

MINUTES OF THE HAMILTON COUNTY DRAINAGE BOARD

August 14, 2023

The meeting was called to order Monday, August 14, 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, Kent C. Ward and members of his staff: Mr. Sam Clark, Mr. Reuben Arvin, Ms. Clara Furst, Mr. Gavin Maxwell, Mr. Steve Cash, Mr. Luther Cline, Mr. John Campbell, Mr. Brian Rayl and Mr. Jerry Liston. The Board's attorney's, Mr. Michael Howard and Mr. Connor Sullivan, were also present.

Approval of Minutes of July 24, 2023:

The minutes of July 24, 2023 were presented to the Board for approval.

Dillinger made the motion to approve the minutes of July 24, 2023, seconded by Altman and approved unanimously.

Receive Quotes - Marion Blanton Drain (Wetland Mitigation):

Howard stated the first quote is from Meristem from Avon, Indiana with an estimated fee of \$3,700.00; the next quote is from Ron L. Dixon, Natural Resource Consulting from Indianapolis, Indiana with a proposal fee of \$22,500.00. This appears to be all the quotes on this project. Do any persons know of any other quotes; none appearing I recommend the quotes be referred to the Surveyor's Office for review and recommendation two weeks from today.

Dillinger made the motion to refer the quotes to the Surveyor's Office for review and recommendation on August 28, 2023, seconded by Altman.

Altman asked is this for design?

The Surveyor stated this is to determine whether there are wetlands that are affected.

Heirbrandt asked did I hear that right; one bid was \$3,700.00 and the next one was \$22,000.00? Was that correct?

The Surveyor stated one is \$3,700.00 unless they put the decimal in the wrong place and the other is \$22,500.00.

The motion had been made and seconded to refer the quotes to the Surveyor's Office for review and recommendation on August 28, 2023 and approved unanimously.

Professional Services Agreement - J. S. McCarty Drain Phase 2:

The Surveyor stated this is a Task Order from Banning Engineering on the project they're working on. We need one easement description on the J. S. McCarty Drain, Phase 2 in the amount of \$1,000.00.

Dillinger made the motion to approve the Task Order on the J. S. McCarty Drain Phase 2 in the amount of \$1,000.00 for one easement description by Banning Engineering, seconded by Altman and approved unanimously.

Professional Services Agreement - J. S. McCarty Drain Phase 3:

The Surveyor stated this is a Task Order from Banning Engineering on the project they're working on. We need five easement descriptions on the J. S. McCarty Drain, Phase 3 in the amount of \$4,000.00.

Dillinger made the motion to approve the Task Order on the J. S. McCarty Drain Phase 3 in the amount of \$4,000.00 for five easement descriptions by Banning Engineering, seconded by Altman and approved unanimously.

Professional Services Agreement - Weaver & Hooke Drain:

The Surveyor stated this is a Task Order from Banning Engineering on the project they're working on. We need one easement description on the Weaver & Hooke Drain in the amount of \$1,000.00.

Dillinger made the motion to approve the Task Order on the Weaver & Hooke Drain in the amount of \$1,000.00 for one easement description by Banning Engineering, seconded by Altman and approved unanimously.

West Arcadia Drain & Wilson-Nagle Drain - Request for Additional Fees:

The Surveyor stated when we did the onsite walkthrough with Commonwealth Engineering we asked them to add additional survey work for both the West Arcadia Drain and the Wilson-Nagle North Bypass. These are additional fees for those requested services. One was for \$3,500.00 and the other one was for \$10,360.00.

Altman asked so this was an enlargement of the original scope?

The Surveyor stated yes.

Altman stated okay, it wasn't clear from the paperwork that was submitted.

Altman made the motion to approve the Professional Services Agreement from Commonwealth Engineering in the amount of \$3,500.00 for the additional survey work on the West Arcadia Drain and \$10,360.00 for additional survey work on the Wilson-Nagle Drain, seconded by Dillinger and approved unanimously.

M. E. Scherer Drain - Easements:

The Surveyor stated we are in need of two easements on the M. E. Scherer Drain in order to get the project to hearing. The plans are complete and all we need are the easements and we can bring it to hearing.

Howard asked do we have appraisals for those yet?

The Surveyor stated this is a request to send them for appraisal. We have the easement descriptions; we were able to get those done in house.

Howard stated you have the language for the easement, but you don't have the homeowner's signature.

The Surveyor stated correct. This is for the appraisal work.

Altman made the motion to approve the appraisal work for the M. E. Scherer Drain easements, seconded by Dillinger and approved unanimously.

Cornthwaite Drain - Easements:

The Surveyor stated we are in need of two easements on the Cornthwaite Drain in order to get the project to hearing. The plans are complete and all we need are the easements and we can bring it to hearing.

Howard asked do we have appraisals yet?

The Surveyor stated this is a request to send them for appraisal. We have the easement descriptions; we were able to get those done in house.

Howard stated you have the language for the easement, but you don't have the homeowner's signature.

The Surveyor stated correct. This is for the appraisal work.

Altman made the motion to approve the appraisal work for the Cornthwaite Drain easements, seconded by Dillinger and approved unanimously.

Isaac Jones Drain and Hinshaw & Keys Drain - Kruse Demand to Cease Unauthorized Activity:

Howard stated the Surveyor's Office forwarded this issue to me and we replied on August 4, 2023. In this letter we explained to them that there are two regulated drainage easements between them and their neighbors that it would not show up in their title work and they did receive notice of the public hearing on both drains and if they had any questions, they could have presented those to the Surveyor's Office. We said the contractor is working diligently and we told them we'd have them back to grade here in a couple of months and sent them a picture of how deep it was. It's a pretty big job. We told them we would not be ceasing work and we have not heard anything since.

Vestal/Kirkendall Drain, Russell Shugart Arm - Midland Pointe Findings & Order:

The Surveyor stated this is a hearing you approved at the last meeting, and this is the findings and order that was missed when everything was being signed. We just want to catch up on this paperwork.

Hearing requests:

The Surveyor presented the following items for hearing on September 21, 2023: Williams Creek Drain, Jackson's Grant Section 2 Arm; Valleys at Geist Drain; Thomas Fouch Drain; A. L. Haughey Drain; Prairie Creek Drain; Margaret O'Brien Drain; J. R. Dunn Drain; Charles Lower Drain; William Thomas Drain; Sail Place Drain; Burkhardt Drain; Thomas Butler Drain.

Altman made the motion to set the items presented for hearing on September 21, 2023, seconded by Dillinger and approved unanimously.

Big Cicero Creek Joint Drainage Board:

The Surveyor presented the minutes of the Big Cicero Creek Joint Drainage Board of June 28, 2023 to the Board for their information. He asked if there were any questions.

There were no questions.

Private Drain Petition - Wright vs Dhani (Invoice):

Howard stated I haven't heard anything, but their time is not yet run. It will be run by the next meeting. If we haven't heard, we will be initiating litigation.

Preliminary Variance Request - Cicero Creek (Pleasant St. Bridge Fill in the Floodplain):

Ms. Alison Krupski was present for this item.

Cash presented his report to the Board for approval.

"Re: Cicero Creek - Variance Preliminary Introduction

August 9, 2023

To: Hamilton County Drainage Board

Project Name: Pleasant Street Phase 3 - Bridge over the Cicero Creek.

Petitioner: City of Noblesville

Summary:

The City of Noblesville requests to present their proposal for site work as part of the Pleasant Street Phase 3 project. This proposal will require the approval of a variance from Ordinance No. 09-26-16A for fill in the floodplain of Cicero Creek. The project site is located where Pleasant Street will cross Cicero Creek, east of Cherry Tree Road, partly in Noblesville Township and partly in the City of Noblesville. The plans are being designed by Butler, Fairman & Seufert, Inc.

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.

Steven T. Cash
Plan Reviewer"

Altman asked what is the guidance the office is requesting?

Cash stated we understand that the ordinance that was passed by the County Commissioners that allowed commercial road projects, bridge projects that did not elevate the 100-year to be exempted from having to do the fill in the floodplain compensatory storage. Will you require this project to install floodplain compensatory storage here.

Krupski stated we do have our construction in a floodway permit from IDNR. There's a little bit of gray area. One side of the bridge is in county jurisdiction, one side is in the City of Noblesville jurisdiction and all of the fill in the floodplain is on the City of Noblesville's side. It should also be noted that the backwater, the .09 feet of backwater is all contained within the channel. There are no obstructions, no houses, nothing upstream that should be impacted because of the 0.09 feet of backwater. We do go to bid on Pleasant Street Phase 2 and 3 September 26, 2023.

Dillinger made the motion to give preliminary approval for the fill in the floodplain variance request, seconded by Altman and approved unanimously.

Preliminary Variance Request - Elwood Wilson Drain (Pleasant Street Phase 2 Bridge)

Ms. Alison Krupski was present for this item.

Cash presented his report to the Board for approval.

"Re: Elwood Wilson Drain - Variance Preliminary Introduction

August 9, 2023

To: Hamilton County Drainage Board

Project Name: Pleasant Street Phase 2 - Bridge over the Elwood Wilson Drain.

Petitioner: City of Noblesville

Summary:

The City of Noblesville requests to present their proposal for site work as part of Pleasant Street Phase 2 project. This proposal will require the approval of a variance from Ordinance No. 09-26-16A for fill in the floodplain of the Elwood Wilson Drain. The project site is located where Pleasant Street crosses the Elwood Wilson Drain, west of the intersection with 16th street in the City of Noblesville. The plans are being designed by Butler, Fairman & Seufert, Inc.

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.

Hamilton County Drainage Board
August 14, 2023

Steven T. Cash
Plan Reviewer"

Cash stated this project is going through EPA approval because of the Firestone Mitigation project that took place in 2005 through 2006. The City of Noblesville is working with EPA and IDEM regarding the approvals for this project. They have received IDNR approval for fill in the floodplain. Because of the location of this project and the mitigation that occurred through the EPA project the project is moving forward, and our recommendation is to minimize as much bank work as possible on this particular stretch of drain. We have had a moratorium on any excavation along this stretch of regulated drain that was approved in 2006. As part of this we recommend that Noblesville not have fill in the floodplain compensatory storage excavated along the banks because of the EPA encapsulation of the drain.

Altman stated literally, the EPA has come and sealed it.

The Surveyor stated yes.

Altman made the motion to grant preliminary approval for this variance request, seconded by Dillinger and approved unanimously.

Non-enforcements:

Ms. Ashley Allen was present for this item.

Cash presented a non-enforcement request for the Sly Run Drain, Andover Section 1 Arm filed by Palmer Properties, LLC for Pebble Brook Crossing. 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 Vermillion Drain, Enclave at Vermillion Arm filed by Brian and Kimberly Minnick for parcel #13-16-08-00-27-005.000 for landscape material. 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 Deerfield Drain filed by Matthew and Haoyue Zeigler for parcel #17-13-09-04-05-005.000 for privacy panels with the last panels and post to have removable panels over subsurface drain. 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 Vermillion Drain, Village at Flat Fork Arm filed by Devonna Kinslow for parcel #13-16-05-00-01-003.000 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 Iqbal Siddique for parcel #13-16-08-00-07-014.000 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 an amendment to a non-enforcement request for the Village of Mount Carmel Drain filed by Thomas and Patricia Dean for parcel #17-09-23-02-09-007.000 for a fence. The amendment is to correct an error on page 4 that will reflect that the fence will encroach 7.5 feet into the 15-foot Drainage & Utility Easement along the southeast perimeter line and the fence will fully encroach along the north perimeter line and be required to have a 10-foot gate along the north perimeter line centered to the inlet/pipe. A ten-foot gate will be required along the southeast perimeter line centered to the inlet in the east rear corner. The fence will fully encroach into the 10-foot Drainage & Utility Easement along the north perimeter line with a 10-foot gate or removable panels along the west perimeter line. The Surveyor's Office recommends approval.

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

Furst presented a non-enforcement request for the Williams Creek Drain, Windemere Arm filed by Gerald R. and Evie A. Horn for parcel #17-13-09-00-07-019.000 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 Ashley Allen for parcel #13-16-08-00-07-024.000 for a fence. This started with a violation on both the side easement and rear easement. This was one of the first parcels in Woods at Vermillion Section 1 and there was a discrepancy between the HOA as well as the understanding on how drainage easements worked within the neighborhood. The Allen's came before you twice to discuss what their options were. The Surveyor's recommendation was to move the fence back to the standard in Woods at Vermillion which was 7.5 feet out of 15 feet on both the side and the rear yard. The Allen's were in disagreement with that, but due to the circumstances with the HOA and other offending fences in the neighborhood the overall non-enforcement permit was tabled. Since that there has been repeat follow ups, two issued by Jerry Liston and then a wait period until a different fence had gone through the court system and then the Surveyor's Office reissued, in 2022, a new violation letter covering why it was still on violation and that we had progressed with new non-enforcements. From that point on I had communication with Ms. Allen regarding the permit process, the updated permit and then we reached the final warning letter due to all the internal timers running out as well as the other five to six fences that were in the same time period have all been mostly resolved. Today we're bringing before you the non-enforcement updated fence permit and the Allen's would wish to revisit why they would like to keep their fence where it's at. Prior to them stepping up here though I do want to provide another photo from this morning. Since this all came about every fence that is leading to the west down to the Allen's fence is permitted through our office and they're all at the 7.5 foot encroachment at both the sides and the rears. The Allen fence is the fence that is jetting out into the rear drainage easement. We wanted to provide where we're at with everybody else on the same street.

Altman asked, is the Allen fence right on their property line?

Furst stated the Allen fence is right on their property line. There's also, per Jerry (Liston), a discussion when he did his initial inspection and my more recent inspection that the side or west perimeter line is almost on top of our drainage pipe leading to the yard inlet that's in the rear.

Altman asked, are these removable panels?

Furst stated to my understanding, no.

Allen stated as Clara (Fust) mentioned we've actually been here, this is the third time that we're coming before this Board. We were one of the first families to move into the home and I believe maybe the first to get a fence installed back in 2017. When we were notified of the non-compliance we were not aware, we thought we had taken all the necessary steps both with HOA as well as providing Amerifence, who was the fence company, with our plat. We then, later that year, found out that we weren't in compliance and my husband came at the time and at that time it was decided to table. I came back in 2018 once we received another issue of non-compliance and at that point in time it was tabled with the understanding that there were going to be some additional follow ups with the fence company. We reached out to Amerifence during that year in 2018 to see if there would be any support with the non-compliance and essentially they kind of through their hands up. That's when I decided to come back in 2018 to speak. We're coming back again today because as I mentioned we feel like we've been extremely cooperative in trying to be responsive to the non-compliance. We would like to have our fence remain intact. We've had it now for over six years and absolutely understand that if there were ever a need to have to access that we would be extremely compliant in making sure that we would do whatever to make sure that the fence was not obstructing the area that would need to be accessed, but just ask for consideration for us to have the exception at this time.

Howard asked Furst, is that fence company one of them that was on your list that will be notified when we get the new ordinance in place?

Furst stated yes, they're one of the top ones.

Allen stated when we received the non-compliance in December of 2022 I did reached out to Amerifence in early 2021 and it is very clear that they don't feel that they have any level of accountability. My husband had reached out to them after he came before this Board in 2017 and at that point, allegedly, the owner said that he would try to work with us, but when I talked to them earlier this year, they claimed that they weren't even sure that they had record of them installing our fence, which just wasn't true. It was actually the second time we had used the fence company, in our first home back in 2009 or 2010. It's pretty clear that they're not willing to provide any type of support and we just feel because of the financial considerations and other means it would just be great if we could have an exception.

Altman stated these are almost impossible to deal with. The only way I would consider allowing it to remain is that you provide a written recordable commitment that if that fence is ever maintained or worked upon it moves back to the proper location.

Howard stated you want to also add to that a hold harmless that if we would have to move that fence to go to work the property owner on behalf of themselves and their successors would hold us harmless for any damage to the fence that's in the easement or connected to the fence that's in the easement.

Heirbrandt asked Allen, do you agree to those terms?

Allen asked could you repeat again? So, we would be responsible if there was any work that needed to be done.

Heirbrandt stated if we needed to get in there to work on the pipe and we had to remove your fence you hold us harmless.

Altman stated yes, we're not going to come back and put your fence back. We're going to take out what we need, but also, that if you ever need to do repair work on that fence or replacement the fence goes back to the appropriate place which is what we would allow.

Allen stated okay, and that would be the 7.5 feet just to clarify.

Altman stated what's recommended.

Furst stated 7.5 feet on the west side and 7.5 feet in the rear.

Allen stated okay, yes, I would be willing to agree to those terms.

The Surveyor stated the Board might also consider that no further landscaping be placed within the easement area on the inside of that fence.

Allen stated I think that's also a fair ask.

Altman stated it also has to be recordable so that the next people that own the property at least have notice that would cut that deal.

Howard asked Furst, do you have a copy of her last deed of record?

Furst stated I will need to check their record. I know we have the updated permit, but I don't think we have a recordable document that specifically states for the following successors.

Howard stated what we're looking for is her last deed of record so we can cross reference. I'll prepare the covenants, but we need last deed of record so we can cross reference it and make sure it gets in her chain of title.

Furst stated I will check the file and make sure it's done.

Altman made the motion to allow the fence to remain in place with the understanding that any maintenance work or replacement of the fence would move the fence back to the recommended 7.5 foot encroachment with no landscaping in the easement inside the fence, seconded by Dillinger and approved unanimously.

Violations:

Furst presented her report to the Board for their information.

"STATE OF INDIANA)	NOTICE OF VIOLATION
)	
COUNTY OF)	HAMILTON COUNTY SURVEYOR'S
HAMILTON)	OFFICE

IN THE MATTER OF)
Musselman Landscape)
Solutions LLC)
17505 Durbin Road)
Noblesville, IN 46060)

NOTICE OF VIOLATION

July 27th, 2023

VIA USPS CERTIFIED MAIL, RETURN RECEIPT REQUESTED 7021 0350 0000 0884 5812

To: Musselman Landscape Solutions llc
Frank Giesecking
17505 Durbin Road
Noblesville, IN 46060

Re: **Weaver & Hooke Drain, Musselman Landscape Solutions llc VIO-2023-00032**

You are NOTIFIED that the Hamilton County Surveyor (Surveyor), pursuant to Sections 14-25-2-14 and 14-25-3-8 of the Code of Ordinances of Hamilton County, Indiana, hereby issues this NOTICE OF VIOLATION (Notice) to the owner of Parcel No.: 12-11-01-00-00-016.001 and Parcel No.: 12-11-01-00-00-016.003 (the Parcels). Said Parcels has common address of 17505 Durbin Road, Noblesville, IN 46060. The owner of the Parcel is listed in the records of the Auditor of Hamilton County, Indiana as Musselman Landscape Solutions LLC.

In accordance with Sections 14-25-2-4, 14-25-3-2, and 14-28-3-5 (10), the Hamilton County Surveyor's Office is responsible for, or is jointly responsible for, the administration, implementation, and enforcement of Title 14, Article 25, Chapter 2, "Illicit Discharge and Connection," and Title 14, Article 25, Chapter 3, "Construction and Post Construction Stormwater Runoff."

In accordance with Section 14-25-2-3, Title 14, Article 25, Chapter 2 applies, "to all landowners, permit holders, developers, or other entities in possession of real estate located within the Hamilton County which either: (3) Directly discharges into White River, Stony Creek, Cicero Creek, Sand Creek, Morse Reservoir, Hinkle Creek, Cool Creek, Mud Creek, and Eagle Creek.

In accordance with Section 14-25-3-3 (a), Title 14, Article 25, Chapter 3, "requires the control of polluted run-off from construction sites with a land disturbance greater than or equal to one acre,..."

Land disturbance is defined in Section 14-25-3-2 as, "Any man-made change of the land surface, including removing vegetative cover that exposes the underlying soil, excavating, filling, transporting, and grading."

This Notice is issued for the following violations:

1. Section 14-25-2-7 (a) states, "No person shall discharge, or cause to be discharged, into the municipal storm drainage system or watercourse any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater.
 - a. During an investigation of the Parcel by staff of the Hamilton County Surveyor's Office on June 22nd, 2023, (the Investigation), large areas of non-stabilized soil from land disturbing activities were observed. Such non-stabilized areas would be expected to contribute to runoff that contains pollutants.
 - b. During the Investigation, several non-contained, non-stabilized material stockpiles of soil material, mulch material, rock material, and sand material were observed to be present at various locations on the Parcels. Such stockpiles would be expected to contribute to polluted runoff.
 - c. During the Investigation, three fuel storage tanks were observed to be present on site. Such fuel storage tanks would be expected to contribute to polluted runoff if not properly contained.
2. Section 14-25-2-11 states, "The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drainage system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illegal discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system.
 - a. During the Investigation, there were no installed measures (secondary containment/spill kits) evident that would provide reasonable protection from accidental discharge of prohibited materials or other wastes from the Parcel.
 - b. During the Investigation, prohibited vehicle washout area was observed with residual substances located on the ground. No installed measures were evident that would provide reasonable protection from accidental discharge of prohibited materials or other wastes from the Parcel.
3. Section 14-25-3-3 (a) states, "In general, this chapter requires the control of polluted run-off from construction sites with a land disturbance greater than or equal to one acre,..."
 - a. During the Investigation, there were no installed measures evident that would control polluted runoff from the Parcel.
4. Section 14-25-3-4 (a) requires, "A technical review and comment form stating the 'plan is adequate' and an improvement location permit shall be obtained prior to the initiation of any land disturbing activities."
 - a. An approved Stormwater Pollution Prevention Plan (SWPPP) and improvement location permit was not issued by the Surveyor prior to initiating land disturbing activities.
5. Section 14-25-3-4 (i) requires, "The applicant will be required to file with the county board of commissioners, a performance bond, letter of credit, or other improvement surety in an amount deemed sufficient by the county surveyor to cover all costs of improvements, landscaping maintenance of improvements for such period as specified by the SWPPP, and engineering and inspection costs to cover the cost of failure to repair of improvements installed on the project site."
 - a. Such surety has not been provided to the Board of Commissioners.
6. Section 14-25-3-6 requires, "Erosion and sediment control measures shall be designed and installed in accordance with Rule 5 (Construction Stormwater General Permit), the Hamilton County Drainage Standards Manual, and the Indiana Stormwater Quality Manual."
 - a. During the Investigation, there was no evidence of installed erosion and sediment control measures.
7. Section 11-14-22-C requires, "All Real Property Owners owning, occupying, or controlling any real estate subject to a Regulated Drainage Easement defined in Indiana Code 36-9-27-33; a Platted Easement located inside or outside of the boundaries of any City or Town; or any other Drainage Easement expressly dedicated

to Hamilton County or the Drainage Board, shall maintain the Drainage Easement free of Drainage Encroachments."

- a. During the Investigation, a rocked drive was observed located over top and withing the regulated drainage easement.

By means of this Notice, the Surveyor hereby orders the following:

1. Per Section 14-25-2-14 (a) (3), the violating discharges, practices, or operations shall immediately cease and desist.
2. Per Section 14-25-2-14 (a) (2), illicit connections or discharges shall be eliminated.
3. Provide all materials required by Section 14-25-3-4. Such materials shall conform to requirements of Section 14-25-3-5 and Section 14-25-3-6. The SWPPP shall include measures for minimizing tracking of soil, mud, and other debris from the Parcels to the adjacent roadways.
4. File the appropriate Construction Stormwater General Permit paperwork with the Indiana Department of Environmental Management upon approval of the SWPPP by the Hamilton County Surveyor's Office.
5. Obtain any other permits from the State or other agencies appropriate for the on-site operations. Copies of such permits, or letters from the agencies indicating that permits are not required for the on-site operations, shall be provided to the Surveyor.
6. Obtain an approved SWPPP, an Improvement Location Permit, any State or other agency permits, provide the requisite Surety per Section 14-25-3-4 (i), and install and implement the approved SWPPP prior to commencing any operations on the Parcel.
7. Obtain an approved *Non-Enforcement of Drainage Easements Individual Tract* permit and *Crossing Request* permit from the Hamilton County Surveyor's Office.
8. After the measures of the approved SWPPP are installed, a required disturbance meeting with the Hamilton County MS4 representative must commence.
9. After the measures of the approved SWPPP are installed, commence an inspection program in accordance with Section 15-25-3-7.

Per Section 14-25-2-15 (a) "Any person receiving a notice of violation may appeal the determination of violation to the county surveyor." Per Section 14-25-2-15 (b) "The notice of appeal must be received within seven days from the date of the notice of violation. Hearing on the appeal before the authorized enforcement officer shall take place within 15 days from the date of receipt of the notice of appeal. In the vent the landowner disagrees with the determination of the director of the county surveyor's office, the landowner may appeal a decision of county surveyor's office to the county drainage board and any appeal of a municipality's authorized enforcement officer to the board of public works and safety of said municipality."

Such right of appeal applies only to violations of Title 14, Article 25, Chapter 2. In the event that the violations are not addressed, corrected, remedied, or that there is not compliance with the Order above, the County may take enforcement action per 14-25-2-14, (Specifically 14-25-2-14 (b) which states, "should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator." 14-25-2-16, 14-25-2-17, `4-25-2-18, 14-25-2-19, 14-25-3-7 (g), 14-25-3-8, 14-25-4-4, 14-25, 4-6, and 14-28-3-3 (i).)

Should you have any questions or comments, please feel free to contact Clara Furst-Engineering Technician/MS4/Permits for the Hamilton County Surveyor's Office at 317-776-8495.

Copies of this Notice of Violation shall be provided to the State of Indiana Department of Environmental Management.

Thank you for your cooperation.

Sincerely,

Kenton C. Ward, CFM
Hamilton County Surveyor "

Violation Updates:

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

"July 18th, 2023

Siddique, Iqbal
16289 Kenora Lane S
Fortville, IN 46040
Parcel ID#: 13-16-08-00-07-014.000

RE: Vermillion Drain, Woods at Vermillion Sec. 1 Arm

On Tuesday, July 18th, 2023, our office conducted a final inspection of the recently installed pool on Lot 231 in Woods at Vermillion Section 1.

The approved *Non-Enforcement of Drainage Easement on Individual Tracts* permit requires the following, "The Drainage Board agrees that the Landowner(s) may construct a pool within the Drainage Easement subject to pool and deck encroach 4ft into the rear 15ft R.D. & U.E." Per the inspection, the office found the pool **not** installed per the requirements of the permit.

The pool is currently installed in the correct location however, the backfilled slope leading to the drainage easement does not meet the standards. In addition, new vegetation has been planted within the easement without permission.

Per the discussion held with Mrs. Furst on Tuesday, July 25th, 2023, an underground pipe with ninety-degree elbow pop-up needs installed. The pipe shall be properly connected to the existing drainage infrastructure in the rear yard. An *Outlet Permit* will need filed with the Hamilton County Surveyor's Office. Please implement the solution discussed within the next **30 days**.

Upon completion of the corrections please contact Mrs. Clara Furst at the Hamilton County Surveyor's Office to schedule an additional final inspection. The number is 317-776-8495.

Sincerely,

Kenton C. Ward, CFM
Hamilton County Surveyor

KCW/CLF"

"August 9, 2023

Happel Pasquarelli, Family Revolving Trust
15734 Capital Spending Road
Westfield, IN 46074

**RE: Jay Ditch - Happel Pasquarelli Property
Rescind Violation - VIO-2023-00017**

The Hamilton County Surveyor's Office rescinds the Notice of Violation, VIO-2023-00017, issued to the Happel Pasquarelli, Revolving Family Trust on April 20, 2023.

The un-authorized dirt fill placed in the floodway/floodplain of the Jay Ditch has been removed by the owner of the property at 23560 Spring Mill Road in Adams Township.

Should you have any questions please contact the office at 317-776-8495.

Sincerely,

Kenton C. Ward, CFM
Hamilton County Surveyor's Office

CC: Sheridan Planning - Dennis Nail
IDNR - Suzanne R. Delay"

Surety Release:

Liston stated that at this afternoon's Commissioners meeting the Board would be releasing the following surety: Bond No. 30065306 in the amount of \$20,499.00 for Wood Hollow Section 2, Vestal/Kirkendall Drainage Area, Fred Hines Arm Storage Basin Improvements.

Clara Knotts Drain, Park Broadway Arm Phase 2 - Conflicts:

Cline stated we're still dealing with the conflicts on this project. Citizens was supposed to have sent their detailed plans for lowering their lines to Miller Pipeline, but we still haven't heard anything out of AT&T or Duke Energy. Duke has been working in the area.

Heirbrandt asked, how long has this been going on with AT&T?

Cline stated over one year. The structures have been sitting out there for at least a year waiting to start Phase 2.

Altman stated yes, we've gotten complaints on that. Did you check on cost to...

The Surveyor stated yes, Cline was going to bring that up on his updates.

Heirbrandt stated to Howard, we're going to have to get you involved in this. This is getting out of hand.

Howard stated the poor man has made the same report for a year.

The Surveyor stated I would like to ask the Board to put a hold on the Duke, Centerpointe and AT&T work within the right of way and also our particular easements to try to get some kind of message to them saying we're tired and this is very frustrating.

Altman stated it's costing a lot of money.

Heirbrandt stated its costing taxpayers a lot of money.

The Surveyor stated enough is enough, they need to move.

Altman stated we need help with the legislature, that's all there is to it because our hands are tied right now.

The Surveyor stated your only option is to hold the permits, which gets something; makes them hurt in some way. We need their attention. How else are you going to get it? They seem to ignore us.

Howard asked, are those three entities still applying for permits when they need them from us? Holding permits, if their going to ignore the permit requirements it just kicks the ball down the road.

The Surveyor stated if they were to ask for permits, I would probably state it that way, but I don't know what to do. We've asked, we've cajoled, we've demanded, and you might as well talk to the wall behind you.

Howard asked, this is all that drainage shed for the Homeplace area at 103rd Street to 101st Street?

The Surveyor stated yes. This is the last project to finish that area.

Heirbrandt asked the Surveyor, could you send me an email knowing that I'm going to forward it and take it to upper management in each one of those utilities and tell them we're tired of dealing with this?

The Surveyor stated we've talked to some people in the upper management of AT&T and Duke and again, talk to the wall.

Heirbrandt stated please get me that and forward that to me and I'll see what I can do.

Altman asked Heirbrandt, are you sending it to Mark LaBar?

Heirbrandt stated I'm going to send it to Pennigar; I'll send it to Stan and then I'll copy Mark Labar and then I'll get it to AT&T to Sords and some of the others.

The Surveyor stated it doesn't do any good to talk to LaBar.

Liston stated the County Highway will work with us on these permits. I have not seen an AT&T permit in a long time through the County Highway though. The other entities have told us that they will not work with us. Carmel has said; we had an issue down there where we needed help with Indianapolis Power and Light, Metronet and Carmel said they would not help us. The Highway Department does step up and hold the permits on their end.

Howard asked do we want to add to or a motion in this discussion that we also will be holding permits not only from the Surveyor and the Drainage Board, but also the Highway Department?

Altman stated I think that has to go on Commissioners.

Construction Updates:

Elwood Wilson Drain, E. M. Hare Arm Reconstruction - Liston stated work is progressing on this project. Morphey has dropped back and started to move their way towards Promise Road to get grass growing.

William Lehr Drain, Joseph & Brooks Arm, 156th Street Reconstruction - Liston stated I spoke with Morphey Construction and they anticipate starting maybe around the 1st of September. The box culverts are supposed to be done at that time.

2022 Reconstruction of the W. S. Burnau Arm of the Musselman Drain - Liston stated work is done on this project with the exception of Duke Energy needing to come back. Duke has some facilities in the way and the new storm pipe was notched and set over their facility. I'm working with Duke to get them to come back and get their facilities low enough so we can come back and put in a ten-foot section of pipe.

William Lehr Drain, J. S. McCarty Arm Phase 1 Reconstruction - Liston stated I spoke with the contractor on this project, and they anticipate a start at the end of this month or the 1st of September.

Adam Ault Drain Reconstruction - Campbell stated we picked a couple of dates that the contractor will be able to make for the preconstruction meeting. When we do that, we'll have an idea of when they will start construction and will send notice to all the homeowners at that time.

Clara Knotts Drain, Park Broadway Arm Phase 2 - Cline stated there have been a lot of complaints about the structures being out there. We asked Morphey to give us an idea of what it would cost to relocate those structures. With AT&T it could be another year. The cost estimate for moving those structures to the salt barn at the 4-H Grounds is \$29,000.00. There are six structures and a lot of pipes, and they figured it would take about two days to move it over there and two days to move it back.

Altman stated I think that's a Carmel decision to be honest. If they want to expend more of their CBDG Funds to do that, fine, but the fact that we're not getting help on relocation from them is kind of telling.

Heirbrandt asked Altman, do you want to handle that and reach out to them?

Altman stated yes, I will.

The Surveyor asked Altman, do you want a copy of the estimate?

Altman stated yes.

Ream Creek Drain, Orchard Park Arm (Pending Asbuilts) - Cline stated Duncan sent out an email of the deficits he saw in the asbuilts and some things he wanted added to the asbuilts that weren't there.

Jonas Rogers Drain, J. M. Gustin Arm Reconstruction (Pending Asbuilts) - Liston stated I have reviewed the asbuilts and passed them onto Duncan for his review.

Canal Place Drain, Strongbow Gate Arm (Pending Final Report) - Liston stated the report is written and waiting on the Surveyor's final review.

J. W. Wagner Drain - Zigler Request:

Mr. Kurt Zigler was present for this item.

Maxwell stated this was brought about by a drainage complaint and some investigating on my end. The drain is north of 206th Street and Overdorf Road. Mr. Zigler, back in 2021, went through the process with the Board to do a relocation of the drain to install a pool and a deck. Zigler relocated the drain to go around and tie back in. The drainage complaint was that the farm ground north of Zigler, approximately 800+ acres, is under water because this structure is 3.4 feet higher than what it needs to be. We went out since and found the pipe. The actual drain is farther to the west. We also dug up and located another pipe. On the asbuilt plan the north invert of the structure is 779.94. A couple of weeks ago we dug up this pipe and found that the invert of the bottom of that pipe is 776.54. Ultimately what needs to happen is all this pipe that was installed in 2021 needs to be lowered.

Heirbrandt asked what's your recommendations for the Board to move this forward?

Maxwell stated the recommendation is to dig up and lay new pipe all the way and lower the structure and tie it into this pipe. That's going to cost quite a bit of money and Mr. Zigler is worried he's going to get stuck with the cost of doing this. Mr. Zigler believes it should have been caught back in 2021 by our inspectors.

Dillinger asked why wasn't it caught?

Maxwell stated I'm not sure. Partially because the mapping showed that pipe tying in farther to the east.

The Surveyor stated it was a problem with the mapping which showed it further east than it actually was. We've never run into a case where there's been such a dive by the arm to get into the pipe from the original drains, that is totally new to us. We've never seen it. When we did the original, we thought we were where we were supposed to be.

Heirbrandt asked, how much money is in that watershed right now?

The Surveyor stated I don't know off the top of my head.

Altman stated but this was all generated by this landowner, correct?

The Surveyor stated yes.

Altman asked, we didn't install it, did we?

Maxwell stated no, he had a contractor.

Dillinger stated but we inspected it.

Altman stated yes, we inspected it, but did we do elevations at that time?

The Surveyor stated we did with the asbuilt, and we didn't have any...

Altman stated but the asbuilt is the paper copy.

The Surveyor stated right.

Altman asked, so was an on site elevation taken at that time?

The Surveyor stated I don't remember, but I don't remember what the original plan was.

Maxwell stated I'm guessing there was based on the structures because this is the asbuilt and that's the actual invert of the structures probably from 2021.

Heirbrandt stated I would think you will need to come back to us and tell us what this is going to cost and what your recommendations are to pay for it.

Howard stated in addition to that you need to give us information about what we instructed the property owner to do, where we wanted him to put the tile, what elevation because if you told him one thing and he did that, that's one problem. If he didn't do what he was supposed to do then; first rule of complex problem solving, "whose problem is it?".

Maxwell stated Mr. Zigler is here today. There is a pipe coming from the southwest that is a fifteen inch pipe put in after Zigler did the original project. After the fact Zigler realized there was water and they were being flooded by the tile that wasn't caught.

Heirbrandt asked, do you have an engineering firm helping with this?

Maxwell stated I don't think we need an engineer we just need to get it done and the problem is who's going to pay for it.

Altman asked have we gone back to the original plans that this was constructed under?

Zigler stated when I inquired about doing this work at one point in time the line had a root east of my house. The contractor was out, he located this line, dug up in my yard and located this pipe. He fixed the root, it seems like according this drawing he found the pipe, it's easy to put the manhole right where he had dug it up and that's where we started from rerouting. The contractor found the pipe on the other side, we connected it, things were good. We had the inspector come out, he wanted to make sure he saw connections to both manholes, which he did and that's all that was done. We thought we were good according to these maps. Sometime later when it did start to get wet; after the fact there was a breather pipe underneath my new deck. After I had the pool and the deck done water was coming out of it and that's when I called my contractor back and said, "we've got a problem". He dug it up and found water coming from the pipe we had disconnected and put the manhole in. He didn't know what to do at that time and he tied it back in. Tying it back in alleviated the problem that I had not knowing that the invert change or whatever is going on upstream was holding water.

Heirbrandt asked Maxwell and the Surveyor, what are the next steps?

Maxwell stated we've already written a work order for the contractor and we were about to do it and the homeowner was out there wondering what's going on and asking how this will affect him.

Altman asked, is this a platted subdivision?

The Surveyor stated it is, the plat goes back to the late 1970's early 1980's.

Altman asked, shouldn't all those pipes been relocated at that point?

The Surveyor stated it was done at the time that wasn't required.

Zigler stated I had a question about why the pipe was so close to the home to begin with and why it wasn't relocated during the time of development. At one point in time I was told part of my house and my entire backyard was an easement, when I first started this.

Altman stated it kind of looks like it.

Howard stated it probably was.

Zigler stated unbeknownst to me and this is where we are today.

Howard asked Zigler, were you the original owner of the house?

Zigler stated no, there's been two or three beforehand.

Altman stated and there were never engineered plans on this relocation.

Zigler stated no.

Maxwell stated I wasn't here in 2021, but Mr. Zigler had this plan and wondered if he submitted this to our office when he did this back in 2021 and this was his plan for relocating the drain. There is septic system.

Altman stated I was going to ask because when I looked at the drainage going through that pipe it wasn't very pretty. Is this served by public sewer or septic?

The Surveyor stated it's all served by septic out in that area. According to this there's a ten-foot offset which is what's required.

Heirbrandt asked what are the wishes of the Board to deal with this right now?

The Surveyor stated I think what we need to do is fix the problem and then decide how to divide up the bill or what to do with the bill.

Dillinger stated the point is, it has to be fixed one way or the other.

Maxwell stated its backing water up for a mile. There's four foot of water in these breathers.

Heirbrandt stated I don't see why it's Zigler's fault.

Altman stated it comes down to who did the plans, and I don't see it as an inspection problem per say if they didn't know about all the pipes there.

Howard asked, we don't have any permit applications or anything?

The Surveyor stated Zigler got a permit for the relocation.

Howard stated but didn't know who bad it was upstream.

Dillinger stated I think you need to go ahead and fix it and come back with how much money is in the fund and a little more research on exactly whose fault this is.

Altman stated plus it appears to be an obstruction the way it was constructed.

The Surveyor stated yes.

Altman stated so under the obstruction; this is a private drain?

Maxwell stated no, it's a regulated drain.

Howard stated then there ought to be a permit on file for someone to work on regulated drains.

The Surveyor stated he did.

Howard asked, we just didn't know how bad it was upstream?

The Surveyor stated the mapping showed it different than what it actually was.

Zigler stated I did everything I was asked to do, submitting pipes, manholes, everything. Believe me, if I knew this was the case, I wouldn't have built the pool and the deck.

The Surveyor stated we'll go ahead and do the work and come back with more information.

Dillinger asked do you know what the estimated cost is going to be?

Maxwell stated it's going to be pricy.

Howard asked do we have money in that watershed?

Dillinger stated they're going to check into that.

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.

Drainage Board Attorney (Pending Items):

Elwood Wilson Drain, E. M. Hare Arm Reconstruction (Home Depot) - Howard stated thanks to Jerry Liston we went back and found the original permitting information and it required the original contractor for Home Depot in the year 2000 to put the, not only the domestic water, but the fire suppression water five feet below our drain. Our project lowered that box two feet and there wouldn't have been a problem except when we started digging the water lines were both on top of our drain generating a \$290,000.00 change order and a lot of problems with water, etc. We sent the demand to Home Depot and got a response from their lawyer saying "tell us why we ought to pay that", that letter is being drafted and you should get a copy of it tomorrow morning.

Borrowed Maintenance Dollars - Howard stated we've been talking about the drains and trying to get reimbursements and people put in a drain and trying to keep our cash contribution from GDIF at a minimum. I talked to Gary (Duncan) a little bit and he suggested we might use the Urban Drain Statute and potentially do what a lot of municipalities and utilities do if a developer comes in and creates capacity that they get reimbursed from subsequent tap on fees. Would that be another tool that you could see putting in the toolbox because generally you'd be doing the same thing. For example, a developer goes in and builds that, we've got the Urban Drain, but that just comes in as some of the land develops and makes a different higher amount, but through credits and reimbursements we could help that.

Altman stated it's an old Barrett Law.

Howard stated yes, it would be like a Barrett Law. We don't have Barrett Law, but I think if we combine the Urban Drain tap on and essentially instead of reassessing that as urban land there would be a tap on directly attributable to the reconstruction downstream.

The Surveyor stated we got bit by that on the Peterson Arm of the Musselman Drain where Peterson built the oversized tile for the Meadows and then once Peterson closed their books they wanted their money back.

Howard stated this would be only as added. As you hook on, whoever it was.

The Surveyor stated that's the same thing we did then, but if you remember right we didn't have enough people to the south coming in, we only had Monarch Springs that paid anything.

Howard stated it would be you get what you get.

Altman stated it would be at the developer's risk. It's just how it's crafted.

Howard stated whatever it was they get what they get. We're not guaranteeing a full reimbursement.

The Surveyor stated okay, that needs to be stated up front. Before you a few years ago, if you remember right, they got paid out of GDIF if I remember right.

Howard stated that's why we're on the sixth draft of this.

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

Mark Heirbrandt - President

Lynette Mosbaugh
Executive Secretary