MINUTES OF THE HAMILTON COUNTY DRAINAGE BOARD

June 10, 2019

The meeting was called to order Monday June 10, 2019 at 12:01 p.m.

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

Executive Session
Altman stated that there was no executive session.

Approve Minutes of May 28, 2019:
The minutes of May 28, 2019 were presented to the Board for approval.

Dillinger made the motion to approve the minutes of May 28, 2019, seconded by Heirbrandt and approved unanimously.

Anchorage Drain Reconstruction – Receive Quotes:
Howard opened the quote from Agricon at $75,625.00.

Altman asked how long it would take the Surveyor’s office to review that?

The Surveyor stated it would be reviewed with the report at the next meeting, but he stated the office has to get with the City of Fishers to find out what the contributions would be.

Altman asked if there is a motion to consider an award at the next Drainage Board meeting?

The Surveyor stated there is a continuation of a hearing until July 22, 2019.

Howard stated there can’t be an award until you have a public hearing on the assessment.

Altman asked if there was a quote hold on that long?

Heirbrandt asked if it was for 60 days?

Duncan stated that it should have been in the bids.

Duncan stated that he might have taken them out since they were just taking quotes.

Altman asked Howard if it would be possible to except the quote pending review that it is responsive to all points. The Surveyor’s Office is not seeing a hold period on that.

Howard stated that to refer to the Surveyor’s Office to review for recommendations and to solicit a written consent to hold up to and including such day that the Surveyor seems reasonable and to make it with that date.

Altman asked if there’s a motion to that affect?

Dillinger made a motion to refer the quote to the Surveyor’s Office for review and recommendation and to obtain written consent to hold the quote up to and including such date as the Surveyor deems reasonable, seconded by Heirbrandt and approved unanimously.

Overman Harvey Drain – Village Farms Complaint:
The Surveyor stated that this email originally went to the Commissioner’s Office but was forwarded to the Surveyor’s Office.

The Surveyor stated that the office is in the process of knocking each drainage complaints down one at a time and a report will be ready at the next Drainage Board meeting.

Heirbrandt stated that some of the standing water is bad.

The Surveyor stated that there were swales which are not regulated, and he would not regulate those swales.

Altman asked if there were any sub-surface drain in the swales?

The Surveyor stated there were in a couple.

Baits stated there are some sub-surface drain which are in the areas that are not part of the regulated drain and was not accepted as part of the regulated drain. Baits does not know if they were installed by the developer at the time or whether they were added by individual property owners later. Baits stated that most of the issues that are in Village Farms are self-inflicted wounds by planting of trees, landscape mounts, fences. (Baits presented some pictures to the Board). One of the particular locations I know happens to be the subsurface drain runs next to a Willow tree which is an issue. The pink
flags are on the subsurface drain and you can see the alignment comes right under the River Birches. We're pumping from the subsurface drain riser and there's landscaping on both sides of the subsurface drain in these subdivisions. A lot of these are pretty much self-inflicted wounds that the property owners are doing.

Altman stated it would be helpful to review this complaint to let the Board know whether it was an oversight as indicated in the complaint or whether it was a deliberate move that the Board did not accept.

The Surveyor stated that the subdivision was done in the early 1970's. A lot of that was pre-dated becoming regulated drains.

Conover stated that four of those locations listed in the complaints are four different sections of the subdivision. Section 1 & 2 was an oversite to regulate the entire section and went back and got it later. I did not find any sub-surface drains on the plans. It looked that they were not installed as far as an oversite.

Altman stated that it would be helpful when a response is put together for the Board to review.

Howard stated there is a big difference when all the lots were in the drainage shed for some discharge in the subsequent drain or whether not the Board accepted the bits and pieces. The question is who has the duty to cut down the trees, etc.

The Surveyor stated that he thinks that some of the older sections of the subdivision and as the newer sections came along the ordinance evolved and started requiring the underdrains and then the regulated drains and so forth. It did not happen all at once as there were problems that we ran into; then the ordinance evolved.

Howard stated that unless there is express acceptance of a defined area whether above or below as a regulated drain, he did not think that the Board could assume maintenance by osmosis.

Altman stated don't they have to petition? It would be petition process.

Howard stated if they petition the Board should not accept until all the self-inflicted issues have been resolved. It would be imposing a huge burden on the watershed.

Altman asked the Surveyor when will this be done?

The Surveyor stated it would be the next Drainage Board meeting.

Altman asked motion to that affect or just a notation.

Heirbrandt stated no.

**Bergman Etal vs. Big Cicero Creek Joint Drainage Board:**

Altman stated there is a big congratulations in line.

The Surveyor stated that it was very good to receive.

Altman stated that it was an excellent opinion in terms of walking through drainage law.

Heirbrandt stated he was glad that there was a judge that understood drainage.

Altman asked who the judge was, was it a local attorney or was he a sitting judge?

Heirbrandt stated he could not remember.

The Surveyor stated it was a sitting judge.

Altman stated for the record that it does reflect that the trial court affirmed that Big Cicero Drainage Board resolution of the reconstruction.

**Private Drain Petition - Wolf Packard Update:**

Conover presented his report to the Board.

“To: Hamilton County Drainage Board

June 4, 2019

Re: Wolf Packard Private Drain Petition – Update

On December 8, 2017 an Obstruction of Private Drainage Petition filed with the Hamilton County Surveyor’s Office. The petition was filed by Joe Duepner attorney at law representing John Wolf and Monica Packard.

The petition identifies an obstruction located on downstream property identified as parcel #11-11-06-00-00-610.001, deeded owner: Sagamore Club LLC, 1201 Aries Dr., Lincoln, NE 68512, registered agent being 120 East Market Street, Suite 808, Indianapolis, IN 46204.
The petitioner Wolf is the owner of tract 11-11-08-00-12-042.000 and petitioner Packard is the owner of tract 11-11-08-00-12-041.000. Other affected properties are 11-11-08-00-12-040.000, 11-11-08-00-12-039.000 and 11-11-08-00-12-038.000.

The petition states that “Said obstruction is caused by poor design and/or downstream obstruction causing flooding to form a lake well into the properties listed above and is located along the rear property or backyard of the properties listed above.”

Plans for the Sagamore Golf Course and for Sagamore Section 5 residential development have been acquired. The Golf Course was developed prior to the residential development with both using different engineers and developers.

The large pond on Sagamore Golf Course was originally constructed as a private pond sometime between 1962 and 1974. This information was only determined from aerial photography. No additional information can be found regarding the original pond.

The Drainage Design Report Summary for Sagamore Westside prepared for the Melrose Company, 200 Merchant Street, Hilton Head Island, South Carolina, addresses the drainage for the Sagamore Subdivision west of Union Chapel Road. The report was prepared by Paul J. Cripe, Inc., 7172 Graham Road, Indianapolis, IN. This report references the existing pond and notes that the existing dam and pond were modified and repaired as part of the golf course construction.

No formal plans for the golf course can be obtained. An as-built drawing was provided by the golf course manager. This as-built drawing is a graphic overview of the golf course and only depicts the general location of drain inlets, drainage tiles and size of the tiles with a rough length of each tile. The as-built drawings that was provided are not engineering drawings. What can be determined from these as-built drawings, and verified in the field, is that in the area of the properties of this petition a 24-inch diameter tile is installed on the golf course with two inlets. One of the inlets is located near the outlet of an 18 inch storm drain near the northwest corner of the Wolf property (Parcel 11-11-08-00-12-042.000) and the other inlet is located near the outlet of a 27 inch diameter storm drain near the northwest corner of Lot 234 (Parcel 11-11-08-00-12-040.000) from the Sagamore Section 5 development.

The 24-inch diameter drain on the golf course is constructed with the outlet submerged in the pond. This causes the entire length of the 24-inch diameter to stand full of water and water can be seen in the inlets described above.

The normal pool level of the pond is shown as 794.35 on the development plan for the subdivision. The normal pool elevation taken on 4-10-2019 was 793.92, a difference of -0.43 feet.

The drainage report for the development indicates that the peak elevations for the pond are 796.03 for the 2-year storm, 796.69 for the 10-year storm and 797.56 for the 100-year storm. The invert of the outlet for the storm drain at the northwest corner of the Wolf property (str # 7265) is 794.83 and the invert of the storm drain outlet at the northwest corner of Lot 234 (str#7259) is 794.28. Topography on the aerial photography indicates the lowest elevation for surface water course for drainage from the Wolf and surrounding properties to the pond is 797.00.

What can be determined from the above information is that in a 2-year storm event the pond elevation would be 1.20 feet above the invert of the outlet of the storm drain at the Wolf property. For the 10-year storm the water elevation would be 1.86 feet above the invert of the outlet of the storm drain at the Wolf property and 2.73 feet above the invert of the outlet of the storm drain on the 100-year storm event.

The elevation for the walkout basement for the Wolf property at 10420 Golden Bear Way is 799.58. The elevation for the walkout basement for the Packard property at 10410 Golden Bear Way is 798.47 and the elevation for the walkout basement for the Ripley property at 10380 Golden Bear Way is 797.88.

I have checked the recorded plat for the Sagamore development as well as the development plans for the subdivision and there are no minimum floor elevations or flood protection grade elevations for the lots in this section (Section 5) of the development. The 100-year pond elevation is not shown on the plans.

In summary it appears that the homes in this area were built without the benefit of knowledge of the 100-year pond elevation and no minimum floor elevations shown on the development plans. The only possible solution to this issue would be to lower the pond elevation which does not appear to be a viable solution nor one that could be addressed by this petition process. This situation does not appear to fit within the scope or definition of IC 36-9-27.4 Removal of Obstructions in Mutual Drains and Natural Surface Watercourses. I would recommend that this petition be dismissed.

Submitted by Andrew Conover

Altman asked if there were any two-foot pre-board or anything like that?

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Howard stated that just for the record did someone explore the outfall from the lake and
is it un-obstructed?

Conover stated the outfall is working as it is was designed. Conover has talked to the
golf course maintenance guy and they have the dam inspected by control of the State and
discussed lowering the dam which will not happen.

Altman stated whether they have an obstruction petition or not. Is this an area that the
Surveyor's Office can work with them and give them some ideas? Is this an area where
they can berm?

Conover stated it is an area which is not a regulated drain. It was all the City of
Noblesville and he thinks it would be best if the Board just stepped away from this
situation. We were brought in because of the private drain petition and is not a
regulated drain and the County has no involvement other than it could have been a
possible obstruction.

Altman stated she hated that answer from government. She thinks that we need to tell
them where they need to go to see what their options are.

Conover stated he did not see viable solutions.

Howard asked could the outlet on the pipe be lowered and discharged? Where is the
regulated drain? Does it go to Stony Creek directly?

Conover stated yes.

The Surveyor stated that this is an old SCS lake which was built

Altman asked what a SCS lake was?

The Surveyor stated Soil Conservation Service. It is what is now called the NRCS. It
was built in the late 1960’s as a farm pond at the time. The golf course went in and it
is a Jack Nicolson course which they did not have any plans for. Then when the
development came in it was under Noblesville’s jurisdiction and the Surveyor’s Office did
not do an in depth review as it was not on a regulated drain.

Altman stated she thinks that the City of Noblesville who does the permitting; needs to
look at this because there are vacant lots that could be developed that would have the
same situation. The City needs to know this before they allow building permits.

Howard stated the City needs to know where the BFE’s are so they don’t issue a new
building permit.

The Surveyor asked Conover if there was a floor elevations on that?

Conover stated he no not on the plans.

Altman stated that is why the City of Noblesville needs to have this elevation maps so
when people want to build, they will have them.

The Surveyor stated it is the only thing that he thinks the homeowners could do to keep
the water out of their house, the 100-year will not go into the walk-out according to
what Conover found here. But if they want to keep away from their patio, they could berm
and pump it over.

Altman asked if the City of Noblesville would permit that?

Howard stated that he was sure if they got this information the city would look at it in
the future in whether they would allow the homeowner to berm.

Heirbrandt asked is that the berm is going somewhere else?

Howard stated yes.

The Surveyor stated that the homeowner could not berm around the structure because the
water must get into the structure. The problem with the structure is that it is
underwater discharges so the water in the inlets will go up and down with the lake. Our
ordinance says it can’t be underwater discharges.

Altman stated she thinks the Surveyor’s Office should speak with the City when the Board
dismisses the petition.

Heirbrandt stated if that is the recommendation of the Surveyor. He agrees with Altman
he thinks we should offer some type of alternative solution if there is one or give some
advice. It does not sound like this is very hopeful.

Altman stated no.

Conover stated there is no viable solution to correct. Other than lowering the dam and
lowering the lake level and he does not see that happening.

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Howard stated it is like Windemere all over. The difference is the Board regulated the discharge in Windemere, but we did not regulate anything here.

The Surveyor stated correct.

Altman stated if they wanted to change the contours, they still need to go to the City of Noblesville for any type of permitting and maybe you could sit down with Noblesville Planning Department or someone and tell them we have this situation and don’t issue anymore permits until it is figured out.

Conover stated he will share all the information he has with the City of Noblesville.

Altman stated she did not want to see anyone else in this situation.

Howard asked if there was a dam on this pond or just a discharge pipe with certain elevations?

The Surveyor stated it is a dam which has a morning glory discharge.

Howard asked what that meant?

The Surveyor stated it is a standpipe in the middle of the lake. The Surveyor stated the outfall from the pipe coming through the dam drops about 4 feet into the open ditch before it goes under 166th Street.

Howard asked if the Highway just have redone the culvert? He knows they just did a major culvert under 166th.

Altman stated the thing is; if it’s discharged faster to keep the water down in rain event it will burden the downstream. There is no good answer here.

Howard stated it is the same pipe you’d just cut the pipe four inches lower.

The Surveyor stated put a hole in it and drill through it.

Howard stated just drill through 4 inches under and whatever the drill size is that is the additional flow. It will be lower when it gets done and the homeowners will not like the mud flats. It is like Windemere, but Drainage Board does not have jurisdiction here.

Altman asked if there is a motion to dismiss the private drainage petition obstruction.

Heirbrant made the motion to dismiss the private drain petition; seconded by Dillinger.

Altman asked if there were any more discussion other than have the Surveyor’s Office to inform the petitioner what the problem truly is and the City of Noblesville to see if there are any other solutions that might work?

The motion had been made and seconded to dismiss the private drain petition and approved unanimously.

**VARIANCE REQUEST – ELWOOD WILSON DRAIN – O’REILLY AUTO PARTS**

Don Fisher was present for this request.

Cash presented his report to the Board.

Cash stated B & R Noblesville LLC previously came before the Board to request a variance which was on April 9, 2018. There were conditional approvals which were given by the Board subject to certain items being met, one of which was DNR approval for the variance. DNR would not grant approval for their request for the building to be located below the flood protection grade. The plans were significantly changed and the two (2) variances which are presented today are a request for fill in the floodplain and a variance request regarding stormwater detention. The revised plans by Don Fisher for the O’Reilly site includes cut volume of 13,349 cubic feet and a proposed fill volume of 4,026 cubic feet which equates to a 3.316:1 cut/fill ratio. Clark-Dietz, the consulting engineer for the Elwood Wilson Drain has analyzed the cut/fill ratios and verified the amounts. Along with this proposed variance for the fill in the floodplain Mr. Howard has prepared a drainage easement and restrictive covenant document for the Board’s signature. The developer has already signed the drainage easement and restrictive covenant. This covenant speaks to the fact the there will be no fill in the future without the Board’s approval in this area. Much of the site including parking area will be below the base flood elevations in the future. The building will be elevated above those elevations. Cash presented the Board the exhibits for the covenants that shows the area that will be located within the flood zone below the base flood elevations so they will not fill in the future.

Cash is proposing the Board to sign the covenant for that.
Howard stated that the covenant has three (3) components. One it grants if there will be any fill within that area above the depths shown in the exhibit then the Board would demand the owner fix it and get it done back to where it was and if they don’t; then there is an easement to go into to fix it. There is a hold harmless from the landowners to the Board for anything that is done to tearing up the parking lot to go in and fix it and the Board has a right to a lien against the property for any and all expenses incurred by Hamilton County in fixing it.

Howard thanked Cash for his patience and perseverance to work with the property owner to go forward because this project has been going on for over 2 years.

Altman asked Howard if he was ok with the attestation and signature page of this covenant. She stated it was not complete.

Howard stated that it needed to be filled in who attested it. The attester needs to be filled in it subscribed and sworn the 30th Day of May but it does not say that. This needs to be filled in.

Howard stated that Cash can finish his presentation, but the Board is not going to sign until the information is filled in.

Cash stated that the other variance that is proposed is for storm water detention.

Altman asked if this was still for O’Reilly’s?

Cash stated yes, they had two (2) variances.

Cash stated that on the April 9, 2019 the Drainage Board granted conditional approval for variance to the detention standards because of the existing site will be inundated. The requirements to detain up to 100-year was allowed to be varied from with the condition that they would revise the plan and detain for the 10-year rate. They have revised the plan to comply with that condition. Because the plans were significantly changed the previous variance was separated to try to keep organized. The previous variance was cancelled and replaced by two variance applications. One of the requests in the previous variance was for the building to be below the flood protection grade. They are not requesting that now. The building has been raised to elevation above the flood protection grade. Cash stated that Don Fishers, project engineer is here if the Board has any questions regarding this project. The Surveyor’s Office recommends approval.

Altman asked as presented?

Cash stated as it is presented.

Dillinger made the motion to approve the two variances; seconded by Heirbrandt and approved unanimously.

Altman stated they are going to hold off signing the variances until it is in recordable form. The documents need to go back to the notary for proper completion.

Howard stated that the date needs to be filled in.

Altman stated they could not do it because the Board is not the notary.

Howard stated the notary attested that those people signed and did not have it filled in before.

**VARIANCE REQUEST – NORTHPOINT ESTATES – KIOVSKY**

Alicia Kiovsky was present for this item.

Altman stated that the Board received an email from Alice O’Brien requesting a delay for this variance so she can organize sufficient comments just for record.

Altman stated go ahead a present the Variance Request.

Conover stated Kiovsky as requested a variance request for their parcel. The intent is to put in a small subdivision in area of Point Lane and 249th Street. Kiovsky wants to take their existing home and make a separate parcel so they can sell their home and get the funding to build a new home and then split off the parcels to do the development. The Surveyor’s office standards require that the bonds (which will be a regulated drain subdivision) need to be paid to the County Surveyor’s Office when the secondary plat is approved. But in this situation they can’t get the secondary plat approved without paying the bond and they can’t pay the bond until the house is sold; and splitting this parcel off is part of that. Splitting the existing home parcel would be part of the replat. Kiovsky is requesting to be allowed to go ahead to split the parcel off and then not have to pay the bond for regulated drain until they start building the house/driveway for this parcel. Conover discussed this with the Surveyor and stated that when the driveway permit is pulled then the Surveyor’s Office would request the bond.

Heirbrandt stated that this was approved in September 2018 on the variance on the county roads standards. Heirbrandt was sent meeting minutes from Dave Lucas from the Highway Department. That part of it was approved.
Conover stated yes as far as the private driveway rather than a public road but they have not applied for the permit for that private driveway or private road.

Heibrandt ask why the neighbors would be upset?

Kiovsky stated before the Board.

Kiovsky stated the neighbors are very old school. They do not like change. They have protested the project from day 1 with rumors that we are doing everything from a tiny home community to putting in a trailer park. What it boils down to they do not want to see the lot changed. There have been a lot of uproar and we have worked diligently with Jackson Township and followed the steps with them. At the Planning Commission meeting there were 50+ neighbors came to object.

Heibrandt stated that would be Cicero correct?

Kiovsky stated correct.

Kiovsky stated that the objection are they don’t like to see houses there. They like to see the field and they also let Jackson Township know they would like to change the regulations to now allow the Beck’s field who owns the acreage on the north side of 249th Street and Seventh Day Adventist to prevent them from ever subdividing. A lot of people do not have reasonable expectations of much of anything. Alice O’Brien was one who objected who is a former attorney. During her presentation she let everyone know that she’s been dotting her “i’s” and crossing her “t’s” and there was nothing they could do to object but she was still going to try which she stated at the meeting. Kiovsky stated that she has had a lot push back on the drainage regulations which she has followed everything that the Drainage Board have given her. She has not objected or tried to change it and is working diligently with the Drainage Board. With her being pregnant the timing of this project has becomea a time crunch. She would like the opportunity to continue finishing up the project with Jackson Township and get in the position to be able to sell her home and then be able to start construction on the new home and be able to satisfy that bond when she is actually ready to start construction and it would help her with that tight money for multiple months for its time aspect. She was anticipating being at the April BZA meeting. Jackson Township sent out the wrong legal notice so we were not allowed to be heard. So there have been some delays to push the timeline out to what she has expected.

Altman asked Kiovsky that she would not put a shovel in the ground with drainage or anything else until she post a bond? Correct?

Kiovsky stated correct.

Howard stated you want to be able to make your existing home as part of the plat so you can sell it now? Has the plat been approved?

Heibrandt stated that is what it says in the meeting minutes from September 2018.

Howards asked Kiovsky’s plat is in place and the requirements bonds posted and she is wanting to defer the day for posting the bonds until she starts construction on any part of the land in the plat?

Kiovsky stated correct. The existing home she lives in has been remodeled so the drainage work is in place and there will be no new drainage work; it is not required. She would like to sell her current home and then when they are applying for the driveway permit be able to satisfy the bond. It is not an issue with the bond it is just the timing.

Howard stated that Kiovsky is going have to record the plat in order to sell the house as a free standing parcel.

Kiovsky stated correct.

Kiovsky stated she needs the legal description that would allow her to sell the 5 acres instead of a third.

Heibrandt asked does that sound unreasonable?

Howard stated no.

Howard stated that the Drainage Boards jurisdiction is to waive the bonding requirements on any county improvements until she starts construction on the undeveloped land.

Altman stated that they were not at risk until she puts a shovel in the ground.

Dillinger made a motion to approve the Variance Request, seconded by Heibrandt.

The Surveyor stated that Conover gets all the road cut permits from the Highway so he would be able to catch it.

The motion had been made and seconded to approve the Variance Request on the Kiovsky project and approved unanimously.

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Capital Asset Notifications - ELWOOD WILSON DRAIN

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

**Non-enforcements:**

Liston presented a non-enforcement request for Vermillion Drain, Heritage at Vermillion filed by Jeanette Gumbel for parcel #13-16-08-00-18-002.000 for a fence. The Surveyor’s Office recommends approval.

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

Liston presented a non-enforcement request for Williams Creek Drain, Jackson’s Grant Arm filed by Matthew & Melanie Laing for parcel #17-09-34-00-09-067.000 for a fence. The Surveyor’s Office recommends approval.

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

Liston presented a non-enforcement request for Follett-Morrow Drain filed by John & Amy Bain for parcel #16-09-25-08-02-024.000 for a reduction in easement. The Surveyor’s Office recommends approval.

Liston stated he would like to point out on the cover letter should say 15 feet instead of 30 feet. That was a typo.

Liston stated that this property is in old town Carmel on 1st Ave NW up toward 136th Street.

Altman asked if there was enough free board?

Liston stated that this non-enforcement was a reduction in an easement.

Altman asked if there were no surface water carried?

Liston stated no.

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

Liston presented a non-enforcement request for Long Branch Drain, Sanctuary at 116th St. Arm filed by William & Beverly Ma for parcel #17-09-31-00-10-011.000 for a deck. The Surveyor’s Office recommends approval.

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

Liston presented a non-enforcement request for Williams Creek Drain, Buckhorn Estates Arm filed by William & Brandy Eastman parcel #17-09-22-03-03-003.00 for a fence. The Surveyor’s Office recommends approval.

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

Liston presented a non-enforcement request for Williams Creek Drain, Jackson’s Grant Arm filed by Cole & Eleanor Zalaznik for parcel #17-09-34-00-10-001.000 for a fence. The Surveyor’s Office recommends approval.

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

Liston presented a non-enforcement request for the Williams Creek Drain, Heritage at Springmill Arm filed by Braden & Courtney Smith for parcel #17-13-03-00-10-010.000 for a fence. The Surveyor’s Office recommends approval.

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

Liston presented a non-enforcement request for the Towne Lake Drain, Windsor Grove Arm filed by Sagar & Ravisa Patel for parcel #17-13-08-00-06-026.000 for a fence. The Surveyor’s Office recommends approval.

Dillinger made the motion to approve the non-enforcement request presented, seconded by Heirbrandt and approved unanimously.
Liston presented a non-enforcement request for the Vermillion Drain, Woods at Vermillion Arm filed by Brad Chris for parcel #11-16-08-00-07-019.000 for a fence. The Surveyor's Office recommends approval.

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

Liston presented a non-enforcement request for the Pebble Brook Drain, Villages at Pebble Brook Arm filed by Jason & Amber Johnson for parcel #11-06-33-03-02-025.000 for a deck. The Surveyor's Office recommends approval.

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

Liston presented a non-enforcement request for Village of West Clay Drain filed by Robert & Patricia Mulligan for parcel #17-09-28-00-66-011.000 for a driveway & retaining wall. The Surveyor’s Office recommends approval.

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

**Surety Acceptance**
Liston stated that at this afternoon’s Commissioners meeting the Board would be accepting the following surety: Irrevocable Letter of Credit No. 1105 in the amount of $18,000.00 for the O’Reilly Auto Pars site, Elwood Wilson Drain, Compensatory Storage Area.

**Surety Release**
Liston stated that at this afternoon’s Commissioners meeting the Board would be releasing the following sureties: Subdivision Bond No. 6012200 in the amount of $3,180.00 for Hamlet at Jackson’s Grant Section 1 - Monumentation.

**Williams Creek Drain – Waterwood of Carmel – Khalil Fence discussion**
Nabil Khalil was present for this item.

Liston stated that on May 13, 2019 the Drainage Board approved a non-enforcement for a half encroachment on Mr. Khalil lot in Waterwood.

Altman asked what the issue was?

Liston stated that Khalil wants a full encroachment. If the contractors would need access to this easement to work on the regulated drain, that is why it is a half encroachment. Liston did check on his neighbors which have fences and they do not have permits. Liston asked the Board if they wanted the Surveyor’s Office to go after the individuals who do not have permits to send violation notices?

Altman stated once it comes to our attention it comes to our attention.

Howard asked if this easement is ingress and egress or are there structures within the easement?

Liston stated there is storm pipe in the easement.

Howard asked if it was part of the regulated drain?

Liston stated yes.

The Surveyor stated that if the contractor has to get in there to fix the storm pipe there will be a lot fences taken down.

Liston stated there will be a lot of landscape taken out also.

Heirbrandt stated that the homeowners needs to know.

Liston asked if the Surveyor’s Office needs to send a violation notice or just send the homeowner a letter saying if the Surveyor’s Office have to access the easement; the fence would come down.

Altman asked what the standard practice was? Violation letter, right?

Liston stated yes.

Altman stated then it should be a violation letter but soften the wording on the violation. We can’t treat people differently in her opinion.

Liston stated it is penalizing Khalil for doing the right thing. Which was not our intent. The intent was to have access into that easement.

Heirbrandt stated he did not want to surprise someone and show up and start taking fences down when they have no idea, what is going on.

Liston stated this is happening everywhere.
Heirbrandt stated it is frustrating sitting on this Board and the fence companies don’t do their homework.

Howard stated that more importantly the title companies don’t understand drainage and there was a lot of complaints on it, so they exclude it under their title policy and the property owner is stuck. They think they have a title policy and there is no restriction on their land which makes the Drainage Board be the bad guys.

The Surveyor stated that the cities are allowing them to put fences up.

Altman stated to make sure the letter states that the contractor is not going to tromp in; contact us; work with us.

Liston presented a picture of Khalil property to the Board.

Khalil stated I understand that in a neighborhood like that people have lots of resources to maintain adequate fencing for privacy. The fact that you have rules and you have to obey and enforce it, but I think there is another way out of that if we could have a letter in the event that you need to do work. I’m willing to take the fence down and my fence is four feet for a dog. It’s not a solid fence so if you give me the right I can follow that line where the drainage is. The drainage is six feet under so my fence post footers, there’s no way its going to have more than that down, so it’s not going to tough that. We never had water flow, so we never had any water damage in this area. I’m willing, if you were to give me the option to put a letter, if there’s any time you come and take that fence down at my own expense and I will build it back. The whole thing is we have a dog, I cannot keep him without a fence for protecting others and protecting me from liability. At this point I’m between a rock and a hard place. I don’t want to upset my neighbor because he knows there’s going to be a consequence of my actions. It’s in your hands, whatever you decide I’m okay with it.

Altman asked will he keep his dog in with a four foot fence?

Khalil stated yes that his dog does not jump.

Altman asked Liston if there were fences in the subdivision already?

Liston stated yes

Dillinger made the motion to approve the non-enforcement, seconded by Heirbrandt.

Liston stated the non-enforcement has already been approved but it was for a half encroachment. Khalil is wanting a full encroachment into that 15-foot easement on his lot in order to utilize his whole back yard.

Khalil stated that the 7.5 feet that has been enforced is just half of his yard.

Dillinger made a motion to approve the full encroachment; seconded by Heirbrandt.

Liston asked how to go back since it’s already been approved.

Altman stated to do an amendment.

Howard stated that an amendment and just have the Drainage Board sign off on it at the next meeting.

Altman stated that this is consistence with everything that Liston has found.

The Surveyor asked Howard if he would write up that amendment.

Howard stated what needs to be done is to get the acknowledgement like we normally have and put in a chain of title. We just start him off with a petition and just do a 30 day petition from scratch. Then Khalil acknowledges that if the contractors have to come in the fence will be tore down if need be.

Liston asked if it was like the old consent to encroachment agreement that the Surveyor’s Office use to have.

Howard stated that was the document he handed Liston that was marked up except it will not have the fence company’s acknowledgement, but it will have Khalil acknowledgement. It means when we go in and take his fence down when maintenance is done we give him 10 days to move the fence. If not we move it then it is not nearly esthetically placed back because the contractor is there to fix the drain not preserve the fence.

Dillinger stated this is being consistent with what is done all the time. Khalil should not be treated any different.

Altman stated for the record she wants it established his fence would be very similar to the other fences that are on the line. Correct?

The Surveyor stated yes.
Altman stated that also for the record that there should be a policy that this is the last one through. Do we really want to allow people to put the fences on the line or do you care? She rather discuss it and be done with it.

Dillinger stated he did not care as long as the homeowner knows what the consequences are. Why would we care?

Altman stated because it slows down the project to move fences.

The Surveyor stated even though the landowner signs it and records it there will still be a howl.

Howard stated the difference between this document and what he went through with Liston on some changes on the document cross reference number is this document is going to pick up in the title policy and not be excluded by the title under drainage code because they do not understand it. This is an express dedication and consent they will pick up their chain of title. Now that does not mean they have read their title policy, or they are going to like it but at least from a defensibility standpoint we will be in better shape. Part of the problem is when realtors tell a buyer yes you can put a fence in (realtors will say anything to get a closing). Which is not necessarily true.

Dillinger stated the reality is if the Board accepts a hundred expectation, which we do; what are we going to do, maybe violate one or two of the hundred?

Altman asked to include in the motion; a motion to waive the fee for the additional permit?

Dillinger stated so moved; seconded by Heirbrandt and approved unanimously.

Construction Updates:
Liston stated he does not have anything new on the Thorpe Creek, Martha Ford Arm.

Altman asked is most of the construction updates not doing anything because of the weather?

Liston states yes.

Liston stated that on the Thorpe Creek, John Underwood Arm the contractor is actually working out there and has made progress.

Duncan wanted to update on the Cool Creek Park Stabilization Project which is completed. They are working on the as-builts survey of the topography and verifying all the plant species that have been planted. He is hoping that because the fact that the Parks Department posted on their website to come look at it that it looks great.

Duncan stated Windemere Pond agreement is recorded which he has not given to the Surveyor yet.

Altman asked if it’s recorded and finished?

Duncan stated yes.

William McKinstray Drain – Lake Stonebridge:
Heirbrandt asked if there was anything else on Lake Stonebridge?

The Surveyor stated that Heirbrandt has seen the emails and tries to send them every week. He does not know what else to do.

Altman asked if it was the same issue the height of the water?

Duncan stated that is what they are saying; their business is doing seawalls.

The Surveyor stated if they are busy somewhere else its kind of negates that excuse.

Clara Knotts Drain
The Surveyor does have a question on another issue. He asked Altman if she had a chance to speak with Carmel about funding on the Clara Knotts.

Heirbrandt stated that is in Home Place where there are all the issues.

Altman asked were they in charge of that?

Howard asked if that was 96th & College issue?

The Surveyor stated College and 103rd.

Altman asked the Surveyor to put together the budget so she would have numbers and she would send it over and she would call Jeremy (Kashman, City of Carmel).

Hamilton County Drainage Board
June 10, 2019
The Surveyor stated on June 24th there will be a hearing on the lining which is the first portion of that which has to be done before anything upstream. So that will be taken care of through Federal funding. There have been emails from Chris Allen CBDG. He thought there was more money earmarked and evidently, we don’t have more money earmarked.

Altman stated there was not much money in that fund.

Howard stated that Carmel is going to start getting the calls.

Altman stated that everybody in there is paying $6.00 to $7.00 a month. They really ought to have some of the money coming back to fix the problem.

Howard stated if nothing more Carmel can front some money and get some of the assessments in the fund.

**Budget & Permit Update:**
The Surveyor presented the budget and permit update to the Board for their information. He asked if there were any questions. There were no questions.

Altman asked is there a motion to accept the budget update?

Dillinger made a motion to accept the budget update; seconded by Heirbrandt and approve unanimously.

Dillinger made the motion toadjourn; seconded by Heirbrandt.

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Christine Altman - President

Pamela Louks
Receptionist