

MINUTES OF THE HAMILTON COUNTY DRAINAGE BOARD

June 12, 2023

The meeting was called to order Monday, June 12, 2023 at 12:00 p.m.

The members of the Board present were Mr. Mark Heirbrandt-President, Mr. Steven C. Dillinger-Vice President and Ms. Christine Altman-Member. Also present was the Hamilton County Surveyor, Kenton C. Ward and his staff: Mr. Sam Clark, Mr. Reuben Arvin, Ms. Clara Furst, Mr. Gary Duncan, Mr. John Campbell, Ms. Suzanne Mills, Mr. Jerry Liston and Mr. Luther Cline. The Board's attorney's, Mr. Michael Howard and Mr. Connor Sullivan, were also present.

**Approval of Minutes of May 22, 2023:**

The minutes of May 22, 2023 were presented to the Board for approval.

Dillinger made the motion to approve the minutes of May 22, 2023, seconded by Altman and approved unanimously.

**Oliver Shoemaker Drain - Noticed Unregulated Subdivision Rate:**

The Surveyor stated there was a mistake made on the assessment notices that went out. The wrong button was hit, and the notices went out at the regulated drain subdivision rate and not the un-regulated drain subdivision rate. It wasn't caught until Janet (Hansen) was talking to guy last week. Something didn't sound right so she looked at it. My idea is to send out a revised notice to these folks to let them know. Luckily, it's going down instead of up and maybe that will calm the residents.

Dillinger asked is this the one all the controversy was over?

The Surveyor stated yes.

Heirbrandt stated yes and I gave the Surveyor's name to Tammy Sanders and Larry Lannan wants to speak to you.

Altman stated you're going to do a cover letter saying that we apologize for the error. The wrong rates were applied. They're still not going to be happy. I would suggest you also explain how it works and these are not taxes, they're fees and it's required by Statute. That type of thing because that was part of the social media "they're spending our tax money", no.

Altman made the motion to send out the corrected rates in a notice form along with an explanation as to the error and also how drainage fees are collected and utilized, seconded by Dillinger and approved unanimously.

**News Article (Law360 dated May 25, 2023) - Clean Water Act:**

The Surveyor stated Commissioner Altman sent this to me three weeks ago. It was good news, the Sacket Case that was in the Supreme Court went the direction of the people instead of EPA. It has really calmed the waters as far as the Corps of Engineers. Duncan and I spoke to them last week about another situation that we were looking at and they said, "no, there's no connection".

Altman stated the clarification was where the supposed wetlands fit into the scheme of Waters of the US.

The Surveyor stated and whether or not there was an adjacency or nexus of those wetlands to the Waters of the US.

**Big Cicero Creek Joint Drainage Board - Minutes of April 26, 2023:**

The Surveyor presented the minutes of April 26, 2023 of the Big Cicero Creek Joint Drainage Board to the Board for their information. He asked if there were any questions.

Heirbrandt stated we have a canoe trip coming up.

The Surveyor stated I'm trying to get ahold of Brian Cooley now to make sure that the 27<sup>th</sup> is a good date and if I hear that I'll send that out today.

Heirbrandt stated I think Butler, Fairman and Seufert has done a good job as the engineer for the Board and have been really engaged.

**2024 Budget:**

The Surveyor stated I need some guidance on the attorney's fees for next year. We've been using 5% of the previous year and going with that; the same thing with the Board per diems, we usually do the 5% increase annually. If that's the way you want to do it, that's fine.

Dillinger asked didn't we work out a deal with Mike (Howard)?

Howard stated what I got is what was in the normal progression.

Altman stated I'm okay with 5%. I don't feel like I've been slammed with inflation.

The Surveyor stated the other is GDIF (General Drain Improvement Fund). Do you want me to put in for \$500,000.00 again?

Altman stated yes, if they say no, they say no, but I would put in what you're going to do with it. Be specific saying we need "x" to do "this".

The Surveyor stated according to what Dawn (Coverdale) sent out, they want explanations on everything.

Altman stated I don't blame them. The other thing is whether we can use it to hire additional engineering firms to move things along faster. Those are the types of things that its helpful to keep subdivisions moving, all that moving with your staff.

**Preliminary Variance - Cool Creek Drain, Oak Ridge Pointe (Fill in the Floodplain):**

Clark presented his report to the Board for preliminary approval.

"Re: Cool Creek-Variance Preliminary Introduction

April 5, 2023

To: Hamilton County Drainage Board

Project Name: Oak Ridge Pointe Mass Grading **-Preliminary floodplain permit request**  
Petitioner: William Eric LLC

**Summary:**

William Eric Group LLC requests to present their proposal for site grading and installing flood plain compensatory storage as part of the Oak Ridge Pointe Mass Grading Project. The proposal will require the approval of a variance from Ordinance No. 09-26-16A for fill in the floodplain of the Cool Creek Drain. The project is located in the Southwest Corner of State Road 32 and Oak Ridge Road. The plans are being designed by Kimley Horn Engineering.

The engineering for the flood plain compensatory storage area is being reviewed by Clark Dietz Engineering which is the Drainage Board's consultant for the Cool Creek Drain Watershed. Following successful review, a Clark Dietz Engineering review memorandum will become part of the report submitted to the Board as part of the variance packet for the final submittal.

The purpose of this presentation is to introduce the project to the Drainage Board and to request Preliminary Concurrence.  
If Preliminary Concurrence is granted, this project will return to the board for final approval.

Samuel T Clark  
Plan Reviewer"

Altman asked what is the type of project?

Clark stated currently it's an overall grade work project that they're using. They're actually reconstructing the E. M. Osborne Regulated Drain to open it up for development because the regulated drain runs through it. This portion of the work is for the affecting of the floodplain.

Altman asked so it's going to be commercial?

Clark stated commercial, correct.

Altman made the motion to give preliminary approval, seconded by Dillinger and approved unanimously.

**Variance Request - Mud Creek/Sand Creek, E.E. Bennett Arm (Sanitary Crossing):**

Liston presented Cash's report to the Board for approval.

**"Staff Report**

June 7, 2023

To: Hamilton County Drainage Board

Re: Mud Creek - Sand Creek Drainage Area, EE Bennett Drain arm, Variance for Saxony Corporate Campus, Blocks EE, FF & GG - Coastal Partners Flex Industrial, DV-2023-00020, Parcel Nos. 13-11-23-00-00-011.501, 13-11-23-00-00-011.411 and 13-11-23-00-00-011.801.

Hamilton County Drainage Board  
June 12, 2023

Attached is a request by Mike Timko of Kimley-Horn & Associates requesting approval of a variance from the following ordinance and standard in connection with the Coastal Partners Flex Industrial project:

- Ordinance No. 3-25-02-A: regarding Utility Installation Cross Section (Detail C-6).

Summary:

As part of a new commercial project located south of 146<sup>th</sup> and east of Boden Road, in the City of Noblesville, the petitioner proposes to extend sanitary sewers to Coastal Partners Flex Industrial which results in crossing under the EE Bennett Drain arm. The petitioner requests to reduce the minimum cover over the sanitary sewer main crossing below the flowline of the open drain to less than the standard 10' separation. Due to the existing depth of the downstream sanitary manhole, the developer maintains the proposed sanitary sewer main cannot be installed lower than what is being proposed. The cover at the drain crossing between Str. Ex S1 and Str. S1 is proposed to be 2'.

Additional Information:

The Surveyor's Office has coordinated with the City of Noblesville Engineering Department and Department of Public Works in the review of this proposal. The sanitary sewer will be turned over to the City of Noblesville upon successful completion of construction.

The separation requirements for pipeline and utility installation under open drains is depicted in Hamilton County Surveyor's Office Standard Plan Detail C-6. (See attached).

Due to the proposed construction in the floodway, a permit is required to be obtained from the Indiana Department of Natural Resources-Division of Water.

Staff Recommendations:

If this variance is approved by the Drainage Board, the Surveyor has recommended that as a condition of approval the following items be met:

- a. The sanitary pipe is to be encased in concrete if open cut installation is used.
- b. Site inspection approval by Surveyor's Office.
- c. Submittal of as-built drawings showing the sanitary sewer crossing location and elevation. As-built drawings are to be stamped and sealed by a professional engineer.
- d. Prior to construction, either an agreement between the City of Noblesville and Hamilton County or a letter from the City of Noblesville stating that if the Regulated Drain requires dredging in the future resulting in a sanitary sewer conflict with the open drain, the City of Noblesville shall at the City's expense install a lift station and sanitary force main to eliminate said conflict. This document shall outline a time limit for this to be accomplished one the County notifies the City of the need to lower the sanitary sewer.

Note - In addition to this variance, this project has also been required to apply for other applicable permits which are being pursued by the developer.

Based on this information, this report is respectfully submitted for your consideration.

Sincerely,

Steven T. Cash  
Plan Reviewer

STC:stc"

The Surveyor asked, would the Board feel comfortable with a letter from the City of Noblesville outlining those conditions or would you rather have the city and the county sign an agreement to that affect?

Altman asked is this going to be platted?

Liston stated it is a flex commercial area in Saxony.

The Surveyor stated its single tracts.

Altman asked but is it going to have anything recorded as part of the project?

The Surveyor stated I don't believe so.

Howard asked so it's just a piece by piece basis?

The Surveyor stated yes.

Howard asked which piece of property is this?

Liston stated it's at Boden Road and 146<sup>th</sup> Street, the southeast corner.

Altman stated so they're just trying to do gravity instead of putting a force main in now? I think we need something recorded with Noblesville doing the commitment signed by the mayor and concurred by council if we're going to hold their feet to the fire that's what we're going to need.

Howard asked who's the guarantor? Is the developer the one that's going to have to incur those costs or is it the city or the city's going to have to compel...it sounds to me like we need three signatures. It needs to be either signed by the developer or on the plat to get it in the chain of title, City of Noblesville Board of Works concurs and then us. Is that enough?

Altman stated quite honestly the only one that's going to matter long term is the City of Noblesville because they will be accepting that into their system if I understand Noblesville. Another project I did, Noblesville actually accepts the sewer and water into their system so they're the only ones that we will be able to make do it.

The Surveyor stated the developer is going to be long gone by that time.

Altman stated yes, it's probably a separate LLC that will dissolve once it's sold.

Howard stated you would want the Board of Works signing on that.

Altman asked so we need the Board of Works and not the Council? Do we need council concurrence or is Board of Works enough?

Howard stated Board of Works.

Altman stated okay, I just want it enforceable by the city. What's your timeframe that they'll commence and complete? You said a timeline, what you're expecting.

The Surveyor stated 120 days.

Altman asked, is that reasonable to get the thing bid? It's going to be a bid project. 180 days is probably more reasonable.

The Surveyor stated 180 days because as the project would develop you would know well enough ahead that they would be notified with plenty of time.

Altman stated it would be our project because we're the ones that would trigger it.

Howard stated let's sit down and do an outline on that and get it together and get it ready for signature.

Altman asked do we have concurrence that we'd accept that so we can pass that to the developer and the city before we spin a bunch of wheels drafting stuff? The city may say no.

Altman made the motion to give preliminary approval based upon the staff report with the agreement with the City of Noblesville to remove any conflicts by way of force main and lift stations to accommodate future drainage work necessary in the regulated drain with final approval being made upon receipt of an enforceable agreement by the City of Noblesville Board of Works, seconded by Dillinger and approved unanimously.

Howard asked do you anticipate that they would draft, and we edit?

Heirbrandt stated yes.

The Surveyor asked do you want to sign the variance at this time?

Altman stated no, it's preliminary because we need to attach that agreement to it.

**Non-enforcements:**

Mr. Jason Losee and Mr. Benjamin Newkirk were present for this item.

Furst presented a non-enforcement request for the Crooked Creek Drain, Parks at Weston Place Arm filed by Donna Wilcock and James Haggie for parcel #17-13-06-00-08-010.000 for a fence. The Surveyor's Office recommends approval.

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

Furst presented a non-enforcement request for the Hunters Creek Village Drain filed by Jason and Amy Whiteley for parcel #16-09-24-01-04-011.000 for a fence. The Surveyor's Office recommends approval.

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

Furst presented a non-enforcement request for the Hunters Creek Village Drain filed by Cynthia Duncan for parcel #17-09-24-01-01-068.000 for a fence. The Surveyor's Office recommends approval.

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

Furst presented a non-enforcement request for the Little Eagle Creek Drain, Albany Place Arm filed by Jeremy and Audrey Stitz for parcel #17-09-20-00-23-023.000 for a fence. The Surveyor's Office recommends approval.

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

Furst presented a non-enforcement request for the Little Eagle Creek Drain, Troy Estates Arm filed by Sraina Vadlamudi for parcel #17-09-19-00-15-023.000 for a fence. The Surveyor's Office recommends approval.

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

Furst presented a non-enforcement request for the Lynnwood Hills Drain filed by Daniel and Daryll McCarthy for parcel #14-10-25-01-03-005.000 for a fence. The Surveyor's Office recommends approval.

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

Furst presented a non-enforcement request for the Williams Creek Drain, Merrimac Arm filed by Keenan Pruett for parcel #08-09-15-00-02-036.000 for a fence. The Surveyor's Office recommends approval.

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

Furst presented a non-enforcement request for the U. G. Mitchner Drain, Setter Run Arm filed by Ronald and Julie Givens for parcel #08-10-17-00-03-023.000 for a fence. The Surveyor's Office recommends approval.

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

Furst presented a non-enforcement request for the Vermillion Drain, Bluffs at Flat Fork Arm filed by Mavrel A. Banegas Martinez for parcel #13-16-05-00-04-012.000 for a fence. The Surveyor's Office recommends approval.

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

Furst presented a non-enforcement request for the Vermillion Drain, Woods at Vermillion Arm filed by Scott Etheredge for parcel #13-16-08-00-07-025.000 for a fence. The Surveyor's Office recommends approval.

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

Furst presented a non-enforcement request for the Williams Creek Drain, Vernon Asher Arm, Meridian Highlands filed by Steven and Michelle Stone for parcel #17-13-02-04-14-020.000 for a fence. The Surveyor's Office recommends approval.

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

Liston presented a non-enforcement request for the Springs of Cambridge Drain filed by Stephanie Brown for parcel #13-15-11-00-06-002.000 for a pool deck and pergola. The Surveyor's Office recommends approval.

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

Liston presented a non-enforcement request for the Springs of Cambridge Drain filed by Jason Losee for parcel #13-15-02-00-25-059.000 for a PVC drain, retaining wall and seawall. The Surveyor's Office recommends approval.

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

Clark presented a non-enforcement request for the Crooked Creek Drain filed by Singh, Gurpreet and Lakhwant Singh for Singh Subdivision. The Surveyor's Office recommends approval.

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

Clark presented a non-enforcement request for the Williams Creek Drainage Area, Springmill Crossing Arm filed by BSM Groups (Spectrum) for parcels #17-09-23-03-04-027.000, 17-09-23-03-04-028.000 & 17-09-23-03-04-029.000 for a cable installation. The Surveyor's Office recommends approval.

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

Clark presented a non-enforcement request for the Richard Moffitt Drain, Lexington Farms Arm filed by BSM Groups (Spectrum) for parcels #17-13-01-03-18-005.000, 17-13-01-03-18-006.000, 17-13-01-03-18-007.000 for a cable installation. The Surveyor's Office recommends approval.

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

Clark presented a non-enforcement request for the Morrow-Follett Drain filed by BSM Groups (Spectrum) for parcel #16-09-25-12-02-014.000 for a fiber optic cable. The Surveyor's Office recommends approval.

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

Clark presented a non-enforcement request for the Williams Creek Drainage Area, Reserve at Springmill Arm filed by BSM Groups (Spectrum) for parcels #17-13-11-00-01-005.000 and 17-13-11-00-01-004.000 for a cable installation. The Surveyor's Office recommends approval.

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

Clark presented a non-enforcement request for the Long Branch Drain, J. W. Brendel Arm, Stanford Park filed by BSM Groups (Spectrum) for parcels #17-09-29-00-10-002.000, 17-09-29-00-10-003.000, 17-09-29-00-10-004.000 for a cable installation. The Surveyor's Office recommends approval.

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

Clark presented a non-enforcement request for the Little Eagle Creek Drain, Overbrook Farms Arm filed by Kenneth Lovik for parcel #17-09-19-00-03-039.000 for a pool, covered structure and pavers. The Surveyor's Office recommends approval.

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

Furst presented a non-enforcement request for the Cool Creek Drainage Area, Springmill Village Arm, The Crossings filed by Peter and Amanda Harper for parcel #08-09-14-01-07-014.000 for a fence. The Surveyor's Office recommends approval.

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

Furst presented a non-enforcement request for the Springs of Cambridge Drain filed by Jason and Lorri Losee for parcel #13-15-02-00-25-059.000 for a fence. The Surveyor's Office recommends the fence encroach five feet into the south 10 foot drainage easement. Mr. Losee is present to discuss what the Surveyor's Office has approved.

Altman stated the construction goes to the edge of the lot line.

Furst stated yes, leading into Geist Reservoir. The Surveyor is recommending a half encroachment.

Altman asked is the pipe right on the lot line, the drainage pipe?

Furst stated yes, the drainage pipe is pretty much right on the property line.

Altman stated so if we allowed their request they'd be putting a fence right on top of the pipe?

Furst stated that's correct.

Losee stated unlike some of the other drains in the area, it does not fall on the property line, it's actually five feet into my neighbor's property, which is why they have a 20 foot easement and I have a 10 foot easement making up the full 30 foot easement. Given that I was looking at your application and it said in the application that in point two, if a storm drain exists within the easement a ten foot gap requirement should be divided into five feet on both sides of the pipe structure. If I put my fence on the lot line that will give me five feet to the centerline of that drain as well as if we have five feet on the other side of my neighbor's drain that will give us the ten foot minimum requirement of the easement for that drain. I have a signed letter from my neighbor with approval to put that fence on the lot line.

Altman asked the Surveyor, can you work on that pipe in ten feet?

The Surveyor stated we'd have to take the fence down to work on it.

Losee stated I'm okay assuming the risk of that fence coming down. If maintenance has to be done on that drain that the fence would come down.

Furst stated if the fence would go right on the property line the fence would be right on top of the working area.

Losee stated I don't plan to put the fence on the seawall, only on the property line going between the two houses.

Altman asked are you going to enclose your fence?

Losee stated only on the other side.

Altman stated the outline shows the fence paralleling the pipe.

Heirbrandt asked Losee, is that correct?

Losee stated that is correct.

Altman asked Furst, are you saying it's built differently?

Furst stated no, I'm saying that in the area that would be needed if a contractor was to come out to do any work on the pipe the fence would be at a high risk for needing to be removed.

Altman stated we just make it removable at their cost.

Howard stated not only their cost, their risk. They may not use soft gloves to remove it.

Heirbrandt stated there could be costs to remove the fence too.

Losee stated yes, we're willing to accept that.

Altman stated we're not going to bear that cost.

The Surveyor stated to Furst, what you're showing is that the edge of the pipe is basically on the property line.

Furst stated yes.

Altman asked is it a five-foot pipe?

Furst stated I disagree that the pipe is five feet off.

Altman stated let's go ahead and say they can install the fence parallel to the pipe with five feet from the edge of the pipe. If he's right, he gets the fence where he wants it and if Furst is right he's got to move the fence in.

Losee asked is it the centerline of the pipe?

Altman stated no, edge of pipe.

Furst stated that may be where the difference is.

Howard asked is the fence already there?

Losee stated no, sir.

Altman made the motion to allow the fence on the south side of the applicant's property no closer than five feet from the northern edge of the pipe.

Losee asked, outside diameter of the pipe?

Altman stated outside edge of the pipe, which would be the north edge.

Losee stated may I ask one clarifying question? At the end where the pipe is actually out into the water it flares out but are you talking about where the actual pipe edge is of the diameter because that makes a pretty big difference.

Altman stated my motion is not going to allow you to put a fence in the flare. You have to stay five feet from the edge of any pipe or drainage structure.

Losee stated okay, understood.

Altman continued her motion to include there be removable panels and that the applicant will bear all costs for removal and replacement if desired, seconded by Dillinger and approved unanimously.

Altman asked Furst, make the neighbor's letter part of the record please.

Furst presented a non-enforcement request for the Williams Creek Drain, Wilshire Arm filed by Benjamin and India Newkirk for parcel #08-09-10-00-15-036.000 for a fence. The Surveyor's Office recommends the fence encroach 7.5 feet into the north 15 foot drainage easement and ten feet into the northeast 20 foot drainage easement. Mr. Newkirk is present today to discuss the recommendation of the Surveyor's Office. This parcel was on the agenda months ago as a violation letter due to the placement of the fence being past a full encroachment on the lot. The fence goes past the property line in the rear and is out into the common area of the pond. I did several inspections and the findings of those inspections that we were unable to locate the lot corner markers so we did do the measurements off of the manhole cover along the side of the fence.

Altman asked is the fence already there?

Furst stated the fence was put in and this is an after the fact permit.

Altman stated so if we follow your recommendations, does the fence move?

Furst stated yes. The fence is fifteen to twenty feet past the property line.

Altman asked is it underground pipe?

Furst stated yes.

Altman asked where the easement is located is where your tape is?

Furst stated there are two easements. The rear easement is the twenty-foot mark where the tape measure ends. There is also a fifteen-foot drainage easement on the side that runs along there too because that's where the regulated drainage pipe is.

Heirbrandt asked is the neighbor in compliance with their fence?

Furst stated the neighbor's do not have fences.

Howard stated the fence is already there, this is a forgiveness not a permission.

Altman asked did we permit this before?

Furst stated no. Mr. Newkirk is present today and I believe his proposition is to keep his fence existing where it's at.

Altman asked Furst, is the fence five feet from the pipe? Where's the fence in relationship to the pipe.

Furst stated the side fence is about five feet from the pipe. There's about a 2.5-foot gap from the 7.5-foot encroachment on the side. In the rear their fence goes approximately twenty feet farther than their property line.

Altman asked are these removable panels?

Furst stated not to my knowledge, no.

Newkirk stated those are not removable panels as of right now, but to Furst's point and the gentleman before me I would definitely incur any costs or any risks associated with removing the fence. When we had this built and quoted three years ago I felt like we went the right path, I did not know we needed to get in front of the Drainage Board and that is on us to ensure we follow up on that next time if we do another structural, but at the same time going through and having the fence company come out and plot out where they were going to build on what we thought was the property line. We did come four feet off of that drain, which Furst was saying was around five feet, but came into the south on that side and then on the property line that extends out twenty feet past on the original plot plan back in 2017 I thought that was actually the end of the property, the twenty foot, or else I wouldn't have brought that out to that point. Last year we had concrete poured so asking to move in the north side, move south another additional 3.5 feet or 2.5 feet would actually be on the concrete. Again, I would absolutely put all of the risk on us if there ever needed to be a change to that fence or fence line. I'm requesting that today.

Dillinger asked the Surveyor, does the fencing company bear any responsibility for this?

The Surveyor stated no, they're like smoke under the door, they come and go.



Howard stated no, whether they should be responsible and whether they've agreed to be responsible are two opposite ends of the world.

Heirbrandt stated can you imagine if we passed an ordinance saying that they needed to be able to follow compliance.

Dillinger stated it seems unfair to the homeowners because they don't know, but the fencing companies should know.

Heirbrandt stated we should do something from a legal standpoint and make sure that people know. Put some of the bear on the fencing companies to do their homework.

Dillinger stated I agree.

Howard asked who is your fencing company?

Newkirk stated Amerifence and my neighbor across the street, Mr. Widmeyer, he was going to be here today, but I think he's coming in a couple of weeks, has the same issue. He built with Amerifence. We went out as far as we thought we were legally able to do so I think that's been the same case with Wilshire. Furst said they had an issue finding the corner markers for the builder, which was Drees. Again, I had Drees also check this prior to us having it built. It's one of those situations where I wouldn't have built either the concrete slab or the fence at the length that I did had we known it was going to be an issue. This is the same thing I discussed with Mr. Widmeyer when he presents in a couple of weeks. The fence company, I don't know if they should bear any responsibility for it, sure they are a reputable company and they're still at four in terms of reviews on Google. It tells me that they're not horrible, but at the same time they did ask me to come four feet off of that drain, off of the actual access panel, the manhole, so they knew that. I actually came an additional foot and a half in from where they originally proposed, I think we were at ten feet and I came back to 8.5 on the right hand side of my house. That was because I didn't want to have any issues with the neighbor who was constructing next door to me at the time.

Howard asked did the fence company see a copy of the plat or a copy of your survey?

Newkirk stated yes, absolutely. I sent the one from March 2017.

Howard asked did they seem to know what DE means?

Newkirk stated that's a great question, I'm not 100% sure. I sent this to them in an email and I have the email chain as well. I have five copies if you want a copy of those. Howard stated I'm guessing the person from Drees was the salesperson.

Newkirk stated correct, Brett Hoover is his name.

Furst stated I think it's important to note in regard to Wilshire and the West Rail at the Station, which is the neighborhood that adjoins to Wilshire that Mr. Newkirk and in the future, Mr. Widmeyer, this is a repeat situation with fences with Timber Ridge and Amerifence being the two that are most popular choices for them. We have reached out to the HOA (Homeowners Association) in our violation letters, and I've had reeducation moments with two of the owners of both fence companies since this issue has arisen.

Altman asked how many more of these do we have?

Furst stated on Maybell Lane specifically, at least nine. On the additional streets you're probably looking at eight to twelve in the coming months.

Howard asked do we have contact information for the sales office for the neighborhood?

Furst stated I would have to check, but I would imagine so.

Altman made the motion to table this non-enforcement request and ask that the Surveyor's Office look at all the violations and come up with a suggestion that will accommodate the drainage needs looking at concessions on covenants that are of record should we need access. I don't want to touch any of these until we look at the whole problem. I assume you've gone through the neighborhood and that's why we had a slew of violations.

Furst stated yes and no. We've gone through two of the four main streets within Wilshire and in West Rail it's significantly more because the education moment happened and then that particular fence company, who's been doing the majority of those fences, towed the line so to speak, and they started submitting permits. Most of those homes went through the correct permitting process prior to fences being put in. Overall, it's a mix. We definitely have more than twenty fences that are facing violations in the upcoming months.

Altman stated my preference is we have a universal solution than a one on one that tries to figure out how we balance everybody's problem.

Furst stated I should also add that many of the fences that run along Maybell Lane are all connected, which is of course a fun journey to go down.

Altman stated if we make anybody move then we've got fences, you double the cost. I just think we need to figure out with a stern letter to the HOA. If they're permitting it, I think they're culpable too.

Heirbrandt stated I agree.

The Surveyor stated the HOA is guilty, but also in this case is Drees themselves?

Howard stated the salespeople themselves.

Altman asked is Drees still controlling the HOA?

Newkirk stated no. They are done with our neighborhood.

Altman asked and they've turned over?

Newkirk stated correct.

Dillinger stated I still believe that we should make the fencing companies somehow responsible because they do it every day. The homeowner, when he comes in, he doesn't know squat about it, but the fencing company should know.

Altman stated I'd argue that it bears on everybody. Homeowners should know what they bought and should have looked at their paperwork when they closed.

The Surveyor stated another problem is that all the pins are gone, if they were ever set to begin with. If they were set, you've got the developer's contractor taking them out, or you have the builder's contractor taking them out, then you have the landscaper who gets a swipe at it, then you have the homeowner themselves to have a swipe at it and by the time you're done if you find a pin...

Altman stated our solution is a required survey, which will even add more cost. We have a way to get around the pins disappearing, you require surveys.

The Surveyor stated I think that's a good idea, require a survey.

Altman stated they do it on septic, but this isn't quite the same as a septic. Have a look at our problem and see if there are solutions. I think we ask the attorney for next meeting to come up with concepts that place penalties on fence companies. I thought we had looked at that. I thought we had requested that we be able to fine.

The Surveyor stated we talked about it, but I don't think we went that far with it.

Heirbrandt stated if we haven't, we need to.

Howard asked do we have an idea of who the major fence companies are that do this kind of stuff?

Furst stated there are about five companies. I have a pretty lengthy contact list as well as many personal experiences of duking it out with the fence companies, so I'd be happy to provide that list to whoever needs it.

Altman stated I just think we have an ordinance that if you work in the regulated drain, contractor, fence company, whoever, we do "x", "y" and "z" and if they fail to do that before work is done, you're subject to a penalty. I thought that's what we had directed.

Duncan stated if I could further that discussion, the first item of Drainage Board Attorney Pending Items is a violation letter to the fence company. That goes back to 2018 where, and I think this is going to give us the direction we need.

Howard stated I don't think we ever took it to an ordinance.

Duncan stated at the time it was do we want to send a letter to, and this particular thing was it just the fence companies in Vermillion or do we want to send something to everybody?

Heirbrandt stated I think you ought to do it countywide.

Howard stated I think we pass the ordinance and then send the letter and attach the ordinance with the penalties.

Dillinger stated we've ran into this forever.

Howard stated the people that are in front of us are these folks.

Altman stated the other thing is I think we ought to include the Homeowners Association because they should not be granting permits for fencing unless they're reviewing a plat. The plat has the DU&Es on it.

Duncan stated a lot of times the covenants restrict fences in easements anyway and will still issue approvals, which I thought it was funny that they're not enforcing their own rules.

Howard stated the HOA is more interested in what color you paint your house than whether a drainage easement is encroached upon.

Furst stated the other issue we've been running into is that different municipalities have vastly different requirements, which require a different level of communication between those municipalities with our office and them. For example, Westfield does not require a fence permit, which is where Wilshire and West Rail does exist versus Carmel does require fence permits.

Altman stated if I were a municipality, I wouldn't get in the business personally because it's not their fight, unless it was my easement.

Howard stated like you said Carmel may have an ordinance and they may look at it, but we still had Dr. Morgan in here.

Dillinger seconded Altman's motion to table this request and approved unanimously.

Heirbrandt stated, Mr. Attorney, you have direction to complete the ordinance.

Altman stated to Newkirk, I would suggest once we come up with the plan we will let you know what we've decided and then you can come back if you choose or otherwise just accept; we'll give you direct notice so you don't have to tromp back here if it's something you say "fine, that's good".

Newkirk stated I will say that the HOA did require the plot to be sent to them as well and then the fence company did mark all of the corners to where the fence was going to be on the lot and everyone physically came out and observed it. That was noted in the emails as well, so I want to make sure those are still requested by the HOA, but the fact that it's still getting approved to your point.

Howard stated if they don't read the language that says "thou shalt not" then what good is it for them to have it.

Newkirk stated exactly.

**Violations:**

Furst presented the following violations to the Board for their information.

**"NOTICE OF VIOLATION"**

**VIO-2023-00018 - Certified Mail 7021 0350 0000 0884 6109**

May 25, 2023

Twer, Adam A. & Elizabeth H.  
15714 Maybell Lane  
Westfield, IN 46074

Parcel ID#: 08-09-10-00-15-008.000

RE: Williams Creek Drain, Wilshire Section 1 Arm

Our office has been made aware of a fence encroachment on Lot 8 in Wilshire Section 1. The aluminum type fence encroaches into the regulated drain easements on the lot. The fence was installed without permission of the Hamilton County Drainage Board and is in violation of IC 36-9-27-33.

Upon receipt of this letter the property owner has ten (10) days in which to correct the violation according to the standards set forth by this office and the Hamilton County Drainage Board.

Please contact Mrs. Clara L. Furst at the Hamilton County Surveyor's Office upon receiving this violation letter to discuss what measures are needed to correct the situation. The number is 317-776-8495.

Sincerely,

Kenton C. Ward, CFM  
Hamilton County Surveyor

KCW/clf

CC: City of Westfield- Wes Rood  
Wilshire HOA"

**NOTICE OF VIOLATION**

**VIO-2023-00019 - Certified Mail 7021 0350 0000 0884 6116**

May 25, 2023

Zimmerman, Michael James & Sarah R.  
15690 Maybell Lane  
Westfield, IN 46074

Parcel ID#: 08-09-10-00-15-005.000

RE: Williams Creek Drain, Wilshire Section 1 Arm

Our office has been made aware of a fence encroachment on Lot 5 in Wilshire Section 1. The aluminum type fence encroaches into the regulated drain easements on the lot. The fence was installed without permission of the Hamilton County Drainage Board and is in violation of IC 36-9-27-33.

Upon receipt of this letter the property owner has ten (10) days in which to correct the violation according to the standards set forth by this office and the Hamilton County Drainage Board.

Please contact Mrs. Clara L. Furst at the Hamilton County Surveyor's Office upon receiving this violation letter to discuss what measures are needed to correct the situation. The number is 317-776-8495.

Sincerely,

Kenton C. Ward, CFM  
Hamilton County Surveyor

KCW/clf

CC: City of Westfield- Wes Rood  
Wilshire HOA"

**NOTICE OF VIOLATION**

**VIO-2023-00020 - Certified Mail 7021 0350 0000 0884 6123**

May 25, 2023

Thompson, Ashlyn Elizabeth & Andrew Phillip  
15674 Maybell Lane  
Westfield, IN 46074

Parcel ID#: 08-09-10-00-15-003.000

RE: Williams Creek Drain, Wilshire Section 1 Arm

Our office has been made aware of a fence encroachment on Lot 3 in Wilshire Section 1. The aluminum type fence encroaches into the regulated drain easements on the lot. The fence was installed without permission of the Hamilton County Drainage Board and is in violation of IC 36-9-27-33.

Upon receipt of this letter the property owner has ten (10) days in which to correct the violation according to the standards set forth by this office and the Hamilton County Drainage Board.

Please contact Mrs. Clara L. Furst at the Hamilton County Surveyor's Office upon receiving this violation letter to discuss what measures are needed to correct the situation. The number is 317-776-8495.

Sincerely,

Kenton C. Ward, CFM  
Hamilton County Surveyor

KCW/clf

CC: City of Westfield- Wes Rood  
Wilshire HOA"

**"NOTICE OF VIOLATION**

**VIO-2023-00021 - Certified Mail 7021 0350 0000 0884 6130**

May 25, 2023

Mazzola, Philip & Brittany Balnis  
15757 Conductors Dr.  
Westfield, IN 46074

Parcel ID#: 08-09-10-00-17-034.000

RE: Williams Creek Drain, West Rail at the Station Section 1 Arm

Our office has been made aware of a fence encroachment on Lot 105 in West Rail at the Station Section 1. The aluminum type fence encroaches into the regulated drain easements on the lot. The fence was installed without permission of the Hamilton County Drainage Board and is in violation of IC 36-9-27-33.

Upon receipt of this letter the property owner has ten (10) days in which to correct the violation according to the standards set forth by this office and the Hamilton County Drainage Board.

Please contact Mrs. Clara L. Furst at the Hamilton County Surveyor's Office upon receiving this violation letter to discuss what measures are needed to correct the situation. The number is 317-776-8495.

Sincerely,

Kenton C. Ward, CFM  
Hamilton County Surveyor

KCW/clf

CC: City of Westfield- Wes Rood  
West Rail at the Station HOA"

**"NOTICE OF VIOLATION**

**VIO-2023-00022 - Certified Mail 7021 0350 0000 0884 5836**

May 25, 2023

Patel, Chirag & Monica Jog  
2809 Towne Meadow Dr.  
Carmel, IN 46032

Parcel: 17-13-05-00-17-012.000

RE: Williams Creek, Springmill Run Drain, Estates at Towne Meadow

Our office has been made aware of a fence encroachment on Lot 12 in Estates at Towne Meadow. The aluminum type fence encroaches into the regulated drain easements on the lot. The fence was installed without permission of the Hamilton County Drainage Board and is in violation of IC 36-9-27-33.

Upon receipt of this letter the property owner has ten (10) days in which to correct the violation according to the standards set forth by this office and the Hamilton County Drainage Board.

Please contact Mrs. Clara L. Furst at the Hamilton County Surveyor's Office upon receiving this violation letter to discuss what measures are needed to correct the situation. The number is 317-776-8495.

Sincerely,

Kenton C. Ward, CFM  
Hamilton County Surveyor

KCW/clf

CC: City of Carmel-Libby Brown  
Estates at Towne Meadow HOA"

Hamilton County Drainage Board  
June 12, 2023

**"NOTICE OF VIOLATION**

**VIO-2023-00023 - Certified Mail 7021 0350 0000 0884 5843**

May 25, 2023

McGonigal, Edgar R.  
641 Beaverbrook Dr.  
Carmel, IN 46032

Parcel ID#: 17-13-02-02-09-052.000

RE: Williams Creek, Waterwood Drain, Waterwood of Carmel Section 2 Arm

Our office has been made aware of a fence encroachment on Lot 97 in Waterwood of Carmel. The wooden type fence encroaches into the regulated drain easements on the lot. The fence was installed without permission of the Hamilton County Drainage Board and is in violation of IC 36-9-27-33.

Upon receipt of this letter the property owner has ten (10) days in which to correct the violation according to the standards set forth by this office and the Hamilton County Drainage Board.

Please contact Mrs. Clara L. Furst at the Hamilton County Surveyor's Office upon receiving this violation letter to discuss what measures are needed to correct the situation. The number is 317-776-8495.

Sincerely,

Kenton C. Ward, CFM  
Hamilton County Surveyor

KCW/clf

CC: City of Carmel-Libby Brown  
Waterwood of Carmel HOA"

**"NOTICE OF VIOLATION**

**VIO-2023-00024 - Certified Mail 7021 0350 0000 0884 5850**

May 25<sup>th</sup>, 2023

Patterson, Gavin & Allyson  
12833 Clifford Circle  
Carmel, IN 46032

Parcel ID#: 16-09-26-00-01-015.000

RE: Williams Creek, JR Collins #1 Drain, Hamilton Crossing West Phs II & Westpark at Springmill Arm

Our office has been made aware of a fence encroachment on Lot 32 in Westpark at Springmill Section 1. The wooden type fence encroaches into the regulated drain easements on the lot. The fence was installed without permission of the Hamilton County Drainage Board and is in violation of IC 36-9-27-33.

Upon receipt of this letter the property owner has ten (10) days in which to correct the violation according to the standards set forth by this office and the Hamilton County Drainage Board.

Please contact Mrs. Clara L. Furst at the Hamilton County Surveyor's Office upon receiving this violation letter to discuss what measures are needed to correct the situation. The number is 317-776-8495.

Sincerely,

Kenton C. Ward, CFM  
Hamilton County Surveyor

KCW/clf

CC: City of Carmel-Libby Brown  
Westpark at Springmill HOA"

Hamilton County Drainage Board  
June 12, 2023

**"NOTICE OF VIOLATION**

**VIO-2023-00025 - Certified Mail 7021 0350 0000 0884 5867**

May 25, 2023

Thompson, Caleb W. & Constantina Andreou  
12825 Clifford Circle  
Carmel, IN 46032

Parcel ID#: 16-09-26-00-01-016.000

RE: Williams Creek, JR Collins #1 Drain, Hamilton Crossing West Phs II, Westpark at Springmill Arm

Our office has been made aware of a fence encroachment on Lot 31 in Westpark at Springmill Section 1. The wooden type fence encroaches into the regulated drain easements on the lot. The fence was installed without permission of the Hamilton County Drainage Board and is in violation of IC 36-9-27-33.

Upon receipt of this letter the property owner has ten (10) days in which to correct the violation according to the standards set forth by this office and the Hamilton County Drainage Board.

Please contact Mrs. Clara L. Furst at the Hamilton County Surveyor's Office upon receiving this violation letter to discuss what measures are needed to correct the situation. The number is 317-776-8495.

Sincerely,

Kenton C. Ward, CFM  
Hamilton County Surveyor

KCW/clf

CC: City of Carmel-Libby Brown  
Westpark at Springmill HOA"

**"NOTICE OF VIOLATION**

**VIO-2023-00026 - Certified Mail 7021 0350 0000 0884 5768**

May 25, 2023

Geske, Douglas & Laura  
4010 Bear Creek Way  
Carmel, IN 46074

Parcel ID#: 17-09-19-00-09-005.000

RE: Little Eagle Creek Drain, Overbrook Farms-Section 3 Arm

Our office has been made aware of a fence encroachment on Lot 87 in Overbrook Farms Section 3. The aluminum type fence encroaches into the regulated drain easements on the lot. The fence was installed without permission of the Hamilton County Drainage Board and is in violation of IC 36-9-27-33.

Upon receipt of this letter the property owner has ten (10) days in which to correct the violation according to the standards set forth by this office and the Hamilton County Drainage Board.

Please contact Mrs. Clara L. Furst at the Hamilton County Surveyor's Office upon receiving this violation letter to discuss what measures are needed to correct the situation. The number is 317-776-8495.

Sincerely,

Kenton C. Ward, CFM  
Hamilton County Surveyor

KCW/clf

CC: City of Carmel-Libby Brown  
Overbrook Farms HOA"

Hamilton County Drainage Board  
June 12, 2023

**"NOTICE OF VIOLATION**

**VIO-2023-00027 - Certified Mail 7021 0350 0000 0884 5775**

May 25, 2023

Rodriguez, Martha M. & Gabriel Rivera  
3986 Bear Creek Way  
Carmel, IN 46074

Parcel ID#: 17-09-19-00-09-006.000

RE: Little Eagle Creek Drain, Overbrook Farms-Section 3 Arm

Our office has been made aware of a fence encroachment on Lot 88 in Overbrook Farms Section 3. The aluminum type fence encroaches into the regulated drain easements on the lot.

The fence was installed with the permission of the Hamilton County Drainage Board however, the fence is not installed per the requirements of the permit. The approved *Non-Enforcement of Drainage Easement for Fences* permit **INDNE-2022-00062** requires the following, "The fence to encroach 7.5ft into drainage easement off of rear property line." Per a recent inspection, the office found the fence not installed per the requirements of the permit.

The fence is currently installed more than 7.5ft into the rear drainage easement on the property.

Upon receipt of this letter the property owner has ten (10) days in which to correct the violation according to the standards set forth by this office and the Hamilton County Drainage Board.

Please contact Mrs. Clara L. Furst at the Hamilton County Surveyor's Office upon receiving this violation letter to discuss what measures are needed to correct the situation. The number is 317-776-8495.

Sincerely,

Kenton C. Ward, CFM  
Hamilton County Surveyor

KCW/clf

CC: City of Carmel-Libby Brown  
Overbrook Farms HOA"

**"NOTICE OF VIOLATION**

**VIO-2023-00028 - Certified Mail 7021 0350 0000 0884 5782**

May 25, 2023

Sinha, Pradiptya & Radhika Mathur  
3984 Bear Creek Way  
Carmel, IN 46074

Parcel ID#: 17-09-19-00-09-007.000

RE: Little Eagle Creek Drain, Overbrook Farms-Section 3 Arm

Our office has been made aware of a fence encroachment on Lot 89 in Overbrook Farms Section 3. The aluminum type fence encroaches into the regulated drain easements on the lot.

The fence was installed with the permission of the Hamilton County Drainage Board however, the fence is not installed per the requirements of the permit. The approved *Non-Enforcement of Drainage Easement for Fences* permit **INDNE-2019-00119** requires the following, "The Drainage Board agrees not to enforce its easement rights beyond a distance of 7.5ft from the South side of the centerline of the tile within the Drainage Easement, unless for maintenance or construction described in Section 2 above." Per a recent inspection, the office found the fence not installed per the requirements of the permit.

The fence is currently installed more than 7.5ft into the rear drainage easement on the property.

Upon receipt of this letter the property owner has ten (10) days in which to correct the violation according to the standards set forth by this office and the Hamilton County Drainage Board.

Hamilton County Drainage Board  
June 12, 2023



Please contact Mrs. Clara L. Furst at the Hamilton County Surveyor's Office upon receiving this violation letter to discuss what measures are needed to correct the situation. The number is 317-776-8495.

Sincerely,

Kenton C. Ward, CFM  
Hamilton County Surveyor

KCW/clf

CC: City of Carmel-Libby Brown  
Overbrook Farms HOA"

**Violation Updates:**

Furst presented the updates on violations to the Board for their information.

"May 25, 2023

Widmeyer, Bobby L. & Angela K.  
15698 Maybell Lane  
Westfield, IN 46074

Parcel ID#: 08-09-10-00-15-006.000

**RE: Williams Creek Drain, Wilshire Section 1 Arm**

In November of 2022, our office was made aware of a fence encroachment on Lot 6 in Wilshire Section 1. The Notice of Violation **VIO-2022-00020** dated November 3<sup>rd</sup>, 2022, was not resolved.

The fence encroaches into the regulated drain easements on the lot. The fence was installed without the permission of the Hamilton County Drainage Board and is in violation of IC 36-9-27-33.

This letter shall serve as the 'Notice' that the Hamilton County Surveyor's Office will be scheduling a third-party contractor to access the drainage easement and remove the fence at the expense of the real property owner(s) pursuant to IC-36-9-27-16(d) (3) (c) and 36-9-27-16 (d) (4).

If, the fence is removed from the limits of the Regulated Drain easement or a Non-Enforcement of Drainage Easement for Fences permit is filed with the Hamilton County Surveyor's Office by end of day **June 2<sup>nd</sup>, 2023**, then the contractor may be halted.

Please contact Mrs. Clara L. Furst at the Hamilton County Surveyor's Office upon receiving this notice letter to resolve the situation. The number is 317-776-8495.

Sincerely,

Kenton C. Ward, CFM  
Hamilton County Surveyor

KCW/CLF

CC: City of Westfield- Wes Rood  
Wilshire HOA"

"May 25, 2023

Newkirk, Benjamin & India  
15697 Maybell Lane  
Westfield, IN 46074

Parcel ID#: 08-09-10-00-15-036.000

**RE: Williams Creek Drain, Wilshire Section 1 Arm**

In December of 2022, our office was made aware of a fence encroachment on Lot 36 in Wilshire Section 1. The Notice of Violation **VIO-2022-00025** dated December 15<sup>th</sup>, 2022, was not resolved.

The fence encroaches into the regulated drain easements on the lot. The fence was installed without the permission of the Hamilton County Drainage Board and is in violation of IC 36-9-27-33.

Hamilton County Drainage Board  
June 12, 2023

This letter shall serve as the 'Notice' that the Hamilton County Surveyor's Office will be scheduling a third-party contractor to access the drainage easement and remove the fence at the expense of the real property owner(s) pursuant to IC-36-9-27-16(d) (3) (c) and 36-9-27-16 (d) (4).

If, the fence is removed from the limits of the Regulated Drain easement or a Non-Enforcement of Drainage Easement for Fences permit is filed with the Hamilton County Surveyor's Office by end of day **June 2<sup>nd</sup>, 2023**, then the contractor may be halted.

Please contact Mrs. Clara L. Furst at the Hamilton County Surveyor's Office upon receiving this notice letter to resolve the situation. The number is 317-776-8495.

Sincerely,

Kenton C. Ward, CFM  
Hamilton County Surveyor

KCW/clf

CC: City of Westfield- Wes Rood  
Wilshire HOA"

**Surety Acceptance:**

Liston stated that at this afternoon's Commissioners meeting the Board would be accepting the following sureties: Subdivision Bond No. 1189562-0000 in the amount of \$130,680.00 for Union Square at Grand Junction, Excavation and Grading (J. M. Thompson Arm of the Anna Kendall Drain); Subdivision Bond No. 1189563-0000 in the amount of \$36,696.00 for Union Square at Grand Junction, Erosion Control (J. M. Thompson Arm of the Anna Kendall Drain); Subdivision Bond No. 1189564-0000 in the amount of \$817,404.00 for Union Square at Grand Junction, Stormwater Improvements (J. M. Thompson Arm of the Anna Kendall Drain).

**Jonas Rogers Drain, J. M. Gustin Arm Reconstruction - Change Order No. 1:**

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

"June 5, 2023

TO: Hamilton County Drainage Board

**RE: Jonas Rogers Drain, J. M. Gustin Arm Reconstruction  
Change Order # 1**

The following items are a deduction from the Jonas Rogers Drain, J. M. Gustin Arm Reconstruction contract.

|  |                    |
|--|--------------------|
| H-3 Payment Removal & Repair           | -\$1,591.50        |
| BB-8 Revetment Rip Rap with Geotextile | -\$ 317.17         |
|  | <u>-\$1,908.67</u> |

|                                      |                    |
|--------------------------------------|--------------------|
| Engineer Estimate (Based on Low Bid) | \$79,329.13        |
| 15% Contingency                      | <u>\$11,899.37</u> |
| Total                                | \$91,228.50        |

|                           |                    |
|---------------------------|--------------------|
| Contractor Bid            | \$79,329.13        |
| Total Deductions C.O. # 1 | <u>\$-1,908.67</u> |
| Total Reconstruction Cost | \$77,420.46        |

Sincerely

Jerry L. Liston  
Hamilton County Surveyor's Office"

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

**Elwood Wilson Drain, E. M. Hare Arm Reconstruction - Change Order No. 5:**

Liston presented Change Order No. 5 to the Board for approval.

"June 7, 2023

TO: Hamilton County Drainage Board

**RE: Elwood Wilson Drain E M Hare Reconstruction - Change Order # 5**

The following items are an additional to the Elwood Wilson Drain E M Hare Reconstruction contract being done by Morphe Construction.

Hamilton County Drainage Board  
June 12, 2023

|  |                      |
|--|----------------------|
| Change Order # 5 - Added 82 loads of haul off for \$14,350.00 and 100 tons of rip rap for \$15,550.00. | \$ 29,900.00         |
| Change Orders # 1, # 2, # 3 and # 4 Cost to Date   | \$ 312,392.59        |
| Change Order # 5   | <u>\$ 29,900.00</u>  |
| Total Change Order Cost to Date  | \$ 342,292.59        |
| Morphey's Contract   | \$2,478,000.00       |
| Total 15% Contingency  | <u>\$ 371,700.00</u> |
| Total  | \$2,849,700.00       |
| <br>   |                      |
| Revised Construction Total to Date   | \$2,820,292.59       |

Submitted By

Jerry L. Liston  
Hamilton County Surveyor's Office"

Altman made the motion to approve Change Order No. 5 presented, seconded by Dillinger and approved unanimously.

**Construction Updates:**

Elwood Wilson Drain, E. M. Hare Arm Reconstruction - Liston stated this project is moving along. We're out of the sand, which was a concern for a while. As of Monday morning, they were getting ready to move onto the Scottish Rite parcel with the open ditch construction. Howard had asked about the Field Rubber site. The contractor started the Presley crossing today and when that is done, they'll go over onto Field Rubber.

Howard stated the parking lot for his employees couldn't accommodate fifteen concrete trucks all at once.

William Lehr Drain, Joseph & Brooks Arm (156<sup>th</sup> Street Reconstruction) - Liston stated we're still waiting for the box culverts to be built for this project. We're also working through a Comcast conflict.

Duncan stated the structures have been ordered and Comcast has a conflict on the north side of 156<sup>th</sup> Street. Comcast is aware of that are working through the permit process with the City of Noblesville and we are trying to accelerate that permit.

2022 Reconstruction of the W. S. Burnau Arm of the F. M. Musselman Drain - Liston stated later on we'll be talking about some issues there that have come up. This project is mostly done.

Jonas Rogers Drain, J. M. Gustin Arm Reconstruction - Liston stated this project is complete. We're waiting on the grass to grow. Indiana Earthworks, the contractor on this project, did an awesome job for us. They still need to address some punch list items there and I've been told that will happen this week.

William Lehr Drain, J. S. McCarty Arm Phase 1 - Liston stated we'll have a first-time contractor working for us on this project. They hope to start August 1, 2023.

Clara Knotts Drain, Park Broadway Arm Phase 2 - Cline stated we're still waiting on AT&T to move their lines. I was there Wednesday of last week and nothing is happening yet.

Ream Creek Drain, Orchard Park Arm (Pending Asbuilts) - Cline stated we have the asbuilts and they are under review.

Clara Knotts Drain, Park Broadway Arm Phase 1 (Pending Final Report) - Cline stated the report has been written and under review at this time.

Canal Place Drain, Strongbow Gate Arm (Pending Final Report) - Liston stated I owe the Board a final report for this project and will hopefully have that for the next meeting.

**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.

**F.M. Musselman Drain, W. S. Burnau Arm Reconstruction (2022):**

Mr. Don Goodwin and Mr. Mike Latty were present for this item.

Liston presented his report to the Board for their information.

"June 5, 2023

TO: Hamilton County Drainage Board

**RE: F. M. Musselman Drain, W.S. Burnau Arm Reconstruction  
Latty Property**

The following information and photos are provided to show slope information through the Latty property. Mr. Latty attended the May 22, 2023 DB meeting to show his displeasure over the work through his property by Morphey Construction.

According to the approved plans for the reconstruction project the slope across the Latty property is to be at 6:1.

The slope was checked on May 30, 2023 using a slope gauge at the direction of the Hamilton County Surveyor and Drainage Board.

**Photo 1:**

Shows instrument used to measure slopes on the F. M. Musselman Drain, W. S. Burnau Arm. Slope is south of the small duck pond. Gauge shows 6:1 slope.

**Photos 2, 3 and 4:**

Photos of small duck pond created at the request of the property owner. Embankment slope on east side of the small duck pond is 4:1. The opposite bank slope east of new drain and small duck pond is 10:1.

**The dead tree in Photo 2 was left at the request of Mr. Latty during clearing of vegetation across the Latty property. The tree is full of bees.**

**Photos 5 and 6:**

Looking SE of small duck pond. Slope is 5:1 on west side, 10:1 on east side.

**Photo 7:**

Looking NE new inlet on 48" drainpipe. Re-directed surface water to inlet. Surface water is caused by a broken-down private tile coming from the east onto the Latty property. Private tile is plugged with tree roots across Latty.

**Photos 8, 9, 10 and 11:**

Looking north from Latty/Boice property line. Slope on west bank is 5:1 and 10:1 on east side. The west bank is at a 5:1 slope so as to be able to remove less trees.

**Photos 12 & 13:**

Excess spoil dirt left at request of the property owner. Dirt is north of the Latty/Boice property line. Dirt is in regulated drain easement. Mr. Latty asked for the leftover dirt from the project. Morphey will obtain written sign off from Mr. Latty.

**Photos 14 and 15:**

Photo of leftover material on the Latty property. Mr. Latty asked for the leftover materials from the project. Morphey Construction will obtain written sign off from Mr. Latty.

**Photo 16:**

Looking NW across Goodwin property towards 196<sup>th</sup> Street. This photo was included to show the difference of footprints or areas to work within across both properties. The Goodwin property has no trees allowing the excess spoil dirt to be spread within the regulated drain easement. The footprint across the Latty property is much smaller due to being a wooded parcel.

Jerry L. Liston"

Heirbrandt stated I appreciate the photos and then line item what the slope is, that was helpful.

Liston stated there are some other photos showing a pile of dirt. Mr. Latty had requested the contractor leave that for him. There are also some pipe materials that has been asked to be left. I have asked the contractor to have Mr. Latty sign a paper asking for the dirt to be left and I've been told that they have that. I've yet to see the letter.

Heirbrandt asked any left-over materials, have all of them been removed?

Liston stated the left-over materials have been left on site at Mr. Latty's request. I've asked for a written letter from Mr. Latty asking for those to remain.

Altman asked don't we need MS4 protection for this pile of dirt?

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Heirbrandt stated we should.

Liston stated yes, that needs to be protected so if it rains it doesn't migrate.

Altman stated that needs to be done immediately or the dirt taken away.

Liston stated I'll let Latty answer that; he may be moving it, I don't know. I have not had that conversation with him. It may be moved somewhere else on the property.

Howard stated if it's not moved, you're at least going to have to put fencing around it because grass hasn't come up yet.

Liston stated it's going to come right down that swale.

Altman stated then it will undo all the work we did.

Liston stated I was asked to go out and I took John (Campbell) our new parttime inspector in the office.

Altman asked our solution to lower the slope to the 6:1 is to go out and take out more trees?

Liston stated yes.

Altman stated I want to make sure that's clear.

Heirbrandt stated I thought that was clear in the last meeting and the discussion we had.

Altman stated there was a question as to whether it was constructed as agreed or not and if that was a field revision was everybody signed off on.

Heirbrandt asked Liston, has Mr. Latty confirmed that he's satisfied?

Liston stated Mr. Latty is here today, so I'll let him address this?

Heirbrandt asked Latty if he would like to address the Board.

Liston stated I've been in this office for 40 years and I need to apologize to Mike (Latty). I lost my cool in a conversation over the phone with him and I've never done that before in the office. I want to go on record saying "Mike, I'm sorry". I think we were both a little hot that day.

Latty stated to Liston, "I apologize too". I have not signed off on the release with the dirt. I have been asked on Friday. It does need some erosion control around that dirt. I don't have anything, maybe if a fence could be brought to me, one of those fabric fences; I'll put that in, easy enough.

Heirbrandt asked is that something we can accommodate?

Altman stated no, it's actually fairly expensive. I think if you want to keep the dirt there it will probably fall on you or we're going to have to have the contractor take it away.

Howard asked is it going to stay there permanently? Is that your plan?

Latty stated no. It's just excess dirt for landscaping projects and stuff, low areas back in the woods and stuff where I can move it. I've already moved a few piles.

Howard asked but there's no timeline?

Latty stated no. It is on my property; it is in the easement.

Altman stated it's an encroachment too. We've got an MS4 problem with siltation that will undo all the work we did and number 2 it's an encroachment in the easement that will affect flow. Just because the contractor was happy to have you leave it there we have to resolve that.

Latty stated okay.

Altman stated at a minimum almost immediately we need to have that silt fencing go up to contain it and that's going to fall on you I think, or we need to take the dirt away.

Latty stated I can do that as far as the fencing.

Altman stated you can get it at Home Depot and all those places.

Latty stated I have no problem with that. I mentioned something the last time and I'm hoping I can sway, if it's in your capabilities, because this has opened up the ground so much for me and it's all been reseeded as you can see with the straw spread everywhere. I don't know, it would be awesome if we could put prairie grass in places. This is all seed. I can't maintain all that, not like I used to mow it. I know County Parks, and such have prairie grasses, which you let it go and you let it do it's thing with nature. I don't know where you're at with your budgets and you could appropriate some. I'm not asking for the whole thing to be prairie grass, obviously you can't, or water would erode it, but I do have a lot of steep banks and I'm not sure you could do the prairie grass on those, but there's a lot of open flat areas if there could be prairie grass put in or some sort of help for me to get that done. It's all to the benefit of everybody I would think.

Howard stated I think the last prairie grass thing we did was down in Carmel at the request of the property owner and basically it was a hold harmless, it's your problem and its not only your problem to make it grow it's your problem to maintain something that doesn't allow erosion. Wasn't that where we ended up? I can't remember the name of the project.

The Surveyor stated that was on the school grounds if I remember right.

Howard stated I think the solution was prairie grass is problematic and we're not in the prairie grass business.

The Surveyor stated it takes about three years for it to establish. That's the problem with prairie grass. We are doing a test plot over in Sheridan where we have some ground just to see how it does, so we don't have to mow it.

Latty stated that's one of the bad things in all of this, you can see the ground is so opened up now and you don't want to see trees grow back in towards the pipe and I don't want to see the weeds grow up and the trees reestablish themselves. I can't mow all of that. There are so many flat areas. I still plan on doing some mowing, but I just can't do it all.

Heirbrandt stated there was an email sent out by Mr. Goodwin about some concerns that he had on his property.

Liston stated on Friday I came in from the field and found where Mr. Goodwin had sent the email. I did not find this email until about 2:40 p.m. on Friday. Mr. Goodwin is right, he did send me an email on February 6, 2023. Duncan and I spoke about the items at the time on that email and I was to respond back to Mr. Goodwin and I didn't do it. Again, I apologize for not responding. That's not on Duncan, it's not on the Surveyor and it's not on the office, that's on me. I went back and found where the email had been forwarded to me under the Surveyor account and I missed it. I did talk with the contractor this morning. Two things on his list, he was unaware of the property corner.

Goodwin stated he should have been, we talked about it.

Liston stated the superintendent over the job, Mr. Dave Morgan, was unaware of it. We'll address that. The other issue was the seed mixture, and we did use what we call the Llama seed mixture across the Goodwin's property.

Goodwin asked how about the fence?

Liston stated we're not 100% done yet, so that will be addressed.

Goodwin stated there's also a pile of rocks left there; will that be addressed?

Liston stated it will be, we haven't done our inspection yet.

Goodwin stated I don't know if you can see it because it was covered by the straw. I talked to Dave (Morgan) about it. I also talked to Dave about the corner marker.

Heirbrandt stated to Goodwin, we saw your email that came on Friday, and we got you on the agenda pretty quickly. That normally doesn't happen.

Goodwin stated my question to the Board is, you've now abandoned the 18" tile that's there, but yet the field tile was not connected. They told me when they came through, they didn't find any, but they did connect the 18" back up so now any of my field tile and my perimeter drain for my septic system runs into this 18" pipe that you're now abandoning. Who maintains that now? Is that now all of a sudden, I'm responsible for an 18" pipe that I wasn't before? Again, you sold the whole project on that the thing was failing, but now you're using it.

The Surveyor stated when we replace a tile with an open ditch, we sometimes don't catch all of it when we put the open ditch in.

Goodwin stated this isn't an open ditch, it's just tile. You replaced it with tile.

The Surveyor stated and that also. What we do is leave the old tile in place and then connect it on the downstream end because we don't know what's coming into it all the way down. That's the usual thing that we do.

Goodwin stated okay, so now this 18" thing collapses, my perimeter drain on my septic system is now not doing its job, what happens?

The Surveyor stated if it collapses, I'm sorry to say it is on you.

Goodwin stated an 18" pipe is now my responsibility that was not until you came through my property. Is that right?

The Surveyor stated we've done it for years throughout the county.

Goodwin stated but does that make it right that you're throwing a huge expense; I know about where it comes through so I've either got to bypass it with that, I've got to find all my field tile and reconnect it and I think you had an issue a while back where you jumped on somebody for trying to do work inside the main, inside the easement on their own field tile. Do I now have to get a variance to work on pipe that used to connect to an 18" and now has to be moved?

The Surveyor stated no, not if you're replacing it or repairing it. This was a new tile that you're talking about that happened to.

Heirbrandt asked Howard, do you have any thoughts?

Howard stated when we reconstruct and put a new tile in from a pragmatic standpoint where you put that new one in there's old field tile and old things everywhere and if we find them and they're in our easement we connect them. We can't survey the whole township or even the whole section. If we've got it connecting into a good outlet that is at least equal to, but probably better than the previous condition, but just because we connect into it wouldn't give us a duty to go clear up the line and fix it. Once it's not part of our system anymore it's theirs. Your field tile has probably been there 100 years.

Goodwin stated at least. I don't know exactly.

Howard stated that doesn't give us an affirmative duty to go up and replace everything in the area.

Heirbrandt stated temporarily, right now, if Liston could continue to give us updates on this property and some of the things, we're able to get done so we can get this issue resolved.

Liston stated we haven't done any inspections. We were just told on Friday morning that the contractor had pretty much buttoned up the project. We'll do a walkthrough with an inspection and put together a list of items that need to be addressed and send those to the contractor and have them addressed.

Howard stated I think the important thing is at least the drain to go around is septic if we can look for those. If your field tile gets busted and doesn't hook in you've got mud, if your perimeter drain around septic doesn't...

Goodwin stated I was there 30 years when it was built. I remember they took it in, they put it into the old 18" and I actually went out and took a couple coat hangers and wrenched for it and found the line and laid flags down for them to where it went through and showed the guy and said could this be connected and then they went right on past and just took 18" in. So, I've got a perimeter drain going into an 18" that's being abandoned that goes into the new. I'm concerned if my perimeter drain; if between where my perimeter drain connects in and where it connects to the new pipe, that collapses, what do I do?

Heirbrandt stated we'll have Liston give us updates on this, but I appreciate you bringing this to our attention and coming in today to speak briefly about it. We're already fifteen minutes late for our next meeting. Liston will give us updates at every meeting until we get this resolved.

Goodwin asked does that include the punch list items too?

**Drainage Board Attorney - Pending Items:**

Flora Mendenhall Drain Reconstruction (Termination of Contract) - Howard stated we had a contract, a project bid last year with White Construction. For some reason unknown to me that contract has been terminated and you asked me to prepare for your signature and for White Construction's a real short joint agreement to terminate the drain reconstruction contract before you for approval.

Altman made the motion to terminate the contract with White Construction for the Flora Mendenhall Drain Reconstruction, seconded by Dillinger and approved unanimously.

**Oliver Shoemaker Drain - City of Fishers:**

Dillinger stated I told Fishers that we would discuss their proposal. Do you want to do that today?

Heirbrandt stated we probably ought to have a discussion because that could be pretty lengthy.

Altman asked what are we talking about?

Heirbrandt stated in regard to an abandonment.

Dillinger stated Fishers would like for us to abandon to the city a portion of a drain. My suggestion to them without talking to the Surveyor if you're going to take part of the drain or if we're going to give you part of a drain, take it all. Don't split responsibilities between us and them.

Howard asked isn't that a huge watershed that includes most of Fishers that's going from four to eight?

Altman stated the main thing is we have to make sure we have conveyance. You just can't give away part of a drain.

The Surveyor asked which one?

Altman stated I don't know; this is news to me.

Dillinger stated Fishers will be in contact with you.

Howard stated it's the one we're going from four to eight on and they have that confused and now they're wanting to...

Heirbrandt stated and there's a lot of development that's going to be happening in that area. I think I brought it up to you about three or four weeks ago.

**Marion Blanton Drain:**

Howard stated there was a project and you had a series of emails to me at 236<sup>th</sup> Street and DeVaney Road about a wetland. The Surveyor's Office is in contact with the appropriate people on the wetland issue. Duncan and I talked about it, and it may be one of those things they'll have to report back. Probably, right now, there's nothing moving forward on it, and they may just walk away from the project until development comes in and takes care of it.

Heirbrandt stated the Army Corps of Engineers has been contacted on this as well as Senator Braun's Office that they had notification of this too.

Duncan stated we've talked to the Army Corps about this specific issue, and we are going to ask for quotes to have the wetlands delineated. We figured the best approach would be to find out if there are indeed wetlands on the property first.

Howard stated we're not working there until we know.

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

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Mark Heirbrandt - President

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Lynette Mosbaugh  
Executive Secretary