

MINUTES OF THE HAMILTON COUNTY DRAINAGE BOARD

October 28, 2020

The meeting was called to order Wednesday, October 28, 2020 at 9:00 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. Reuben Arvin, Mr. Steve Baitz, Mr. Steve Cash, Mr. Andy Conover, Mr. Sam Clark, Mr. Jerry Liston, Mr. Gary Duncan and Mr. Luther Cline. The Board's attorney, Mr. Michael Howard, was also present.

**Insurance Discussion - Pollution:**

The Surveyor asked where are we on pollution?

Howard stated we got an email back from Ms. Walker and you got a copy of it. I think that they're acknowledging that this is a risk management decision of the Drainage Board and the Commissioners. What they want to do in that instance; it did indicate in that memo that we do have some coverage if there is a spill in our right of way or on our worksite. However, if we don't have a COI (Certificate of Insurance) we would be the risk partner in that and put our \$100,000.00 deductible per incident at risk. It's kind of your call what you want to do in those instances. If you have any questions, I'll turn it over to the Surveyor of what he believes is a reasonable risk management situation. I'm not sure the Drainage Board has found pollution. Did you find that up by Sheridan, the Parks Department ran into some of that on a trail or something didn't they?

The Surveyor stated I think that was Parks, but we ran into it on the Miller-Carson Drain in Atlanta where there was an oil tank or a gasoline tank from an old filling station actually buried in the right of way.

Howard asked it was in the street wasn't it?

The Surveyor stated yes.

Howard stated the Atlanta Town Board voted that they were immune.

The Surveyor stated whenever we run into something, we're going to deal with it. I can't think of any other time that we've run into anything. Baitz is shaking his head "no". If we have a hydraulic hose that busts or a gas can that gets spilled over, we deal with it on site and go on with the job. I don't understand it.

Howard stated I might suggest that there may be two classifications. If we're doing a major reconstruction and your bidders are people that probably have insurance anyway and whether they do or not, but you're talking about a major two or three million dollar; for example the Sheridan project that we just completed in the last couple years. You might look at those contractors to have some type of coverage, but I think our maintenance guys and the people that go in there and as I pointed out in my memo to the Walkers, we have contingencies for this. When Dillinger and I started this Dick Irwin said you carry a five percent contingency above ground and a ten percent contingency underground because you have a lot less understanding of what it is. I think it's a risk reward decision of yours. Do you think you're eliminating bidders and contractors and sub-contractors and are you willing to assume that risk? Is it minimal enough you're willing to assume it, or do you want everybody to have pollution insurance or do you want to draw the line between big projects and small projects? That's kind of your call.

Altman asked is there any possibility of self-insurance?

Howard stated the Walkers did point out to us that we do have insurance that as part of our coverage covers this type of issue.

Altman stated but you've got the \$100,000.00 deductible.

Howard stated but we have \$100,000.00 deductible and they pointed out that this is not an insurance issue it's a risk shifting issue.

Altman stated so our risk is \$100,000.00 on the project, basically, unless it's some huge pollution issue.

Dillinger stated but it is anyway.

Howard stated the issue would be if you have a big preexisting spill on a piece of property.

Altman stated but it would be our problem, not the contractors.

Howard stated yes, it would be our problem.

Altman stated when you analyze it why are we putting that risk on a contractor that just wants to dig a hole?

Howard stated we analyzed the foreseeable ones that I pointed out in my memo. There were a few that we thought there was something there, but sometimes you just run into it.

Altman stated that would be our problem. When it comes back to it, it's our problem because it's our easement or it goes back to the landowner's problem if it's an underlying fee.

Howard stated or whatever's outside the easement and may be leaching into our easement.

Altman stated correct.

Heirbrandt stated even if you separate it into a little project or a big project you're still at risk, you can still find something.

Altman stated yes.

Dillinger stated but the risk to the County is really only over \$100,000.00. If it's under \$100,000.00 we're going to pay for it anyway.

Altman stated but if it is something someone else caused then we can sue to get our money back.

Dillinger stated sure.

Howard stated if we find that person.

Altman stated my point is we've got the same problem either way. I think we're making a mountain out of a molehill.

Heirbrandt stated I do too.

Altman stated and we move on.

Heirbrandt stated we only found this one other time that anybody can remember.

Altman stated we've isolated our risk, it's \$100,000.00, there is a possibility. If the contractor causes it, I'm worried about the contractor screwing up on the job and causing pollution. If it's a burst line or whatever that's one thing and we'll go after them and hopefully there's surety or something else, we can go after.

Howard stated would the motion then be that we waive the Certificate of Insurance for Drainage Contracts unless...

Altman stated the extra pollution coverage.

Altman made the motion to waive the extra pollution coverage for drainage contracts, seconded by Dillinger and approved unanimously.

**Approval of Minutes of October 12, 2020:**

The minutes of October 12, 2020 were presented to the Board for approval.

Altman made the motion to approve the minutes of October 12, 2020, seconded by Heirbrandt and approved. Dillinger abstained.

**James I. Teter Drain - Small Structure Replacement:**

Mr. Faraz Khan was present for this item.

The Surveyor stated we have a request from the County Highway Department on a small structure replacement (#23042) on Cyntheanne Road north of 206<sup>th</sup> Street. The structure in question is within the drainage easement for the J. I. Teter Drain. The drain at that point makes a turn and heads north parallel to the right of way line for Cyntheanne Road and the entire structure was in the 75-foot easement for that drain. The Highway Department is asking for allowance by the Board to utilize that particular easement for the extension of a pipe and any needed guardrail or other accretements that may go with that extension.

Altman asked do you have any objection to this?

The Surveyor stated none.

Dillinger made the motion to approve the allowance for Hamilton County Highway to use the easement for the J. I. Teter Drain for a structure replacement on Cyntheanne Road north of 206<sup>th</sup> Street, seconded by Altman and approved unanimously.

**Hortonville Drainage Study - Pinnacle Title Search:**

The Surveyor stated we have a cost estimate from Pinnacle Title Search for the eighteen (18) title searches for easements within the Hortonville project area. Those searches would be \$290.00 a piece and those would be for a 50-year search.

Altman made the motion to approve the cost estimate by Pinnacle Title Search for eighteen (18) title searches for easements within the Hortonville project area, seconded by Dillinger and approved unanimously.

**Duck Creek Drain - Request for Quotes:**

The Surveyor stated I'm asking the Board to set quotes for the maintenance of the Duck Creek Drain. This is bank repair on Duck Creek that we have the DNR LARE Grant on. This would be for November 9, 2020.

Dillinger made the motion to set the date to receive quotes on the Duck Creek Drain for November 9, 2020, seconded by Altman.

Altman asked is that enough time?

The Surveyor stated it should be.

The motion had been made and seconded to set the date to receive quotes on the Duck Creek Drain for November 9, 2020 and approved unanimously.

**Hearing Request:**

The Surveyor asked the Board to set for hearing the Vermillion Drain, Bluffs at Flat Fork Section 2 Arm for November 23, 2020.

Altman made the motion to set the Bluffs at Flat Fork Section 2 for hearing on November 23, 2020, seconded by Dillinger and approved unanimously.

**Citizens Energy Group - Service Advisory Board:**

The Surveyor presented the minutes of the Service Advisory Board for July 21, 2020, August 18, 2020 and September 15, 2020 to the Board for their information.

Altman stated in the July minutes it states Mr. Goings expressed concerns about a potential 2021 drought given current climate stuff and it sounds like the Citizens Energy guy talked around it. Do you know what's going on with that?

The Surveyor stated Roger (Goins) has been looking at the whether statistics and the forecast. He has a pattern article on possible drought for 2021. He was trying to bring that to the Citizens attention and they more or less indicated that they felt they could handle that.

Altman stated I couldn't tell whether it got shoved aside on their drought plan or not by the way the guy was talking in circles.

The Surveyor stated there is a drought plan in place. If you would like I could get that from Citizens.

Altman stated I just want to make sure there's something in place because the way the minutes read it looks like they just decided it wasn't important.

The Surveyor stated that was the vibe I got through that.

Altman stated they did some balancing act with using more Geist water. Has that actually helped out Morse Reservoir in terms of the vast fluctuations that we usually have? Or do we know.

The Surveyor stated those are two different water plants. Morse Reservoir feeds into White River which feeds into the White River Plants. Geist Reservoir feeds into Fall Creek which feeds into the Fall Creek Plant on 38<sup>th</sup> Street. Also, they can now draw water out of Fall Creek, pump it up into the aqueduct and that serves the downtown facility. They're trying to put some redundancy into their system and have been working on those two pump stations, one on the White River to also put water from White River into the canal. There're two separate pumping stations now from two different sources to get water to the canal to get it downtown.

**Ordinance No. 10-12-20-A:**

Howard stated we've been working on an ordinance for several purposes and I'll be going down my list, but this ordinance goes back and clarifies our rights in drainage easements both statutory easements under the Drainage Code and dedicated easements. It provides for procedures for us to go in and remove drainage obstructions if the obstruction could cause flooding or immediate damage. We can do it without notice, if it is not, we give them notice and we can give them anywhere from 10 to 60 days to remove whatever the obstruction is. It allows, if they don't, to remove it, to go on site to remove the obstruction and if we notify a party with a substantial interest in real estate, which would be the mortgage holder we would place a lien for the cost of that removal including administrative costs and attorney's fees would be a lien superior to any other lien other than taxes so we would get ahead of the mortgage company and that's a nice little provision that's put in the statute. It also provides that utilities would also have to get a permit in our area, and we have the authority, we don't have a duty, but we have the power to require posting of bonds from those utilities. There's an expansive definition of drainage structures, a definition of encroachment, it has the enforcement provisions in it and I think kind of cleans up for our staff, what people can do and what we can do about issues in our easement. It also provides that if there is damage, someone damages something in our easement do we have the authority to seek reimbursement from them. I was writing down the Cyntheanne Road 206<sup>th</sup> Street, I think that's probably a Highway Department; we need to find out if we know who hit that bridge and get ahold of their insurance carrier and work on subrogation. This ordinance was introduced at your last Commissioners meeting and will be before you later today for final approval.

Altman asked on the enforcement section, did you carry through the concept of someone other than the property owner not removing and facing fines? I didn't see it in here, I may have missed it. I want to be able to, under this ordinance, not just focus on the property owner and lien, but focus on anybody else like utilities that go in there and don't remove it so we have penalty enforcement against them on a per diem basis. I may have missed it. Would you look at it?

Howard stated I'll look at it between now and then and if there is an insert...

Altman stated or if there's another existing ordinance that we've covered it in.

Howard stated even if we did it in another one, I think we want to make this a one stop shop.

Altman stated I just didn't see that carried through. It seemed like it was just the real property owner.

The Surveyor stated I think I saw that in there.

Altman asked in the enforcement part? In the prohibition, it's in there, but I was going through the enforcement where we can go after the real property and put the liens in and collect, but I want to make sure that it's clear to a contractor or a utility if we tell you to get out you get out.

Howard stated it's the allocation of costs. There is a section that prohibits; makes the prohibition not only against them, that is in Section II, c. "Any utility that places any Utility Encroachment within a Drainage Easement and fails to remove it may be subject to fines and costs of removal as set out in Section IV below".

Altman stated in Section V it leaves it just to; just go through and double check. Make sure utilities and any other perpetrator is clearly covered. If I'm representing the other side, I'll go after it.

The Surveyor asked Altman, would that be under Section II, d.?

Altman stated he's got it covered in the...

Howard stated I have the prohibition in there she just wants to make sure that there's a charge back for costs in the administration.

Altman stated and if you're the progressive fine that's going to get someone's attention to get them moving because our goal is to get them out without them just sitting there saying "okay, I'll get it done".

Howard stated this is an ordinance for your approval as Commissioners.

Dillinger asked are we just introducing, or do you want to pass it here?

Howard stated it was introduced at the Commissioners, you need a recommendation for the Commissioners to approve it as amended.

Dillinger made the motion to recommend approval for Commissioner's meeting of Ordinance No. 10-12-20-A as amended, seconded by Altman with any modification we need to make it clear on fines and approved unanimously.

The Surveyor asked what about the HOA that allows the encroachment?

Altman stated they're not really doing it; they're just passing on it.

Howard stated they are naively assuming jurisdiction, but we don't want HOA's in the middle. The primary goal is to deal with the property owner and be able to get a lien against the property to wake them up.

Altman asked do we have a comprehensive list of HOA's? I know the City of Carmel maintains one. I don't know if we have it countywide. It might be good to let HOA's know this is going on just so as they go through the process and someone asks because they're the first stop if they go before the Architectural Control Board, they can say it doesn't matter if we say okay, you have to understand you have to have permission and we're just informing there are penalties and bad stuff if you don't.

The Surveyor stated once this is passed, I can get the information on the HOA's from the different cities because they maintain those lists and it's horrible maintenance trying to keep those up to date.

**Lake Stonebridge Agreement - Installation & Maintenance of Backflow Preventer:**

The Surveyor stated we have the agreement from the Lake Stonebridge Homeowners Association attorney. There are some items in there that we need to fill in the blanks and in order to do so we need to finish up the plan and also get a quote from a contractor to do the work so we can fill those blanks in because right now I have no idea what the cost would be. There're also some other blanks that need to be filled in like website or web addresses.

Heirbrandt asked so this is just an introduction for information?

The Surveyor stated yes, just to let you know that we got it.

Altman asked who's going through this for us? Is it going to be Howard or...

The Surveyor stated I need to give Howard some information.

**2020 Vegetation Control - Final Report:**

Baitz presented his report to the Board for approval.

"TO: Hamilton County Drainage Board

October 19, 2020

RE: Final Report on 2020Vegetation Control Contract

The Hamilton County Drainage Board received bids for the 2020 Vegetation Control Contract at the March 23, 2020 Drainage Board Meeting. K&H Spray Services LLC. were the only responding bidders.

The Hamilton County Drainage Board at the April 13, 2020 Drainage Board Meeting awarded K&H Spray Services LLC. all 54 of the drains at a cost of \$49,835.00. The contractor was able to satisfy the contract specifications.

After receiving a request from property owner to spray for Scouring Rush, an additional area was added via work order. This was the Herr-Haughey Drain # 14 at a length of 1,950 lineal. However, due to the close proximity of the soybean crop and the affect the spray might have on them they did not apply this spring and the crops harvest time made the application beyond label recommendations. The work Order was cancelled.

K&H Spray Services Inc. completed application to 54 drains totaling, 275,127 lineal feet sprayed at a cost of \$49,835.00.

Page two of the report lists the drains sprayed, footages, date sprayed, gallons used, and check amount.

Jerry Liston will be requesting the release of the bonds for this contract.

Please consider this the final report on the spray contract for 2020

Stephen Baitz  
Drainage Inspector"

Altman made the motion to approve the final report for the 2020 Vegetation Control Project, seconded by Dillinger and approved unanimously.

**Non-enforcements:**

Clark presented a non-enforcement request for the Little Eagle Creek Drain, John Edwards Arm filed by Pulte Homes of Indiana, LLC for Bent Creek Section 3. The plat was recorded without out our specifications. We're having them submit the non-enforcement for the plat that was recorded and at the Commissioner's meeting on the 9<sup>th</sup> of November we're going to have a representative from the developer submit a certificate of correction for that plat, which will bring it up to our specifications.

Altman asked have they sold any lots in Section 3?

Clark stated no, not yet. The plat has been recorded, but we're requiring that they don't sell any lots until the certificate is submitted.

Heirbrandt asked do you recommend the Board table this item?

Clark stated no, since the plat has already been recorded, we'll need the signature on the non-enforcement for now and then we'll correct it after the fact.

Altman asked do we need this to make sure they follow through with their commitment?

Clark stated it's the fact that it's already been recorded, the plat.

Altman asked did we already sign off or did it just get recorded?

Clark stated we did initially submit the non-enforcement for Section 3, I think there was a lapse between you signing it and me receiving it. We don't have a signed copy of that non-enforcement. We're trying to get the signature as of right now and then in the Commissioner's meeting we correct the mistake that was made.

Altman made the motion to approve the non-enforcement in concept and we will sign off on it when all the paperwork is complete on the revision and recorded, seconded by Dillinger.

Howard stated I want to see that they're amending the restrictions in the plat. I think we call it an amendment to restrictions to the plat rather than a non-enforcement and we cross reference it then to the plat. The goal is that the title company finds it.

Clark stated and that's the purpose for the certificate of Correction for the title company to be able to cross reference it.

Howard stated kick that over before 4:30 when the packets come out.

The motion had been made and seconded to approve the non-enforcement in concept and sign off on it when all the paperwork is complete on the revision and recorded and approved unanimously.

Liston presented a non-enforcement request for the Vermillion Drain, Ridge at Flat Fork Arm filed by Jason and Kara Zdyb for parcel #13-16-05-00-03-017.000 for a fence. The Surveyor's Office recommends approval.

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

Liston presented a non-enforcement request for the Springs of Cambridge/Bee Camp Creek Drain, Fox Hollow at Geist Arm filed by Jeffrey and Mary Roberts for parcel #13-15-11-00-13-006.000 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.

Liston presented a non-enforcement request for the Canal Place Drain, Weatherstone Arm filed by Matthew and Trisha Lee for parcel #13-15-12-0-02-061.000 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 Richard Moffitt Drain, Lexington Farms Arm filed by Teri Morning for parcel #17-13-11-03-18-011.000 for a fence. The Surveyor's Office recommends approval.

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

Clark presented a non-enforcement request for the Cool Creek Drain, Village of Mount Carmel Arm filed by Jon and Amanda Ferguson for parcel #17-09-23-02-09-022.000 for a pool. 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, John Edwards Arm filed by Pulte Homes of Indiana, LLC for Bent Creek Section 4. The Surveyor's Office recommends approval.

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

**Surety Acceptance:**

Liston stated that at this afternoon's Commissioner's meeting the Board would be accepting the following sureties: Irrevocable Letter of Credit No. 1404ENC5 in the amount of \$179,348.40 for Enclave at Vermillion Section 5, storm sewers; Irrevocable Letter of Credit No. 1405ENC5 in the amount of \$59,637.54 for Enclave at Vermillion Section 5, erosion control.

**Surety Release:**

Liston stated that at this afternoon's Commissioners meeting the Board would be releasing the following surety: Irrevocable Letter of Credit No. 1354JG6 in the amount of \$199,243.80 for Jackson's Grant Section 6, storm sewers.

**Private Drain Petition - Request to Table:**

Conover presented his report to the Board.

"To: Hamilton County Drainage Board

October 16, 2020

Re: Obstruction of Private Drainage Petition

Daniel Phillips  
19025 Mill Grove Drive  
Noblesville, IN 46062

On September 3, 2020 an Obstruction of Private Drainage Petition was received by the Hamilton County Surveyor's Office. The petition was filed by Daniel Phillips, Parcel #11-06-27-00-04-019.000, located at 19025 Mill Grove Drive, Noblesville, IN 46062.

The petition identifies obstruction being located on the City of Noblesville street right-of way under the curb in front of his residence at 19025 Mill Grove Drive. The blockage is in the subsurface drain which serves as the outlet for the sump pump for Mr. Phillips' home. The City of Noblesville no longer maintains the drain.

On October 16, 2020 I received an email from Patty Johnson, Noblesville Street Commissioner, stating that the City of Noblesville Utility Department was working with Mr. Phillips to resolve this issue and providing an outlet for his sump.

I contacted Mr. Phillips to get additional information and he confirmed that he has been working with the City of Noblesville to resolve this problem. He agreed that it would be best to table the Obstruction of Private Drainage Petition until further notice.

At this time, I request that the Obstruction of Private Drainage Petition filed on September 3, 2020 by Daniel Phillips be tabled.

Submitted by:



Andrew D. Conover  
Inspector"

Conover stated in a county regulated drain subdivision we don't allow rear yard discharge because of all the water that gets pumped in the swales and causes flooding. They do allow it under Noblesville Standards so now they're going to work with him in trying to do the rear yard swale discharge.

The Surveyor state 40 years ago we had outlets for sump pumps and perimeter drains and so forth outletting on top of the ground all over the county. This is why we had the subsurface drains under the curbs installed so they would be able to outlet into those in the future and not cause problems. 40 years ago, it was a problem everywhere. It seems like history is starting to repeat itself. I think Noblesville is going down the wrong road and I wanted to put that on record and let the Board know that if there are problems in the future because of this my office washes its hands of it.

Heirbrandt asked have you had discussions with Noblesville?

The Surveyor stated Noblesville knows better.

Altman stated no, you need to have a direct discussion with the history because Noblesville doesn't have the institutional memory that we have and maybe walk through that with them on the problems that this causes to be helpful. They just don't have the history we have.

The Surveyor stated I will discuss that with whoever in Noblesville that's in charge of that right now.

Howard stated it would be Patty Johnson with the Street Department because essentially the goal would be traditionally to put them in the street drains, to discharge to the street drains.

Heirbrandt asked Howard, can you organize that with the Surveyor?

Howard stated I'll send him where he needs to go. I probably shouldn't be getting in the middle of it. I'm not in the middle of everything over there anymore, but I would be having a potential conflict.

Conover stated we need to bring the Noblesville Wastewater Department on too, because they'll take care of the rear yard swales. Would Stottlemeyer be in on that with the rear yard swales or lack thereof?

The Surveyor stated it's hard to keep all the cities and organizational charts in mind because they change them monthly.

Altman stated that's my point. You have people coming in that don't understand the implications and it makes; you look at it and say okay, go ahead, without understanding the implications.

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Heirbrandt stated if you could help coordinate the meetings with the people that the Surveyor needs to see from Wastewater and storm.

**Construction Updates:**

William Krause Drain Reconstruction Phase 3 - Conover stated I was out there again yesterday, and I think we just have a few minor items with the one property owner, Aaron Ogle. Everything else looks good as far as the street paving and parking lots. Everything seems to be functioning properly.

Ellis Barker Drain Reconstruction - Cline stated the ball is in Frontier's court now. We're still waiting for them to do something on their line.

Heirbrandt asked what do they need to do?

Duncan stated we were talking before the meeting that Frontier has until November 15<sup>th</sup> to move their facility. What I need to do is draft a communication to them reminding them of the deadline and also indicating that there're some things we need to do on our end to coordinate with our contractor and whatnot. What we don't want to do is have them close the roads to do their relocation and then we need to close the road. There's some coordination. I'm hoping that it might spur them along, but to date we've been dealing with Frontier's contracted designer on the relocation. We really haven't heard anything from Frontier themselves, so I need to contact, I'll give them a phone call, our main contact with Frontier and get an update. All the response has been from the designer and in the end, they don't have any control.

Heirbrandt stated I'm getting tired of hearing about Frontier and all their delays and everything else. It's just getting out of hand.

Altman stated that's why we need the enforcement in the ordinance.

Duncan stated I'll call...

Howard stated it's the guy I sent the letter to down by Wolfies.

Duncan stated yes, Steve Costlow. I'll reach out to him over the phone and see if I can't spur this along.

Howard stated I'll work with Duncan, if I need to write another bad guy letter to him; that did get a response for a few weeks, but it looks like the momentum has waned.

Altman stated it may be that we take a position while they're in non-compliance with anything, they don't get any further permits in right of way or anything else.

Howard stated it doesn't make any difference, they don't ask for permits anyway. I got a call from a subrogation group that was working for Frontier and I think it was Cumberland Road just south of 236<sup>th</sup> Street, they had a line in the middle of the road four inches below pavement and our contractor went out and milled there and tore out their line. There was no notice, nothing recorded, etc., etc. and they wanted to subrogate against our contractor, E & B Paving and I said you guys are on your own on that deal. Subrogate against us we're coming after you for frivolous litigation. We can't read your minds.

**Pending Asbuilts:**

F. M. Musselman Drain, Burnau Arm Reconstruction - Liston stated just received the revised asbuilts in the office on Monday and they are under review by staff.

**Pending Final Reports:**

William Krause Drain, Phase 1 - Conover stated the final report is in a rough draft and we're working towards getting it presentable to the Board.

William Krause Drain, Phase 2 - Conover stated the final report is in a rough draft and we're working towards getting it presentable to the Board.

**H. A. McMullen Drain Work Order:**

Mr. Robert Hayes was present for this item.

Hayes stated took over my acreage in 1958. The drainage system then is more the same as it is today, with the exception the system isn't working. All I want to know is somebody to set a time when they will come and finish. The drainage ditch runs across my property three ways and it doesn't drain, which it doesn't drain now. It pools up. It floods my buildings out. I realize the drainage is plugged up in an area that's pretty bad, I realize that, but that shouldn't have anything to do with repairing the ditch. My only problem is I wanted, it's not a problem to get without setting a time to finish the work. It's very important. This ditch has been plugged for years and it is the main ditch. You have to look at it to see how bad it really is. I realize there is a problem. I know that. If I could handle it, I'd even help do it. The stuff is grown up. They done work on part of it, beautiful work, but the other end of it isn't doing anything. Plus, the open part is closed until it gets to the railroad and then it wonders over to the street and that's pitiful. There's no drainage to it, there's roots and to compound that there's a ditch sitting right along the street where it drains. If you would look you can't even stand in the ditch to clean it up. You've got stuff hanging in the air. Again, you would have to see this. I think I'm entitled to a time. That doesn't help me at all.

Heirbrandt stated I did go out; I walked the drain with Mr. Hayes one day. There is a lot of overgrowth, we talked about that as well. I think we do have plans to do some work there, but there are crops in place and until those crops are out; am I correct, is that what we're doing.

Hayes stated I don't pay the assessment for maintaining this, everybody pays that, but we're not getting anybody to come open it up.

Heirbrandt stated I think that's been the delay, some of the crops.

Baitz stated I spoke with the contractor; he will be there this afternoon. Beans did come out the other day, the farmer west of the area we need to do some work over the top of the tile. We're going to try to access a different way. We can get into Mr. Hayes lot and set the breather. I have inspected the breather and water is flowing, I took photographs for the Surveyor. The outlet of the tile east of the railroad and extends all the way to the new structure at 281<sup>st</sup> Street. The open ditch along the west side of the road in Millersburg is clear. I gave the Surveyor photographs showing that. The area that's in contention, which we are going to clear the east over the top of the regulated tile through the Dickenson property, but I do believe that Mr. Hayes believes that the surface area through there is regulated. What we regulate is the tile. The open ditch that runs east and west from the railroad over to the regulated drain is not regulated at that location. Therefore, I don't have easement or jurisdiction over that. We're talking about two different things I believe. We will do what we can to the regulated drain, which is flowing.

Hayes stated the regulated drain is not flowing. I need to excuse myself because I can't sit here and have a guy say water's running when the water is not running.

Heirbrandt stated I understand that we're talking about two different things, what we have jurisdiction over and what we don't.

Hayes stated I think really, I've waited long enough without knowing.

Heirbrandt stated I think we're going to get out there this afternoon.

Hayes stated you've got to go and take a look; the water is not running. The water hasn't been running for quite a while. When you get an inch and a half of rain the water is on top of the ground.

Heirbrandt stated we'll take a look at it.

**A.F. Ingerman Drain - Eric Scherer Request for Variance:**

Heirbrandt asked is Mr. Scherer present today?

The Surveyor stated I thought he was coming today. Andy (Conover), did you talk to Mr. Scherer?

Conover stated no, I just got the email.

Heirbrandt stated I sent an email to him about being here. I put on my email that I formally request to be put on the next Drainage Board meeting on the agenda. He said he was seeking a variance on this. At this point we should table the item. I'll reach back out to him and see if I can get him to come into the next meeting.

Altman asked was he confused what the next Drainage Board was? This was October 22<sup>nd</sup> and you responded the same day. Did you include him on the response? No.

Heirbrandt stated no, I did not.

Altman made the motion to table this item until the next meeting on November 9, 2020, seconded by Dillinger and approved unanimously.

Howard asked do you want Andy (Conover) to give him notice?

Heirbrandt stated I'd like somebody to reach out from the office to make sure he's notified of the next meeting.

Conover stated okay. Do we need to discuss anything with the A. F. Ingerman Drain aside as to the, there's not a moratorium, but we just can't add any more water to it.

The Surveyor stated nothing's changed.

Howard asked is that the Cicero inadequate drain?

The Surveyor stated yes.

Conover stated I can contact Mr. Scherer for the next meeting.

Heirbrandt asked can you send a brief summary of those meeting minutes to us so we can review them for the next meeting?

Altman stated we have the one that was attached to this addition, but I don't know how big a parcel he has.

Heirbrandt stated he doesn't have a very big parcel.

Altman stated what I pointed out in those meeting minutes was if he had good retention then we probably could do something, but his parcel's not large enough.

The Surveyor stated he'd have to get somebody to draw it up for him.

Altman stated he could do under building retention like they do.

The Surveyor stated I think the lot's high enough that he could put something in, and he would have positive drainage out, but the trouble is it's going to be positive drainage out to somebody else.

Altman stated that's what I'm saying, if he had his retention calculation, then why wouldn't we allow it.

The Surveyor stated again, we need to see something.

Heirbrandt asked can you give him some advice on what he needs to do prior to coming?

Conover stated yes, I can tell him what plan he needs to bring in. If he's looked at any kind of a drainage plan or anything like that.

Altman stated just give him our requirements for retention.

Conover stated the problem is on the A. F. Ingerman, I think we touched on it in the minutes, even if you have a retention pond and you're going to release the water slowly, there's still no place that can handle even the slow discharge.

Altman stated if he maintains the present condition or improved the present condition, that's where I kind of get stuck. If he makes it better why wouldn't we let him do that even though we want that reconstruction?

Conover stated I'm afraid we'd open a can worms in the A. F. Ingerman because if we let one in then...

Altman stated then we put a condition in that at some point; lets work up a plan to come up with a reconstruction and everybody that develops makes a commitment to throw in money for a reconstruction. We've done it on other drains, but just to say no is not I think an answer. We probably need our own plan on what's it going to take to reconstruct this thing and everybody participate. I'm just not seeing a plan on either side. I don't feel comfortable.

Howard stated the idea we would give them a price per acre for whatever it costs, we basically put a reconstruction plan and price it out and tell them if they can get their neighbor's to agree to those assessments we'll do the reconstruction. If it's more money than the ground's worth it's more money than the grounds worth, but at least we've; I think there are people that are throwing the Drainage Board under the bus of frustrating growth of the community and I think we need to put a price tag on it and if that community wants to step up and hit it good for them.

Altman stated Sheridan did. Communities take care of themselves to the extent they can.

The Surveyor stated at our last meeting with the town they were going to try to put a meeting together of property owners within that drainage shed to see what the climate was. They keep saying we've talked to several people and I don't know if several is one person or two, that want this project. I hate to see us put a lot of time effort and money into this and then take a running start at a brick wall.

Altman stated but we're going to have to probably. I don't see another resolution because I don't want people buying stuff there not understanding what they're buying and the liability. There's lots of reasons why we would invest our time. It's not like the drainage shed's going to change that we can't use these plans later when property values go up and people think it's worth it. We don't have to have engineered plans, certainly we've got a concept of what it's going to take to fix the mess, don't we?

Conover stated we developed that 20 years ago.

Howard stated but at least you're guessing you're going to have at least a certain or up to a certain dimension pipe and it's going to run "x" amount of feet and it's going to be buried.

The Surveyor stated this will be open ditch.

Conover stated I will contact Mr. Scherer.

**Pending Items (Attorney):**

Construction in a Floodplain (Findings of Fact) - Howard the findings of fact are signed and Mr. Nethery's picking those up today.

Encroachment Violations & Penalties - Howard stated the ordinance will be before the Commissioner's today.

Ellis Barker Drain Reconstruction (Letter to Frontier) - Howard stated we'll keep that open because I'm working with Gary (Duncan) on that.

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