

MINUTES OF THE HAMILTON COUNTY DRAINAGE BOARD

May 26, 2020

The meeting was called to order Tuesday, May 26 at 9:03 a.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 members of his staff: Mr. Jerry Liston, Mr. Gary Duncan, Mr. Reuben Arvin, Mr. Steve Baitz, Mr. Steve Cash and Mr. Andy Conover.

Alva Osborn Drain, Osborne Trails Section 1 - Non-enforcement & Findings & Order:

The Surveyor stated this particular item was approved by the Board at the last meeting. The non-enforcement did not get signed at that time and we're bringing it back to the Board for the approval of the non-enforcement.

Altman made the motion to approve the non-enforcement request for Osborne Trails Section 1, seconded by Dillinger and approved unanimously.

The Surveyor stated the findings and order for reconstruction for Osborne Trails Section 1 did not get signed either.

Altman made the motion to approve the signing of the findings and order for reconstruction of Osborne Trails Section 1, seconded by Dillinger and approved unanimously.

Benton Hinesley Drain, Grass Waterway - Certificate of Assessments:

The Surveyor stated we have the certificate for assessments for the new Grass Waterway on the Benton Hinesley Drain. Since construction is now finished this is the final cost for the total project.

Dillinger made a motion to approve the Certificate of Assessment for the Benton Hinesley Drain, Grass Waterway project, seconded by Altman and approved unanimously.

Anna Kendall Drain, E.M. Osborn Arm - Meijer Partial Abandonment (Findings & Order):

The Surveyor stated the Board wanted to have on the Secondary Plat a statement for the other folks on the drainage.

Altman stated the statement wasn't included; the plat language was not included.

The Surveyor presented the plat language that was recorded to the Board for their review.

Heirbrandt asked are there any concerns about the plat?

Altman stated this is the one they vacated, and we wanted to make sure that anything connected they wouldn't disconnect or deny access by vacation because it was a reconstruction, correct?

The Surveyor stated correct.

Howard asked was this a partial vacation or just vacating.

The Surveyor stated just vacating it across the Meijer property.

Howard asked is there platted right of way around it?

The Surveyor stated that there are drainage easements through it.

Howard stated so the upstream property people have conveyance capacity to get their water out and that was part of the construction plans that were approved.

The Surveyor stated yes.

Altman stated it doesn't allow for new connections, but it does maintain existing connections.

Altman made the motion to approve the Meijer Vacation of the E. M. Osborn Arm of the Anna Kendall Drain, seconded by Dillinger and approved unanimously.

FINDINGS AND ORDER

CONCERNING THE PARTIAL VACATION OF THE

Anna Kendall Drain, E. M. Osborn Arm, Meijer Partial Abandonment

Station 27+72 to Station 38+40

On this **26th day of May, 2020**, the Hamilton County Drainage Board has held a hearing on the Maintenance Report and Schedule of Assessments of the **Anna Kendall Drain, E. M. Osborn Arm, Meijer Partial Abandonment (Station 27+72 to Station 38+40)**.

Evidence has been heard. Objections were presented and considered. The Board then adopted an order of action. The Board now finds that the costs of continued maintenance to the portion of the above drain exceed the benefits to the real estate benefited by the portion of the drain to be abandoned and issues this order vacating the above section of the **Anna Kendall Drain, E. M. Osborn Arm, Meijer Partial Abandonment (Station 27+72 to Station 38+40)**.

HAMILTON COUNTY DRAINAGE BOARD

Mark Heirbrandt
President

Christine Altman
Member

Steven C. Dillinger
Member

Attest: Pamela Louks

Elwood Wilson Drain, Gasho-County Farm Arm - Request for Study:

The Surveyor stated at this time I'm requesting the Board to conduct a study for the Gasho-County Farm Arm to the Elwood Wilson Drain. This particular study would be from S.R. 38 to the main thread of the open ditch on the Elwood Wilson. You saw the photographs I believe that should have been with the packet. This has been something we've been watching for a while and this year it got worse. I think it's time to pull the trigger on this and fix it.

Dillinger made the motion to approve the request for a study, seconded by Altman.

Altman stated I'm trying to figure out where we are on the face of the earth with this thing.

The Surveyor stated the area between Cherry Street and the open ditch.

Altman asked you've got S.R. 38, is it really S.R. 32?

The Surveyor stated it's S.R. 32/38.

Altman asked is this where they wanted to fill the area in; where they wanted to fill in the floodway to the north of S.R. 32/38?

The Surveyor stated yes.

The motion had been made and seconded to approve a study on the Gasho-County Farm Arm of the Elwood Wilson Drain and approved unanimously.

Altman asked where's the pipe exposed.

The Surveyor stated just south of Cherry Street.

Altman asked so we know, is that sanitary?

The Surveyor stated that is part of the regulated drain.

Altman stated I know, but the pipe that's exposed.

The Surveyor stated its part of the regulated drain.

Altman stated so we have a dual channel, we have a pipe and a...

Surveyor stated yes.

Non-enforcements:

Kimberly Hansen and Keith Grandstaff were present for this item.

Clark presented a non-enforcement request for the Williams Creek Drain, Jackson's Grant Arm filed by Erik and Kimberly Hansen for parcel #17-09-34-00-12-023.000 for a fence. The office was going to support a full encroachment into their rear property line and a half encroachment onto their west property line. Hansen is here today to argue for a full encroachment on the west property line.

Hansen stated I will be moving to 522 Dickson Lane in Carmel in just a couple weeks. The main reason we want this fence is that I have two small children and I'm trying to keep them safe from the bio swale and the drain as well as the construction that's still going on in the neighborhood. Behind us is actually a neighbor who has a fence directly over the drain and it does take up the whole lot. We do want to go to the edges of our lot. We don't have a big lot in the area, and I think if it only goes to the 7.5 feet we are missing a lot of what is ours. Beyond that we understand that there is liability there if that needs to be accessed for some reason in the future and we would be happy to sign anything saying that would be at our cost and that we understand the fence would be removed. None of that's a big deal to us. I just want to make sure I can keep my kids safe.

Altman asked do we have an existing fence that goes to the back of the lot?

Clark stated the property owner behind Hansen did acquire a non-enforcement in 2017. They construction against what we allowed.

Altman asked why haven't we made them take it out if we're going to make them push their fence?

Clark stated we did issue a violation, but it would appear that the enforcement on that violation never came to fruition.

Howard stated they have no encroachment permitting or for half right of way or full right of way.

Clark stated the neighbor's behind them did acquire a non-enforcement, but it was the orientation that we were going to allow for Hansen, they didn't construct it according to what we allowed, and we issued a violation, but it seems to have been...

Howard stated so they were authorized for a half and they used it all.

Clark stated yes.

Altman asked when did we issue the violation?

Clark stated it was several months after the non-enforcement was issued.

Altman asked what did we do with the violation?

The Surveyor stated it fell through the cracks. We're going to process it and get it moving forward.

Altman asked is it right over; is there a buried?

Clark stated there is a drain right along the property line.

Altman stated so we've got one existing right on top of it, correct?

Clark stated correct.

Altman stated one solution would be we allow them to tie into that existing fence and then have both of them coming in to share the cost if we have to access the easement.

Clark stated the issue is there's a dry detention basin that is in between their two properties.

Altman asked so that's going to hold water?

Clark stated it's a dry detention basin.

Altman stated no, it will collect water.

Clark stated it will, yes.

Altman stated if you want to keep your kids safe do you really want the fenced in yard to hold water?

Hansen stated I've got my house and then a bio swale that's I don't know how many feet wide, that will fill with water. My actual lot won't, that would be some incredible rain fall event, I think. Behind that is the house that already has the fence in the easement. Tying into it, probably from me to you between us that is the detention area.

Howard stated I think everybody comes in and says "well, if you need to move the fence go ahead and move it". If there's maintenance requirements for water blockage it needs to be done quickly and if one person gets a fence, everybody ought to get a fence, which means our contractor spends about five times as much time getting fences out of the way as they would fixing the drain and that's taxpayer money. You said that's your lot, but your lot and your title policy and what you've got is subject to that easement.

Hansen stated on our application we did get put in and got approved by the architectural board a 6-foot access gate. We're happy for that to be used for any regular maintenance. I hope this is designed in a way that you're not accessing it all the time, but if you take it out, you do.

Heirbrandt asked do you think it could be maintained so the fence could easily be removed if needed?

Clark stated in those situations we allow removeable panels, but it would be the entire span of the west property line.

The Surveyor asked is the property line located on top of the tile?

Clark stated that is correct, yes.

The Surveyor stated so we would have to remove the fence any time we'd access it.

Clark stated yes, the inspector verified that.

Howard stated when you go through the platting process, that's why there's easements there, that's why they're recorded, that's why subsequent owners have that and as far as your children's sake you can complete the fence, it's just where it is. You are not indistinguishable from hundreds, I don't know if there's been hundreds, but there's been a lot of people that come into this Board for the last thirty years.

Altman stated plus I show a platted road right behind this lot. I'm looking at Lot 522 there's a road here.

Clark stated that should be the bioswale.

Dillinger asked putting the fence where you're wanting it, how much does that expand your yard?

Hansen stated 7.5 feet.

Howard stated it's a 15-foot easement on her lot and we're agreeing to encroach halfway in, which leaves 7.5 on her side and through enforcement it would be 7.5 on the other side.

Altman stated they would have gotten a reduction on the plat because I think it's 20-foot minimum for a lot for Carmel, so it's already been reduced.

Howard stated so there was a variance anyway.

Altman stated I would think because Carmel standards are 20.

Dillinger stated besides the size of the backyard how is this hurting you?

Hansen stated it affects my side yard. What little space I have on the side if I fence only 7.5 feet then essentially it becomes my neighbor's yard.

The Surveyor stated we did give her a full encroachment in the back.

Howard stated because it doesn't affect a drain.

The Surveyor stated right.

Howard stated so it's a platted easement that's not being used.

Altman made a motion to accept what the Surveyor has offered, mainly because these lots were known to be small and quite honestly people need to check before they purchase.

Hansen stated we knew it was there. We were told we would be able to do this because our neighbor was.

Altman stated we definitely want to take care of the neighbor's issue

Hansen stated I don't want to get the neighbor in trouble.

Altman stated the thing is the neighbor already came and knew what the rules were and decided they didn't need to follow them.

Hansen stated and they've lived happily for four years and it hasn't been taken out. I don't want to get them in trouble.

Altman stated it wasn't you that caused it.

Dillinger stated I think the Surveyor has made a good compromise with you.

Dillinger seconded the motion to accept what the Surveyor has offered and approved unanimously.

Clark presented a non-enforcement request for the Albert Shaw Drain filed by Keith and Amy Grindstaff for parcel #17-09-30-00-03-040.00 for a fence. We were going to allow a 7.5 foot encroachment into their south and east property line easements both of which are 15 feet. The Grindstaff's are here today to argue for their preferred orientation, which would be roughly three feet off of their south property line.

Altman asked where's the drain? Give us a context of what we're talking about.

Howard stated for the record, would you describe what is being used in this easement area?

Clark stated yes, there are two drains on their south and east property lines. We were willing to support 7.5 feet on both sides of the property line. The issue is the presence of landscaping along primarily their south property line wherein if we were to do 7.5 feet off the property line that would run in between two of their trees. For that reason, they are...

Howard asked what do we have in our easement? Is it an access, is it an open ditch, is it a pipe, what is it?

Clark stated it's a pipe.

Altman asked there's a pipe on the back and on the side?

Clark stated correct.

Altman stated so we have pipes on both sides. It's a tight easement anyway. You have a total of 30 to work and you're proposing to cut it back to 30 minus 7.5.

Clark stated yes, for the purpose of the fence.

Howard stated so essentially, it's 22.5 feet you're giving up.

Clark stated yes, that's what we were going to support.

Grindstaff stated I have a non-enforcement request for the south and east side of the property. For the south and east side, we're requesting a 4-foot set back from the property line on the south and east side. Why we're requesting four feet and why we need a fence, first of all for our dogs. We don't want the liability risk of continuing to have a non-fenced yard with our dogs. The old expression is good fences do make good neighbors and if we keep our dogs out of their yard it's a much better thing. Four feet is consistent with the neighbor's fencing to the east as drawn on by the boundary survey. The neighbor behind has 7.5, but the neighbor to the east has four feet. The reason for four feet also, is enjoyment of our property. At four feet we'll lose approximately 3% of our total yard, at 7.5 feet we're going to be losing over 5.5% of our total yard, not the backyard, the total yard, not even counting the house. We don't want to kill the trees. There's tape measurement showing, there's an Aristocrat Pear that's about 20 feet tall at the seven-foot mark on the south side of our property. You can see from the next picture this easement is already full of encroachments. The neighbor's property is at 7.5 feet and within the 15-foot boundary you can see multiple pine trees that are going to continue to grow. There's a GIS map of the neighborhood showing multiple drains. I would note particularly there at Airhart and Pontell, which is in the right-hand corner of where those two streets meet, you'll see a nice fencing there among those right on top of the drain a single fence adjoined by the neighbors. What we're asking for is not inconsistent with what is throughout the neighborhood. Four feet for the neighbors and in other parts of the neighborhood a single fence that runs across the drain and is connected to the neighbor's house. We're not having any issues with our neighbor at this point. If you'll note on the last page you can see this is the picture of the fence to the east, that stake is the corner property line and if you look, you'll see the little white spot that's the concrete surrounding the honeycomb drain. Our property line is actually inside the honeycomb drain so we'd actually be greater than four feet away from the pipe on that side of the property. I would also note where the other fencing is, you'll continue to have complete and unobstructed access to the two honeycomb drains in the southeast and southwest corners of the property. Even with the new fence there will be absolutely no obstructions to get to those honeycombs. They can come through from the southeast side or from the southwest side. We think four feet is reasonable, consistent with what our neighbor already has. It's not aggressive as other parts of the neighborhood where they have a shared fence right on the property line.

Altman stated a shared fence may not have an encroachment with the drain. That's the issue, is the encroachment with the drain.

Howard stated there's not a drainage easement on every property line.

Grindstaff stated I just took the GIS map and I could see where the drains are that look identical to mine.

Howard stated if there's not an easement there the shared fence is permitted.

Grindstaff stated and we know that the neighbors are already at four feet, which is what we're requesting.

Altman asked if the neighbors got permission for four feet?

Clark stated I believe I verified that.

Altman stated if we have to have access that fence is going down at your cost.

Grindstaff stated we understand and at this point if it's a small repair and you need to get to the honeycomb it's complete unobstructed access. If you need to get to the drain pipe and remove it, whether I'm at four feet or 7.5 feet you'd still only have 11.5 feet on the one side and if you have to get really big trucks in there we're all in a mess.

Howard stated it's not the pipe, it's the depth of the pipe and the size of the pipe.

Altman asked do you know what that is?

The Surveyor stated I'd have to ask Clark, but this fellow that has the four-foot encroachment did not get a non-enforcement

Altman asked he did not?

The Surveyor stated he did not.

Altman asked what are we going to do about that guy?

The Surveyor stated he's getting a violation.

Altman stated that this asking for forgiveness instead of permission has gotten old except for you, you asked for permission.

Dillinger stated it makes it difficult for us whenever your neighbor that you're trying to compare to didn't get permission, now we're having to give him a violation and then give you permission to do it. How are you consistent?

Grindstaff stated sure and unfortunately our neighbor, he moved in after the fence was already built so they weren't the cause.

Howard asked did you move in after the tree was already planted?

Grindstaff stated yes, we just moved in last spring. We'd hate to destroy a 20-foot tree, at the rate of growth that's 10-20 years for that tree or anything like it would come back.

Dillinger made a motion to approve the nonenforcement as requested by the property owner, seconded by Altman.

Altman stated on these, I want to make sure when we say the fence comes down at the owner's cost, the delay to the project, removal. We're going to have to do that to protect drainage.

Dillinger stated I would assume if that had to come down the tree would probably have to come down too.

Altman asked you understand the landscaping is encroaching in the easement, too?

Grindstaff stated yes, and there's another tree that's within the 7.5 foot, but still within the 15 foot that would also be problematic.

Dillinger stated so you understand if that happened, you're going to be in here and you're not going to be a very happy camper because we just tore the hell out of your yard, right, at your expense.

Grindstaff stated of course not. I wouldn't be whether there's a fence or not.

The motion had been made and seconded to approve the nonenforcement as requested by the property owner.

Liston presented a non-enforcement request for the Vermillion Drain, Woods at Vermillion Arm filed by Christopher Nieves for parcel #13-16-08-00-20-004.000 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 Vermillion Drain, Villages at Flat Fork Arm filed by Brian and Sarah Davis for parcel #13-16-05-00-07-020.000 for a fence with removable panels. The Surveyor's Office recommends approval.

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

Conover presented a non-enforcement request for the Isaac Jones Drainage Area, Raymond Briles Arm filed by Hal Hinds for parcel #03-06-07-00-00-012.004 for a house. The Surveyor's Office recommends approval.

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

Conover presented a non-enforcement request for the George Symonds Drain filed by Indiana American Water for parcel #02-01-32-00-00-013.000 for construction of a wastewater treatment tank. 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 Katherine Malarsky for parcel #17-09-19-00-08-006.000 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.

Clark presented a non-enforcement request for the Williams Creek Drain, Westmont Arm filed by Carlo Cochran for parcel #17-09-21-00-22-051.000 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.

Clark presented a non-enforcement request for the Little Eagle Creek Drain, Maple Village Arm filed by Julie Griffin for parcel #08-09-03-00-12-048.000 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.

Clark presented a non-enforcement request for the Towne Lake Drain filed by Penny Hauser for parcel #17-13-08-00-01-008.000 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.

Clark presented a non-enforcement request for the Albert Shaw Drain filed by Muthruamesh Ganapathy for parcel #17-09-30-00-09-004.000 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.

Clark presented a non-enforcement request for the Crooked Creek Drain, Park at Weston Place Arm filed by Olivia West for parcel #17-13-06-00-02-063.000 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.

Clark presented a non-enforcement request for the Williams Creek Drain, Jackson's Grant Arm filed by Bruce and Rhonda Matt for parcel #17-09-34-00-14-003.000 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.

Clark presented a non-enforcement request for the Cool Creek Drain, Springmill Ponds Arm filed by Mac and Elizabeth Becher for parcel #17-09-23-01-05-009.000 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.

Clark presented a non-enforcement request for the Williams Creek Drain, Westmont Arm filed by David Partlow for parcel #17-09-21-00-22-040.000 for a retaining wall and fill. The Surveyor's Office recommends approval.

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

Waltz, Warman, Booth & Dickover Drain - Petition by Beck's Hybrids:

Lawrence Sonny Beck was present for this item.

Howard stated the instructions from the Board was to try to put together an arrangement which would allow Beck's to continue to construct, reconstruct, improve, crossings, construct crossings, etc. through this drain. For the record, the Beck's own the fee on either side and almost all of the regulated drain, it's not all of it. Mr. Beck can clarify that. He's spent substantial sums in improving this drain and has other projects to improve it. The written request before you is for a vacation. In doing the research it was apparent under Section 33 of the code that the right of way of the drainage easement is either side of a regulated drain and then if we vacate this it is no longer a regulated drain. While we may be granting benefits in the short term, there are provisions in there that would allow us if something happens, the Beck family sells out to a competitor or whatever happens, we may have to notice a hearing to set aside a license agreement which really allows them to work in the easement without the total vacation. The total vacation, then you have to re-acquire right of way down the road and all of us have been in hundreds of right of way acquisition problems, they are never cheap, they are never prompt, they are very difficult. So, working with Beck's, we put this out as a proposal. There's no pride of authorship on my side. This is not contemplated in the statute, it's kind of a new venture, a new project. If we decide to move forward here today, we would still publish notice of public hearing to everyone in the watershed. You have in your packet a petition to vacate signed by every property owner in the watershed and my office has verified that. We would be sending notice out to all of those persons again because the rights that they would have or retained would be a little different than the pure vacation. They would receive notice of public hearing and it would be published 10 days in advance pursuant to statute and on your next agenda.

Beck stated Howard has proposed a very acceptable license agreement that we can work with, which allows us to continue to take care of this drain in every way, shape and form, spent all the money on it. I do only ask your speedy acceptance to help us move through it because we are working on redoing the road which we are paying for there. I want to make sure we can also redo the drain while we're doing that. We want to get that in the proposal so we can bid the proposal so they can keep things going. That's why I hope we can move it through as fast as possible we can finish up doing the money on that road. We'll also be finishing our work on the tower, which we have a promise to the County to finish this tower for our business so it will also affect what we need to do with that. Mr. Howard has been very good in working through this license agreement and I think that's the best for both parties.

Dillinger made a motion to approve the License Agreement.

Altman stated we can't because we have to publish notice.

Howard stated I think it's just a motion to move forward.

Altman made a motion to adopt the license agreement pending public hearing and no creditable remonstrance, seconded by Dillinger and approved unanimously.

Howard stated I will finalize the actual agreement in recordable form so it will be placed of record cross-referenced to the deeds of record.

Heirbrandt asked can we have the public hearing at the next meeting?

The Surveyor asked Howard, you said ten days?

Howard stated ten days, it's ten days so my office will get that notice in the paper today and they're providing the addresses of owners of record so we will get that out today. If we get it out today it will be published Thursday and that will get us in time for the next meeting.

Altman asked does the petition have everybody on there?

Howard stated yes.

Altman stated I just wanted to make sure they had a complete list of everyone that had to have notice.

Conover stated for clarification on this, I've been working with them currently on the East Tower project. The regulated drain is going to be essentially vacated, but I just wanted to make sure that this area will still be held to the County's Standard Release Rates for all development. Is this right, that we'll still need retention for these projects and that sort of thing even though it's not regulated?

Altman stated that's what we had discussed before.

Heirbrandt stated I believe Mr. Beck has agreed to that.

Howard stated the draft is proposed which set the release rate at the downsize part of the drain as what the release is going to be at the completion of the existing tower. If that release rate goes up, then the Board would have authority to revoke the license agreement. This is not, I'm kind of taking from what I've heard from different Board members, this is not, as far as the discharge rate on a per project basis, this would not require those calculations, only certification to the Board at the completion of each state at each phase. One, providing as-builts within 180 days so that if we take this drain over or if there are problems we know where the structures are and secondly, that the discharge rate within there would be fixed, not to exceed what it's going to be with the tower. So, anything subsequent to the Tower project is going to need to have detention so that they do not exceed the discharge rate.

Altman stated so we're looking at the outlet.

Howard stated we're looking at the outlet.

Altman stated on a macro basis, so we're not going to look at each project, correct?

Howard stated that was my understanding of what the Board and Mr. Beck have discussed.

Beck stated we're agreeing to the outlet to the discharge rate being the same as it's established by a State Civil Engineer at the point of, we finish this tower and that's what it will be. We'll abide by that with new projects.

Howard stated in clarification, any subsequent development that increases the gross discharge rate, because the improvements that he's made have substantially increased cubic feet per second discharge from his site. But, anything in the future that's going to increase the maximum flow in those structures is going to have to have detention.

Beck stated we fully intend to build detention whether anybody wants it or not. On the other side of the road I've built detention over that nobody asked me to. We clearly went to the State and asked for, on the side of the road we're talking about, on the creek to make a second bottom in there about two years ago so we could hold additional water right before our water is released; hold additional water in Little Cicero Creek. It's called a "second bottom", you take the dirt away so it's 14 inches up and slope it so we can get additional water holding capacity there. We're about doing this thing right. We've done all this stuff to add capacity. The county ditch, at the present time, is 1/15th of what we have built. That's the reason this makes all the sense in the world to let us take over this project and continue to do it in the right way, meeting state guidelines or civil engineer guidelines for our building projects and so forth before they can even occupy it.

Altman stated I think we're on the same page.

Howard stated the thing that is important, the inverts of that is you've increased the flow characteristics at the outlet times 15. That's why from here forward there does need to be some detention in that area.

Altman stated it sounds like he put in a two-stage ditch.

Beck stated this didn't have anything to do with this project, we just did that a couple of years ago. We intend to build a detention pond for this Tower as soon as I get the numbers from our Civil Engineer. I intend to do that whether they require it or not. I live here.

The motion had been made and seconded to adopt the license agreement pending public hearing and no creditable remonstrance and approved unanimously.

Heirbrandt asked Howard, you will get that out today so we can expedite the hearing?

Howard stated we'll get it sent out. We'll get the agreement in recordable form to Beck's by the end of the week so they can review it and have time to look at it for a week before we come in. It'll be substantial, the terms in the outline.

Burnau Arm Reconstruction - Duke Agreement:

Howard stated I think Gary (Duncan) should discuss it because of all the details in it. The reason I was brought in is the rule that if a utility is in a private right of way and we require them to move we get to pay those costs. We looked at the agreement. There's a few red flags in there, but there's been clarification, red line clarifications, from Duke which we want to put in the the record and make part of the minutes of this meeting and the minutes of this approval because having worked with other clients with relocation and Duke's cost structure its very onerous. As they are moving from one pole to another pole within the same easement, within our same drainage easement, they are not getting any additional property rights over and above what they have today in pole #1 or pole #2. Anything else about who does what and when, I'm going to defer to Gary because I did not read all of that.

Duncan stated this is for the Burnau Arm of the F.M. Musselman Drain, essentially at 191st and Mallory Road. It is a current construction project where we are improving the drain behind a row of homes on the west side of Mallory Road south of 191st Street. There is one power pole that conflicts with our project, a Duke owned power pole. There are other utilities on it. In working with Duke, they have provided us with what they're calling a work plan. I have seen these before, more or less outlines of what Duke is proposing to eliminate the conflict with our drainage project. To my knowledge we have never signed one in the past. I could be wrong about that, but I have not signed one in six years now. So, Duke is asking us to sign this work plan and that is why it is before the Board today. In looking through that and working with Howard there is some language in there that had raised some red flags. I wanted to have Howard review it to make sure the Board is not signing anything away, any rights reserved by Statute or whatnot. Truth be told, one of his first thoughts was I don't know why we would need to sign it. I think the Statute's very clear that if there's a conflict the utility has to move at their expense. So, I don't know why they would need us to sign anything whether agreeing to their work plan or whatnot, but still wanted to have it reviewed and see. I don't know if we were to not sign it where that would leave us in terms of Duke moving the pole.

Altman asked are they claiming any superior lien to our regulated drain?

Duncan stated they are not.

Howard stated there's nothing as property interest.

Altman stated they don't have any private, we're not doing anything, we're within the regulated...I would tend to concur with Gary. This is just going to cause, perhaps a problem.

The Surveyor stated we've never signed one of these before. We were leery about signing it because there's a lot of language in there that was kind of iffy in our mind.

Heirbrandt stated so it could be construed in a different way.

Altman asked is there a timetable in here?

Duncan stated there is, but there's not. Our contractor has not indicated that there's any issue. We've worked around the pole at this point. In some respects, it could remain. I believe we can finish the project without this being moved.

Altman asked is it in the flow of water?

The Surveyor stated it's in the side of the slope.

Altman asked it's just going to cause problems with erosion and stuff like that won't it, long term?

The Surveyor stated the pole should come out.

Altman stated if we've already worked around it I think we just send them a letter saying thank you for your submission, but you know the statutory duties for you to move the pole and we would appreciate you doing that within the next "X" timeframe and move on.

Heirbrandt asked Howard, are you fine with that?

Howard stated I'm fine with it. I know what the answer will be "well, our colleagues in Charlotte want something signed and in the record" and like I say from a superior land right of way rights, purposes I see nothing in there; this is really just operational. If the Surveyor's Office feels comfortable with the terms of it then...

Altman stated I'm not hearing comfort so that's what I'm saying let's just move on and send a letter and see where we get.

Duncan stated there would be another approach we could take is return the red lined mark up as this might be something...

Altman stated then we'll get back in the same situation we are at 10:00 with INDOT. Just send them a note saying the Statute's pretty clear; send a nice letter.

Saddlebrook Agreement:

Howard stated the Saddlebrook agreement was signed and I think we've got for your signature for the actual recorded document. We went through it, word by word and it was returned to our office in three business days. They're moving forward and we just hope the prairie grass grows better than it has in other places.

WOTUS:

The Surveyor stated one bit of good news, WOTUS (Waters of the United States) was finally published in the National Register and will go into effect June 22, 2020.

Howard asked that's restricting waters of the U.S.

Surveyors stated yes.

Dillinger made the motion to recessed into Executive Session for discussion of IC5-14-1.5-6.1(1) (2) (b) (1) (2) (B), seconded by Altman and approved unanimously.

Mark Heirbrandt - President

Pamela Louks
Acting Executive Secretary