

MINUTES OF THE HAMILTON COUNTY DRAINAGE BOARD

March 9, 2020

The meeting was called to order Monday March 9, 2020 at 12:00 p.m.

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

**Approve Minutes of February 24, 2020:**

The minutes of February 24, 2020 were presented to the Board for approval.

Altman made the motion to approve the minutes of February 24, 2020, seconded by Heirbrandt and approved. Dillinger abstained.

**Thorpe Creek Drain - John Underwood Reconstruction:**

There were neither landowners present nor objections on file.

The Surveyor presented his report to the Board for approval.

"January 7, 2020

To: Hamilton County Drainage Board

Re: Thorpe Creek, John Underwood Reconstruction

The portion of the reconstruction within Madison County assessed to the Town of Lapel is now complete. The cost estimate for this portion was \$17,986.00. Morphe Construction was awarded the contract to do the work and their original bid prize for this portion was \$28,189.00. Change Order #2 added 18' of 24" RCP in the amount of \$2,916.00. Change Oder #3 removed \$2,750 for pavement repair of which 3' (23%) \$632.50 was Lapel's and 10' (77%) \$2,117.50 was Hamilton County's. These changes make the actual cost for the work done in Madison County for Lapel total \$30,472.50 which is an increase of \$12,486.50 for the Town of Lapel.

I recommend the Board set a hearing for February 24, 2020 to increase the reconstruction assessment.

Sincerely

Kenton C. Ward, CFM  
Hamilton County Surveyor

KCW/jh"

Howard asked did Lapel ask if they could pay over time?

Liston stated the Lapel Town Clerk said whatever the Board could do to help. I believe her name was Paula. It will be hard on their budget.

Altman asked on this classification we can go how long?

The Surveyor stated at the last meeting you mentioned five years.

Altman asked and they were okay with that?

Howard stated I think the statutory interest rate is 8%, but you do have the ability to adjust that down and have traditionally done that.

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

Altman asked have we closed the public hearing.

Mosbaugh stated the public hearing has been opened and closed.

Altman made the motion to approve the reconstruction with the provision that; actually anyone who seeks a repayment schedule can do so over five years on their assessment at the rate of 3%, seconded by Dillinger and approved unanimously.

"STATE OF INDIANA )  
 ) ss:  
COUNTY OF HAMILTON )

BEFORE THE HAMILTON COUNTY  
DRAINAGE BOARD  
NOBLESVILLE, INDIANA

IN THE MATTER OF THE  
RECONSTRUCTION OF THE  
**Thorpe Creek Drain, John Underwood Reconstruction**

**FINDINGS AND ORDER FOR RECONSTRUCTION**

The matter of the proposed Reconstruction of the **Thorpe Creek Drain, John Underwood Reconstruction** came before the Hamilton County Drainage Board for hearing **on March 9, 2020**, on the Reconstruction Report consisting of the report and the Schedule of Damages and Assessments. The Board also received and considered the written objection of an owner of certain lands affected by the proposed Reconstruction, said owner being:

Evidence was heard on the Reconstruction Report and on the aforementioned objections.

The Board, having considered the evidence and objections, and, upon motion duly made, seconded and unanimously carried, did find and determine that the costs, damages and expenses of the proposed Reconstruction will be less than the benefits accruing to the owners of all land benefited by the Reconstruction.

The Board having considered the evidence and objections, upon motion duly made, seconded and unanimously carried, did adopt the Schedule of Assessments as proposed, subject to amendment after inspection of the subject drain as it relates to the lands of any owners which may have been erroneously included or omitted from the Schedule of Assessments.

The Board further finds that it has jurisdiction of these proceedings and that all required notices have been duly given or published as required by law.

Wherefore, it is ORDERED, that the proposed Reconstruction of the **Thorpe Creek Drain, John Underwood Reconstruction** be and is hereby declared established.

Thereafter, the Board made inspection for the purpose of determining whether or not the lands of any owners had been erroneously included or excluded from the Schedule of Assessments. The Board finds on the basis of the reports and findings at this hearing as follows:

HAMILTON COUNTY DRAINAGE BOARD

Mark Heirbrandt  
PRESIDENT

Christine Altman  
Member

Steven C. Dillinger  
Member

ATTEST: Lynette Mosbaugh  
Executive Secretary"

**Professional Services Agreement - Village Farms Pond & Dam Drainage Study:**

The Surveyor stated I sent you the packet on this.

Altman stated let's talk about this before we get into the services agreement. Did you look through the covenants and such?

Howard asked in Village Farms?

Altman stated yes.

Howard stated no.

Altman stated in looking at this it appears that it's a very vague plat to be kind and probably the covenants are very vague also, but it does impose in the covenants that we received the obligation of the Homeowners Association to maintain common areas and common facilities. Hence, we're not regulated, correct?

The Surveyor state correct, the dam is not regulated.

Altman stated hence, it is the Homeowners Association responsibility under the covenants. So, if we start doing this who's going pay for it? I want to clarify that because we're opening a big can of worms because we have lots of HOA's out in the world that have the same obligation.

Howard stated that's what I saw in what I read, but when you have a document that has cross references all around it and the signor, the declarant, was Mr. Wilfong.

Altman stated he's got the super majority until he's out. We're assuming a responsibility for a Homeowners Association that we can now have all the other HOA's saying "come save me".

Howard stated I think it's even bigger than that because in this particular one there's a question if we have an easement to go lower the outfall and if we do lower the outfall and we don't have jurisdiction then we have Windemere times ten problems.

Heirbrandt asked what do you advise?

Howard stated I would advise that you not undertake any action. We tell them it is the responsibility of the Homeowners Association and then it would be up to the Board if you would entertain a petition at sometime down the road, but who has standing to object and consent especially when you have all these different layers of development.

Altman stated there's an obligation in there that with two-thirds vote capital improvements can be made. It's really up to them to have their Homeowners Association to get two-thirds vote and we can offer them this proposed contract.

Howard stated I think maybe in that letter you acknowledge there may be a problem and there may be a solution, but it's not our problem. Our solution is we have had an engineering firm look at it and if they want to consult with them or another engineering firm of their choice to find a solution.

The Surveyor stated the problem that is occurring is that there's flooding onto streets in Village Farms. There's a surcharge in the drainage system, which is regulated upstream. I think there's a problem with the dam and something that has happened there.

Howard stated you added a new wrinkle in that the upstream is regulated, but there are no assessments against the houses in Village Farms.

The Surveyor stated yes, it's all part of Cool Creek Drainage Shed.

Howard stated so they are assessed?

The Surveyor stated yes. What I'm trying to do with this is to assess if there's a problem with the dam and if there isn't then we go on and find out where the problem actually lies.

Altman asked wouldn't it be an obstruction?

Howard stated if the spillway has been raised or if it is causing those upstream problems; I didn't know the subdivision was in the drainage shed.

The Surveyor stated yes.

Howard stated if the subdivision is in the drainage shed then it's an obstruction. It's damaging the property owners in the drainage shed.

Heirbrandt stated we need to be able to prove it.

Howard asked is there a maintenance assessment in there?

The Surveyor stated there is, there's about \$2,000,000.00 in the fund.

Howard stated so there would be sufficient funds in there to; if it is in our watershed we would have the authority to do an investigation, would we not? We have money to pay for it out of the watershed because it would be either a maintenance or a reconstruction and we can use maintenance funds for reconstruction up to a certain percent.

The Surveyor stated that was my intent.

Howard stated okay, I think we've walked through it.

Altman stated I think the study is appropriate, but I still think if there's a problem with the dam it's an obstruction that falls back on the homeowners.

The Surveyor stated I don't disagree.

Heirbrandt stated but we need to prove it first.

Altman stated I understand that and the question was who's going to pay for it. They have been paying for it through the Cool Creek Watershed.

The Surveyor stated correct.

Altman made the motion to accept the Professional Services Agreement with Clark Dietz, Inc. in the amount of \$23,100.00 for Village Farms Pond and Dam Drainage Study, seconded by Dillinger and approved unanimously.

**Bellewood Drain - 13262 Reconstruction:**

The Surveyor stated this is on the Bellewood Drain on Mr. Konow. This is with Banning Engineering and is not to exceed \$4,500.00 for the field survey and \$19,500.00 for the analysis with report.

Altman asked who's paying for that?

The Surveyor stated this would come out of the drainage fund.

Dillinger made the motion to approve the Professional Services Agreement with Banning Engineering in the amount not to exceed \$24,000.00, seconded by Altman and approved unanimously.

**RFQ - Crawford Property Wetland Mitigation:**

The Surveyor stated this is for the construction of the wetland mitigation. I sent it to four different companies, Davey Resource Group, Williams Creek Management, Cardno and Ecologic Indiana. I received no quote from Davey Resource Group, but they did send a letter saying that they appreciated the request, but they didn't want to quote at this time. Ecologic Indiana I received no communication or submittal. Cardno cost came in at \$125,700.20 and Williams Creek Management cost came in at \$111,642.80. I would recommend the Board award this to Williams Creek Management.

Dillinger made the motion to award the RFQ to Williams Creek Management in the amount of \$111,642.80 for the Crawford Property Wetland Mitigation, seconded by Altman and approved unanimously.

**Martin Marietta Materials - Notice of County Ordinance No. 03-13-17-B:**

The Surveyor stated this is a letter that was sent out to 19 of the property owners doing gravel extraction along River Road. IDEM has been hammering us on those people on mucking up the roads with dirt and so forth for at least four years. Until we had the ordinance we didn't have anything to go against them on. With the ordinance we can go in there and clean it up. This letter was sent to all those folks and a copy of the ordinance was included.

Altman asked the ordinance was published?

Howard asked how long ago was that ordinance?

Altman stated 2017.

The Surveyor stated I think it's next week. Doesn't the time run out next week?

Howard asked for the...

The Surveyor for the ordinance.

Howard asked expires?

The Surveyor stated the notice.

Howard asked when did you send the notice?

The Surveyor stated I didn't. I'm talking about the ordinance I sent to them.

Howard stated yes.

Altman stated junk on the roadway, debris. We need to make sure it's been published for the fine element.

Howard stated I presume it was because the Auditor usually publishes any ordinance that has a penalty on it.

Altman stated let's make sure.

Howard asked the Surveyor, would you send me a copy of the ordinance?

The Surveyor stated yes.

**Pipe Creek - Kilburn Request:**

The Surveyor stated Heirbrandt had asked that this be placed on the agenda. I've had several communications with Mr. Kilburn. I've sent him all the information I know what to send him. I've sent him the petition, I've sent him all the landowners that would be affected in Hamilton County, I have sent him a map of the drainage shed in Hamilton County. Last year when it first came up, I contacted the Surveyor's Office over in Madison County and got a lukewarm response. They've got the majority of the landowners. I don't know if this goes into Grant County or not, it may.

Howard asked it would have to be a joint board?

The Surveyor stated it would have to be a joint board and we would have a minority in it. I'm not sure if the Board really wants to go that direction.

Heirbrandt asked what do you advise?

The Surveyor stated I'll answer Mr. Kilburn and let's see where it goes to.

Howard asked would Madison County's Drainage Board then be primary?

The Surveyor stated yes.

Heirbrandt stated I wanted to make sure we got copied on that email, so I sent it out and put it on the agenda for discussion.

Altman stated so right now, there is no joint board.

The Surveyor stated no.

Altman asked is Pipe Creek regulated?

The Surveyor stated no.

Altman stated so they would have to do a petition.

The Surveyor stated correct.

Altman stated and Kilburn didn't want to do it because he didn't want to cover the cost. I was confused in his email. All he wanted to do was do a float.

The Surveyor stated he just wants to go out and do it, but if he's going to be on private property he has to get the permission from the landowners. If that's what he wants to do that's fine, but if he wants to make it a regulated drain he has to go through the hoops.

Altman stated right. All we had was the email.

Howard asked is Kilburn a citizen?

The Surveyor stated a citizen.

Altman stated he wanted to take his boy scout troop down Pipe Creek and there's a logjam.

Heirbrandt asked the Surveyor, you will take care of this?

The Surveyor stated I will respond to his email.

**Hearing Request:**

The Surveyor presented a request for hearing on R. J. Craig Drain, George White Arm 2, Jaycee Street Partial Vacation for April 27, 2020.

Altman made the motion to approve the request for hearing for April 27, 2020, seconded by Dillinger and approved unanimously.

**Final Reports:**

The Surveyor presented the following final reports to the Board for approval.

**"To: Hamilton County Drainage Board**

**February 20, 2020**

**Re: Cool Creek Drain - Springmill Villas Arm**

Attached are as-built, certificate of completion & compliance, and other information for Springmill Villas. An inspection of the drainage facilities for this section has been made and the facilities were found to be complete and acceptable.

During construction, changes were made to the drain, which will alter the plans submitted with my report for this drain-dated November 28, 2018. The report was approved by the Board at the hearing held January 28, 2019. (See Drainage Board Minutes Book 18, Pages 341-342)

The changes are as follows: the 12" RCP was shortened from 866 feet to 860 feet. The 15" RCP was shortened from 876 feet to 874 feet. The 18" RCP was shortened from 378 feet to 375 feet. The 24" RCP was lengthened from 55 feet to 190 feet. The 6" SSD was shortened from 1,683 feet to 1,659 feet. The 30" RCP was shortened from 496 feet to 484 feet. The 30" HDPE was shortened from 73 feet to 61 feet. The 42" RCP was shortened from 216 feet to 213 feet. The length of the drain due to the changes described above is now **5,332 feet**. Note the project removed 1,175 feet to existing tile.

The non-enforcement was approved by the Board at its meeting on January 28, 2019 and recorded under instrument #2020008793. In accordance with IC 36-7-7-709, the petitioner did not submit a surety.

I recommend the Board approve the drain's construction as complete and acceptable.

Sincerely,

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Kenton C. Ward, CFM  
Hamilton County Surveyor "

**To: Hamilton County Drainage Board**

**February 20, 2020**

**Re: Little Eagle Creek Drain - Springmill Villas Arm**

Attached are as-built, certificate of completion & compliance, and other information for Springmill Villas. An inspection of the drainage facilities for this section has been made and the facilities were found to be complete and acceptable.

During construction, changes were made to the drain, which will alter the plans submitted with my report for this drain-dated November 28, 2018. The report was approved by the Board at the hearing held January 28, 2019. (See Drainage Board Minutes Book 18, Pages 343-344)

The changes are as follows: The 21" RCP was shortened from 723 feet to 696 feet. The 27" RCP was lengthened from 231 feet to 230 feet. The 6" SSD was shortened from 41 feet to 44 feet. The length of the drain due to the changes described above is now **970 feet**.

The non-enforcement was approved by the Board at its meeting on January 28, 2019 and recorded under instrument #2020008794. In accordance with IC 36-7-7-709, the petitioner did not submit a surety.

I recommend the Board approve the drain's construction as complete and acceptable.

Sincerely,

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Kenton C. Ward, CFM  
Hamilton County Surveyor "

Dillinger made the motion to approve the final reports presented, seconded by Altman and approved unanimously.

**Capital Asset Notification:**

The Surveyor presented a Capital Asset Notification to the Board for approval on the Anna Kendall Drain.

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

**Big Cicero Creek Joint Drainage Board:**

The Surveyor presented the minutes of the Big Cicero Creek Joint Drainage Board of January 22, 2020 for the Board's information.

**News Articles:**

The Surveyor stated I thought this was an interesting news articles on the Seventh Circuit decision Boucher v. USDA, 934F. 3d530 (7<sup>th</sup> Cir. 2019) against the United States Department of Agriculture in what appears to be according to the Court, an overreach of their authority. It was a constant theme that week. (Seventh Circuit sides with landowner in wetlands determination case", Brings conclusion to a two decade long wetlands dispute "The National Agricultural Law Center)

**Non-enforcements:**

Cash presented a non-enforcement request for the Margaret O'Brien Drain filed by Fishers East 96<sup>th</sup> St. LLC for parcel #15-14-12-00-05-011.003 for easement dimensions as per secondary plat for North by Northeast Business Park Section 1. The Surveyor's Office recommends approval.

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

Clark presented a non-enforcement request for the Cool Creek Drainage Area, Harmon Clark Arm filed by Dearing Buildings LLC for parcel #09-09-12-00-00-001.008 for a proposed building addition. The Surveyor's Office recommends approval.

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

Clark presented a non-enforcement request for the Williams Creek Drain, Heritage at Springmill Arm filed by Michael Phillip Shaner for parcel #17-13-03-00-10-029.000 for a fence with removable panels on east and south lines. The Surveyor's Office recommends approval.

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

Clark presented a non-enforcement request for the Little Eagle Creek Drain, Albany Place Arm filed by Drees Premiere Homes, Inc. for parcel #17-09-20-00-25-020.000 for a driveway. The Surveyor's Office recommends approval.

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

**Surety Acceptance:**

Liston stated that at this afternoon's Commissioners meeting the Board would be accepting the following surety: Performance Bond No. PRF9330920 in the amount of \$387,735.92 for F. M. Musselman Drain, Burnau Arm Reconstruction.

**Construction Updates:**

Anchorage Drain, Reconstruction of a Portion of Section 1 - Liston stated there has not been any work done by our contractor since the last meeting.

Ellis Barker Drain Reconstruction - Cline stated the contractor was able to lay 400 feet of pipe. They're moving forward and hope to, later this week, to be down to Grassy Branch Road.

William Krause Drain Reconstruction Phase 3 - Conover stated the gas line is currently being moved by Vectren, which will allow the contractor to get back in there and complete the installation of the storm drain on this project.

Thistlewaite Drain, California Street Arm Extension - Conover stated we were waiting on the curbs to be installed. Those were installed last week so we should be able to request the asbuilts and get that project completed.

William Krause Drain Reconstruction Phase 1 (Pending Asbuilts) - Conover stated we have received the asbuilt drawings on this project and should have the final report at the next meeting.

William Krause Drain Reconstruction Phase 2 (Pending Asbuilts) - Conover stated we have received the asbuilt drawings on this project and should have the final report at the next meeting.

Benton Hinesley Drain, Grass Waterway (Pending Asbuilts) - Conover stated we have received the asbuilt drawings on this project and should have the final report at the next meeting.

Thorpe Creek Drain, Martha Ford Arm Relocation (Pending Asbuilts) - Liston stated we have received the asbuilts on this project and you will have your final report at the next meeting.

Thorpe Creek Drain, John Underwood Arm Reconstruction (Pending Asbuilts) - Liston stated we have received the asbuilts on this project and you will have your final report at 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.

**Drainage Board Attorney (Pending Items):**

Vermillion Drain (Rivas Violation) - Howard stated if you remember at your January 27<sup>th</sup> meeting you had a request concerning the Rivas on the fence in their backyard represented by counsel Mr. Montel. I just checked with Jerry (Liston) there's been no movement toward removal of that fence and the motion was to give them 60 days. That's coming up on the 27<sup>th</sup> of this month. I did check with Jerry and there's been no action other than they have been leaving their big dog in the backyard more often. I will be sending out a letter with a copy to you today or tomorrow reminding Mr. Montel that we will be pursuing our rights under the ordinance to move forward. The ordinance was published, the time has run, and it is effective Friday.

The Surveyor stated Mr. Montel, last week, did ask for the audio tapes of the Drainage Board meeting minutes that this had been discussed at.

Altman stated perhaps you ought to listen to those. You more or less transcribe don't you?

Mosbaugh stated yes, I do.

Altman stated forget it.

Howard stated I'm very comfortable with the points that were made by the Board and by others at the meeting and very comfortable with that record. Whatever it brings it will bring.

Altman stated one thing, when we send the contractor out, I think we need notice since they have the animal of when the contractor will be there so they can secure the animal.

The Surveyor stated a date specific.

Howard asked do you want to go ahead and see if you can get that date before I send them the notice or I'll send them the notice, give them a warning and we'll be giving them the date so they can bring the dog in. Do we want to just lay the fence on the ground?

The Surveyor stated we usually stack it.

Heirbrandt asked any other updates? There's a long list.

Howard stated we haven't been able to get together for a month.

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