grass clippings out.

Dillinger stated if it's been there for that long why would we even mess with it.

Altman stated because we keep sending out violations when we go out and see a problem. You have to treat people consistently. I'm just pointing out it seems like we keep picking our battles when ignoring some people and letting other people slide. Just an observation. I didn't know whose manhole fence that was.

The Surveyor stated that's the neighbor.

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

Cash presented a non-enforcement request for the William Lehr Drain filed by Brooks Farm Development, Inc. for Brooks Farm Sections 1 and 2. The Surveyor's Office recommends approval.

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

Clark presented a non-enforcement request for the Bellewood Drain filed by Jeffrey and Patricia Hines for parcel #17-09-30-00-07-054.000 for a fence. The Surveyor's Office recommends approval.

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

Clark presented a non-enforcement request for the Cool Creek Drain, Springmill Ponds Arm filed by Jaclyn and Garrett Schwarz for parcel #17-09-23-01-05-010.000 for a fence. The Surveyor's Office recommends approval.

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

Clark presented a non-enforcement request for the W. R. Fertig Drain filed by Stephanie and Corey Wilson for parcel #17-13-01-00-01-087.000 for a replacement fence. The Surveyor's Office recommends approval.

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

Clark presented a non-enforcement request for the Hunters Creek South Drain filed by Ryan and Amy Whiteman for parcel #17-09-24-03-02-036.000 for a fence. The Surveyor's Office recommends approval.

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

Clark presented a non-enforcement request for the Hunter's Knoll Drain filed by Cherine Perrin for parcel #17-09-24-03-03-013.000 for a fence. The Surveyor's Office recommends approval.

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

Clark presented a non-enforcement request for the Kingsborough Drain, Buckhorn Estates Arm filed by Sovandy and Angela Ros for parcel #17-09-22-03-03-015.000 for a sound barrier. The Surveyor's Office recommends approval.

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

Clark presented a non-enforcement request for the Little Eagle Creek Drain, Albany Place Arm filed by Abhilash Vemulapalli and Sruthi Anne for parcel #17-09-20-00-25-004.000 for a fence. The Surveyor's Office recommends approval.

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

Clark presented a non-enforcement request for the Little Eagle Creek Drain, Grannan Grove Arm filed by Jeffrey Gibbs for parcel #17-09-19-00-11-013.000 for a fence. The Surveyor's Office recommends approval.

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

Clark presented a non-enforcement request for the Little Eagle Creek Drain, Maple Knoll Arm filed by Dung Thi Kim Pham for parcel #08-09-10-00-13-007.000 for a fence. The Surveyor's Office recommends approval.

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

Clark presented a non-enforcement request for the Little Eagle Creek Drain, West Rail at the Station Arm file by Wanda Anderson for parcel #08-09-10-00-20-002.000 for a fence. The Surveyor's Office recommends approval.

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

Liston presented a non-enforcement request for the Thorpe Creek Drain, Barrington Estates Arm file by Joe and Gretchen Reynolds for parcel #13-12-29-00-11-010.000 for a driveway and underground geothermal loop. The Surveyor's Office recommends approval.

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

F. E. Hines Drain, Slater Run Arm - Mann Fence Violation:

Mr. John Mann was present for this item.

Liston stated around the start of the year we issued a notice of violation. We had received a non-enforcement for Lot 34 in Slater Run Section 2 on Waterhaven Lane in Noblesville. While out there I saw the neighbor had placed a fence without permits. In 2017 we issued a notice of violation for another lot. The fence encroached into the easement about 20 feet from about seven feet from the centerline of the storm pipe. On the Mann fence, it's about five feet from the center line of the storm pipe, the 21" storm pipe. Mr. Mann has tried to get his fence company to sign the third sheet. I know what the Board has said in the past, if the fence company won't sign the sheet the

property owner won't get a fence, but this fence was already installed. Mr. Mann is here now to give the Board an update on where he's at.

Mann stated I apologize for taking you time on this matter. This strictly comes out of my ignorance about how things work with the drainage system here. I was under the assumption, and wrongly so, like I said I have nobody to blame but myself for standing up here taking your time, that I needed permission from the HOA when I submitted my fence order. When the fence company came out, I explained that I wanted to be in line with this other fence because I wanted to be cosmetically the same. I still wasn't thinking about a county drain that ran through here. I wanted to leave plenty of room so if work trucks needed to get back there that they would have that. That was my intent. I come here today so no matter how the ruling goes that I want the Board and the Commissioners to know that I did this out of ignorance and not out of intent. I just didn't know that I needed to submit anything to the Drainage Board or believe me I would have. As I was trying to figure out just to make sure that I was on the right side and I wasn't was when I looked at the HOA and they had a wood fence that went all the way up to where the trail is. That was the wood fence and I thought as I was laying this out in my mind I thought if there's a wood fence that runs all the way there then I should be okay. Again, I didn't even know that the county drain would have ran back there or I wouldn't be standing here today, I would have went through the process the way that I should have in the very first place. The only thing that I was told when I talked to Mr. Liston on the phone he said in preventative measures what they had done was call all the fence companies to make sure that they knew before they put a fence in that they needed to contact the Drainage Board and make sure they're not on the easement. My fence company just happened to be one of the ones in Fishers that they did not call. Again, not on the fence company, that's on me, my responsibility. One of the things that I will do, in the covenants when you sign off for the HOA Board there's just a spot in there that asks if you are on an easement or if a permit is needed, so if you don't know like I did you just check no, you didn't think one was needed, but I'm going to go back to my Board and make sure there's a check off that yes, I've contacted the county, yes I've contacted the city and I'm needed on this fence. That way a new homeowner, like myself, if they thought that all they needed was Board permission to put in a fence and making sure that it's right materials that we won't run into this problem in the future. Again, I'm embarrassed that I have to stand here in front of you. I know you have more time to spend on important things than my fence that was put onto your easement, but purely by accident.

Dillinger asked what are our options?

The Surveyor stated the problem has been that his fence company won't sign the third page.

Dillinger asked saying that...?

The Surveyor stated saying that they know the rules and they'll abide by them.

Altman stated but the fence is already there.

The Surveyor stated the fence is already there and all we wanted was the non-enforcement, which he couldn't submit because his fence company wouldn't sign it.

Altman stated signing the page now is kind of silly. The fence is there, he's gone through the process of saying "oops, can I have a variance". The variance is in line with two or three neighbors I'm not sure...

Dillinger stated to Mann, you understand that if we had to get in there and the fence had to be removed...

Mann stated yes and I talked to the fence company and believe me they are very, very well aware now of how the system works and there is a requirement for the county drain here. When I talked to the fence company, I think they were looking at it from the Noblesville City side because they told me I could run the fence all the way to the trail that runs behind me. I didn't want to take a chance on that. He's like all you would do is sign an agreement with the city that if they needed to get back there that you'd be responsible for removing the fence. I said I didn't want to do that. I'll take the responsibility, but I didn't want to do that to the neighborhood. What I think I can do, at least for Slater Farms, with the HOA and I've talked to the president briefly and I was going to see after I get out of here is to go back and make sure that those boxes are not just check boxes where I as a homeowner think I need an easement permit or not, but have I contacted, yes or no and then who was my contact. I think as new homeowners submit for a fence approval then they will have already made these contacts and do it on the right path rather than me talking to the fence guy going "yes, let's put it here because it looks like it's in line" and being backwards. That's my apology because on the back side of Slater Farms they do have these fences that run all the way to the trail, but there's no drainage easements back there. When I'm looking around, I had no idea. I think I can correct the problem for the neighborhood moving forward with these adjustments in the HOA, but again I apologize, that was solely on me and not knowing. I didn't intentionally reroute any of the system with permits. I just never put a fence up before.

Altman stated I think what you're doing with your HOA is going to be more valuable going forward than chasing the fence company who doesn't want to sign.

Dillinger stated and he's acknowledged he would have to move the fence.

Altman made the motion to waive the requirement of the fence company signing off given the circumstances on the Mann Non-enforcement, seconded by Heirbrandt and approved unanimously.

The Surveyor stated to Mann, get with Liston on the non-enforcement and we'll just make a note on that page of today's action.

Mann stated again, my apologies, but I really respect and love what you guys are doing for Hamilton County. I'm glad I live up here. Everything you do is making the county greater and my property values keep going up.

Violations - Mud Creek/Sand Creek, Nancy Kimberlain Arm:

Liston presented his report to the Board.

**"NOTICE OF VIOLATION
VIO-2021-00005
Certified Mail: 7018 3090 0000 8238 2089**

May 5, 2021

May, Brooke & Andrew M. Weaver
11803 Edgefield Drive
Fishers, IN 46037

**RE: Mud Creek Sand Creek Drainage Area, Nancy Kimberlin Drain
May-Weaver Pool and Fill Encroachment - Lot 67**

It has been brought to the attention of this office of a pool encroachment and fill material placed into the Nancy Kimberlin Drain's 75 feet regulated drain easement on Lot 67 in Arbor Glen Sec. 2.

A recent site visit, after receiving notification from the City of Fishers and supporting survey documentation from HWC Engineering (attached) show the pool, pool deck, retaining wall and fill material placed in the easement and floodplain on the lot.

The encroachment of the pool, deck and retaining wall is a violation under 36-9-27-33 of the Indiana Drainage Code. The placement of the fill in the floodplain is in direct violation of Hamilton County Ordinance No. 4-26-99-C which prohibits placing fill in a Floodway/Floodplain of a regulated drain.

Upon receipt of this letter, the landowner has ten (10) days in which to contact this office concerning the violations.

Please contact Mr. Jerry Liston at 317-776-8495 upon receiving this Notice of Violation to discuss what measures need to be addressed to correct the situation.

Sincerely,

Kenton C. Ward, CFM
Hamilton County Surveyor

CC: Jason Armour
Jonathan Valenta"

Altman asked is this an individual lot or a community pool?

Liston stated it is an individual lot.

Altman asked do they have room on site to mitigate?

Liston stated no.

The Surveyor stated I don't know where he'd put it.

Altman asked how far along are they with their pool?

Liston stated the pool is in, the decking has been formed with concrete. The retaining wall is in, the fill has been placed.

Howard asked is there anywhere to put an actual drainage structure on the lot?

Liston stated I don't think so.

Howard stated no pipe, no...

Liston stated no.

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The Surveyor stated it's a little larger lot, but the small lots they love to develop now with McMansions on it, so it's wall to wall house.

Liston stated I'm sure we'll be back with some additional information.

Altman stated maybe he'll have muddy water in his pool someday.

The Surveyor stated the pool is at least above the 100-year.

Howard stated the pool will be clean, the street will be flooded.

Mallery-Granger Drain - Change Order No. 1:

Liston presented Change Order No. 1 to the Board for approval.

"May 5, 2021

TO: Hamilton County Drainage Board

RE: Mallery Granger Drain Reconstruction
Change Order #1

The Contractor, 5 Star Company, Inc. on the Mallery Granger Drain Reconstruction has requested an extension of the completion date due to backlog on culvert pipes from their pipe vendor.

The initial completion date in the contract was June 1, 2021. The office requests an extension of 45 days. The new completion date would be July 15, 2021.

Respectfully,

Jerry L. Liston
Hamilton County Surveyor's Office

CC: 5 Star Company
Project File"

Altman made the motion to approve Change Order No. 1, seconded by Heirbrandt and approved unanimously.

Surety Acceptance:

Liston stated that at this afternoon's Commissioner's meeting the Board would be accepting the following sureties: Subdivision Improvements Performance Bond No. 3739838 in the amount of \$33,421.92 for Stony Bluffs Subdivision, Stony Creek Floodplain Compensatory Storage Area; Performance Bond No. 70NGP185018 in the amount of \$340,929.60 for Maple Run Section 5, Stormwater Drain and Storm Sewer System; Performance Bond No. 70NGP185032 in the amount of \$138,115.20 for Maple Run Section 3, Stormwater Drain and Storm Sewer System.

Construction Updates:

Intracoastal at Geist Drain - Liston stated at the last meeting I updated the Board saying I had spoken with Vectren and they believe their line is in conflict with this project and can either be raised or lowered or spliced if we need to. I had a conversation this morning with Duke Energy. If you remember a month or so ago, we updated the Board about a transformer that needs to be relocated. It's a single feed transformer and has to have a scheduled outage. It was obvious from my conversation this morning that they haven't done anything since our last conversation. It effects 70 plus residents in that subdivision. I was also told this morning that it was our responsibility to notify the residents that would be affected by the scheduled outage. I don't see where that's our responsibility, I think it falls to the utility to do that.

The Surveyor stated how do we know?

Howard stated if they ask one question then the whole system fails because you don't know anything about running electricity.

Altman stated that's their internal policy. I did it on a commercial job and they had to have so many days' notice before they shut things down to change my service. It's the same process.

Howard stated we just do it in writing. Just get the date and send it out to them. If they have any questions call Duke Energy.

Altman stated either that or we get big tin snips and cut their line. What are we going to do?

Howard asked how many people do we affect?

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Liston stated they told us 70 plus homes.

Duncan stated we still don't have a firm number from them.

Altman stated it's got to be just the subdivision, don't you think?

Duncan stated we think so, but it's hard to say whether they've fed more homes from this circuit or not.

Howard asked do they have an address list or a map with a line on it or something?

Duncan stated I'm sure they do, but we don't have it.

Altman asked how do we notify them until we tell them what day they're going to cut the power?

Duncan stated and who to notify.

Liston stated I still think that falls back on Duke's responsibility. What if somebody has lifesaving needs or something, if they have O² or whatever.

Altman stated the only other thing we can do is call IURC and say, "we're having a problem with Duke, what's our choice?". They're the regulatory body.

Heirbrandt stated that's going to have to go through Howard.

Liston stated we awarded this contract back on November 23, 2020 and our contractor, it's one of our maintenance contractors, but this is the second project we've held him up on getting started.

Howard stated I think we're going to have to put a process; Duke's got to tell us when they're going to do the work and they have to get us the list and we have to do it. I've never been to the IURC, I don't know those people, but most people that deal with them think there's four words involved, and they've never gotten a lot of relief.

Altman asked is there any way we can go around this thing?

Duncan stated we've looked at it to see and it is so narrow between these homes and the drain that we're connecting to there really isn't a way. I've laid out some options to go around them, but it's just not practical. In some instances, it's just not feasible to do either.

Altman asked is it a power line we're going to run into or box?

Duncan stated both, it's a transformer plus the wiring that goes into it and then comes out of it in both directions.

Howard asked we can't take a circuitous route?

Duncan stated no.

Altman stated I don't care if it gets buried in water.

Duncan stated we get into easement issues and all sorts of things to go out and around it.

Howard asked we don't have any easements?

Duncan stated we do have easements, it's just that they're right between the homes.

Liston stated there are utility easements there too, it's a combined easement.

Altman asked what's the project going to relieve?

Duncan stated that's one of the most important parts. From a risk standpoint, every day they do not move prevents our project from completing which is being done to reduce the potential for the homes right next to this drain to flood, which is really what we're doing the project for. I hope we don't get a rain event large enough to flood the homes before they move. That's certainly the emphasis for the project was to help those homeowners.

Altman asked where is it on the face of the earth?

Duncan stated 113th and Florida Road.

Altman stated I don't know what else to do but inform the people that are going to flood that this project is being held up by your utility, Duke Energy.

Howard stated yes, and cc the IURC. I'll help you with that. We might as well do something.

Altman stated put the homeowners on notice that we are unable to act and unable to adjust.

Heirbrandt stated copy Mark LaBarr on that too.

Howard stated we need to get that plat and see what it says. I bet it says DUE and DUE is defined for the benefit of drainage and utilities, so who's at the top of the pecking order from a property rights standpoint. That's what you sicked us on, get an ordinance, tear them up and let them go, what about Home Place, it's a property rights issue and our good friend Judge Hamilton didn't help us any in the Panhandle Madison County Drainage Board case. If you can't approve superior property rights, I know what your statute says, but we're not going to enforce it as an unconstitutional taking. The Drainage Board Statute is clear and unambiguous, but the case law has interpreted it as a property rights issue.

Heirbrandt asked and you'll make sure Mark LaBarr is copied on that?

Howard stated yes.

Altman asked is Duke going to do this without charge or are they going to back charge the project?

Duncan stated they should be doing it at no cost to us.

Altman asked have we verified that?

Duncan stated it's supported by the State Code.

Howard asked they're in a drainage easement?

Duncan stated yes and in conflict with our project, so the cost of the relocation is born by the utility.

Howard asked is it a drainage easement or a drainage and utility easement?

The Surveyor stated DU&E.

Altman stated then I don't think we have that position based upon that last discussion. It may be cheaper just to get some easement from the people we're trying to help. I assume the people that we would be getting easement from are people we're trying to help. Tell them that we have a conundrum, we can't help you because Duke won't move without moving our project line and someone's going to have to give up easement to do that.

Howard stated I agree with the Surveyor under the Statute, it defines a regulated easement as a ditch or pipe or structure and it says if you need to relocate for drainage purposes you can make the utilities move. Federal Court says that's non-compensable taking.

The Surveyor stated where Duke is located is right beside where we've got to go and there's no way around.

Liston asked do we need to look at dedicated easements for the future?

Altman stated that's what Carmel's requiring. Carmel, when you do a subdivision, almost will deny your approval unless you, for drainage, have dedicated easements. It's a question of plan approval on this stuff and we all sit at the TAC meeting and we see their structures unless they varied from the preliminary plan. That may be where you need to dig deeper, did they put that box someplace other than where they said they were on the preliminary plat.

The Surveyor stated part of the new ordinance is going to be you cannot put utility boxes on top of our drains period.

Howard stated in most cases it's not going to be over; if it's over an existing regulated drain and you can prove the regulated drain existed before they went over it, you're good to go, but in these platted subdivisions where we're taking over a drainage system in a DUE which means both, who wins? It almost becomes you go back to the property owners and they don't like to hear that their; it was just like John's (Mann) situation. Developers aren't going to tell you what you can't do on your lot. Everything is going to be wonderful and Realtor's are worse than the developers. They just want to get their commission and get out of there.

Mallery Granger Drain Reconstruction - Liston stated we're being held up on this project because of utilities. Duke has a three-phase line that crosses our drain south of 196th Street on the golf course where we need to go through to finish this project. The contractor started working at 196th Street. When they came out to do the locates on this the locator missed marking this and it just so happened the contractor and I met with the golf course personnel and saw that mark on the ground. We got ahold of the locator and they came back and actually marked it. We asked Duke to provide us with the depth because of it being three phase and having to go over it and they pretty much told us no. We're asking our contractor to give us a cost of potholing it so we can get this project from 196th Street down onto the golf course. We've got water backed up in the drain from

dredging. Also, Indiana-American Water, which is on the south side of the bridge they're crossing, I was out there Friday and they had their US Hydro out trying to locate that water main and having trouble finding that. We think we're okay with the water main, but we wanted to make sure.

Ellis Barker Drain Reconstruction - Cline stated we're still trying work with Westfield. They have the northern end of Grassy Branch closed and if the intersection at 196th Street closed it would block in people from the north end so there's been some emails back and forth between our office and Westfield about trying to work out some type of solution to this problem. They say it will be July before they're finished.

Duncan stated if we were to wait to complete the project until the roadways are open north of where we need to do our work it could be the end of July. In one of my correspondences I said we all know that construction projects can become August, can become September and we said we can't wait to finish this project until almost fall. I had proposed to Westfield and our contractor is it possible to do it under traffic and the general indication is that it is. They have installed enough of the tile across the intersection that we can maintain traffic maybe through use of flaggers and keep it open. I'm exploring that and we expect that it will cost more money for that additional maintenance of traffic so I'm going to request a price from Morpheus. I think we just have to do it. We don't want to keep dragging this out. Morpheus is already holding prices that are already stale to keep this going. I would really like to pursue doing it under traffic with use of flaggers and just get it done.

Heirbrandt stated I agree with you.

Duncan stated it should only take a matter of days to get it done and I'd hate to wait all those months just for a couple of days.

Heirbrandt made the motion to approve the use of traffic control to finish this project, seconded by Altman and approved unanimously.

Clara Knotts Drain, Park Broadway Arm - Cline stated the contractor met with AT&T who has lines in the way on May 3, 2021 and have come to some kind of decision as to what's going to happen, or a game plan on what's being proposed. AT&T has two lines that they need to move. I have not seen anything back yet about the timetable of moving those lines.

Duncan stated I had a meeting with the City of Carmel Engineering Department last week regarding another matter, but we did talk about the Clara Knotts. As the Board knows Carmel has financially helped with the project and have an interest in this project. They have a staff member that deals with utility coordination and they offered their help to reach out to the other utilities because we still have issues with Vectren and Centerpoint as well as Carmel Water. I was going to take them up on that just to say having more than one voice asking for them to move should probably help.

Altman stated especially Carmel Water.

Duncan stated I know all the folks down at Carmel Water, I'm good friends with a lot of them.

Overman-Harvey Drain, Village Farms, Adios Pass Reconstruction - Cline stated the project is basically complete. I did a walk through on April 30, 2021 with the contractor and they just had a couple of items they needed to address which were minor.

Budget & Permit Update:

The Surveyor presented the budget and permit update to the Board for their information. He asked if there were any questions.

Altman asked when do we have to turn our budgets in?

Mills (Robin) stated June 7th, I believe.

Altman stated we need to talk about it at the next meeting.

Cove Horney Drain - Carey & Sons, Inc. Easement:

The Surveyor presented an easement on the Cove Horney Drain on the Carey & Sons, Inc. property to the Board for acceptance. This is paid for by the developer.

Heirbrandt made the motion to accept the easement from Carey & Sons, Inc., seconded by Altman and approved unanimously.

Cove Horney Drain - Steven & Linda Osborne:

The Surveyor presented an easement on the Cove Horney Drain on Steven and Linda Osborne's property to the Board for acceptance. This is paid for by the developer.

Heirbrandt made the motion to accept the easement from Steven and Linda Osborne, seconded by Altman and approved unanimously.

Senate Bill No. 385:

The Surveyor stated Altman had mentioned she wanted a synopsis of Senate Bill 385.

Altman asked do we have Class 2 Wetlands?

The Surveyor stated we have Class 1, 2 and 3.

Altman stated I know, but this thing effects Class 2. Tell me what a Class 2 Wetland is.

The Surveyor stated they changed the definition. I think the definition before was what is not a Class 1 or Class 3 is a Class 2.

Duncan stated but had substantial habitat and endangered species.

Altman stated so these are the made-up ones.

Duncan stated I haven't seen how many wetlands this affected by changing the definition. My assumption would be some of what would have been considered Class 2 became Class 1. It's hard to say with the language how much it had changed. Class 2 still includes endangered species.

Altman stated I think what the developers were maddest about was the emergent wetlands that weren't really mapped, but all of a sudden became...

Howard stated like our situation wherever we had a drainage pipe break, and nobody saw it for three years and it turned into wetland.

Altman asked do we know whether this bill affected that?

Duncan stated it does. One of the items in it is "providing that an IDEM permit is not needed for the development of cropland" and cropland is defined in the code change, "that has been used for agricultural purposes in the five years immediately preceding the development or in the ten years immediately preceding the development if the Army Corps has issued a jurisdictional determination that the cropland does not contain wetlands". They have expanded that to allow development; they should not have to get the permits that they would otherwise have to get under those conditions.

Altman stated if it wasn't a designated wetland by the Corps.

Duncan stated within ten years before the development.

Howard asked which is the most protected, Class 1 or 3?

Duncan stated the most protected is Class 3, that's the highest class of wetland.

Altman stated so it's counterintuitive like most of the federal designations. Class 3 would be a designated wetland that I think of if I look at a map and it says "wetland".

Duncan stated it's the highest quality. Class 1 is the one that's really been impacted and is degraded and has become less regulated due to the fact that it's so degraded.

Howard asked the Surveyor, was ours a Class 1 or just an emerging wetland because of neglect.

The Surveyor stated I think in the agreement it spelled out what class it was, and I forget, but I think it may have been Class 2. I'll check that and see what it was.

Howard stated we've already planted the trees.

The Surveyor stated it's history. The one thing that it did remove was the ephemeral streams.

Altman asked is that like an intermittent or what?

Duncan stated essentially one that fills with water while it's raining.

Altman stated a drainage ditch.

Duncan stated a drainage ditch, a roadside swale.

Altman stated so it's one that catches runoff.

Duncan stated that one page is a summary. The roll back itself is 16 pages, I tried to boil it down to items that affected the Board.

Howard asked as people who follow it will there be opportunities for the downtown enforcement people you feel like this is clear enough that they are precluded from some things or are they going to try to sneak back under the door.

The Surveyor stated they're going to try to sneak under the door like smoke.

Duncan stated in some levels there's review and approval authority for Class 2 and Class 3.

Howard stated in a lot of situations you're going to be dealing with the same sweet wonderful people that we've dealt with in the past.

Duncan stated let us know if you have any questions.

Drainage Board Attorney (Pending Items):

Ordinance on Utility/Drainage Standards - Howard stated Connor (Sullivan) met with Gary (Duncan) and looking into specifically Home Place and starting to look into what the property issues are, whose easement it is, etc. because it's not as easy as saying "thou shalt get out of our way or we'll tear it up".

Lake Stonebridge Agreement (Backflow Preventer) - Howard stated we did get the Lake Stonebridge in last week, but since we only had one person working and the other's on leave for Covid I didn't know about it so they're copying it for the next meeting.

Altman asked when can we expect the ordinances to be complete for us to act on?

Howard stated the thing is there's going to be several issues because these are not just the regulated drainage easements that have been there forever. These are platted subdivisions with all kinds of property designations so each one will be different. Hopefully they have clearly defined drainage easements and they have clearly defined utility easements, but I think what we're mostly going to find are DUE's and then the question is does the Statute if it's a DUE because Judge Hamilton found for the pipeline because there was no evidence of which preceded which and which preceded which sounds like property law.

Altman asked, but was it a federal preemption issue or was it clearly first in time first in right?

Howard stated it was a drainage issue first in time, first in right and he ignored Section 48 of the Drainage Code. Andy (Conover) was over there and he pointed out to me that he ignored Section 48 because there was no proof of who was first in time, first in right.

Altman stated it sounds like a failure of the attorneys to plead their case properly.

Howard stated that's right, but he did let them know that without that he found for the pipeline.

Altman stated however, again, is it a ruling that he's going to ignore or was it a ruling that the attorneys didn't do their job in litigation. Send out a copy of the case if you would.

Anchorage Drain - Erosion Study:

Heirbrandt asked the Surveyor, would you get me an update on Anchorage with Christopher Burke and where they're at?

The Surveyor stated I received an email today from Peggy (Shepherd), Jeff's on vacation this week, but he had written out a report. I have not opened it yet to look at it but was going to look at it and send him anything that I saw. He should have, when he gets back, enough information to finish it.

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

Steven C. Dillinger - President

Lynette Mosbaugh
Executive Secretary