

MINUTES OF THE HAMILTON COUNTY DRAINAGE BOARD
May 14, 2001

The meeting was called to order Monday, May 14, 2001 at 12:01 PM.

The members of the Board present were Mrs. Sharon R. Clark-President, Mr. Steven A. Holt-Vice President and Mr. Steven C. Dillinger-member. Also present were the County Surveyor, Kenton C. Ward and members of his staff: Mr. Stephen A. Baitz, Mr. Andy Conover, Mr. Kurt Wanninger, Mr. Jerry Liston, Lynette Mosbaugh and Mr. Rick Durham, PE. Mr. Howard entered at later time.

Approval of Minutes for April 23, 2001:

The minutes of the April 23, 2001 meeting were presented for approval.

Mr. Holt made the motion to approve the April 23, 2001 minutes, seconded by Mr. Dillinger and approved unanimously.

Mud Creek - Beaver Ridge Subdivision:

The Surveyor requested this item be tabled, it is still being investigated. The Surveyor has been in contact with the Town of Fishers and Kent Shook their engineer. The Surveyor stated that he and Mr. Andy Cash had a meeting with the developers. Mr. Cash has been in contact with Stoepelwerth & Associates. He stated he would like this set for the next meeting.

Fitch & Jessup - Treesdale Reconstruction Discussion:

Mr. Howard entered at this time.

Mrs. Clark stated that the developer could have extended his letter of credit and decided not to. She asked Mr. Liston if that was correct.

Mr. Liston stated that the Letter of Credit did not say that it would be extended. Mr. Liston said it would expire the March 23rd. Mr. Liston was later informed that it would be extended.

Mrs. Clark asked if the Letter of Credit had been extended would there have been any financial damage? Mrs. Clark stated that the developer had the opportunity to correct the problem and still was not done. Mrs. Clark stated the County did what was necessary.

Mr. Dillinger asked what problem needed corrected?

Mrs. Clark stated she believed it was final grading. Mr. Liston said it was settling areas from construction and installation of new pipe.

Mr. Liston stated that the Goldners were upset throughout the construction because the whole area was not worked. There were areas from equipment moving that the construction crew was blending in with the newly graded area. Mr. Liston stated that from that point the Goldners were not happy. Mr. Liston stated that since John Ward Construction has done their work the Goldners have not had reason to call.

Mr. Dillinger stated that the Goldners received a more superior field than what was originally there. Mr. Dillinger stated that the developer was made to do something that was totally unreasonable and unfair.

Mrs. Clark stated that the developer had opportunity to finish this job and chose not to.

Mr. Dillinger stated that the developer attempted to satisfy throughout the construction and that nothing they did was right because the Goldners wanted what the County ended up doing. Mr. Dillinger stated that the field could not have been great because compared to the other field there was no difference.

Mrs. Clark stated she did not know what the conditions were before the construction.

Mr. Dillinger stated he did not know either other than looking at the other field where they put the wire fence, which was part of this field.

Mr. Holt stated that his regret is that Mr. Carriger was not invited to the hearing where the Letter of Credit was called. Mr. Holt stated that he did not want to debate the differences in the field. Mr. Holt stated that the developer created the need to reconstruct. Mr. Holt stated that there was evidence that the horses were put at risk at various times because of the way the fencing was handled. Mr. Holt stated that if Mrs. Goldner has a better pasture than before he did not have a problem with that given the stress she went through. Mr. Holt asked if the solution was the taxpayer pick up the cost.

Mr. Dillinger stated the shed or the drainage fund should pick up the cost. Mr. Dillinger stated that Mrs. Goldner went through inconveniences, but that's what the right of way is for.

Mr. Holt stated that this is what the easement is for, but he doesn't see any reason for everyone in the shed to pay for the developer to put in improved drainage.

Mr. Dillinger stated that is was not to put improved drainage but to right what was allowed to happen wrongly in his opinion.

Mr. Holt stated he did not believe any wrong was done other than not invite Mr. Carriger to the hearing that called the Letter of Credit.

Mr. Dillinger stated that Mr. Carriger was invited to that hearing.

Mrs. Clark stated that there should be a policy set to call in the Company for the Letter of Credit if they are going to call it.

Mr. Howard stated that the Board has to take an action to release the bond. Letters of Credit expire by their own term. Mr. Howard stated that the bank stated that this Letter of Credit did not expire at a particular date. Mr. Howard also stated that the document was not clear. Mr. Howard stated that when the decision was made he had 10 days. Mr. Howard stated that in this case he needed to act right away or take a chance that there was no letter of credit.

Mrs. Clark asked if in the future the Board gets to that point again was there something that could be done?

Mr. Holt asked the Surveyor if they could have called Mr. Carriger before the hearing?

The Surveyor stated that they should have.

Mr. Howard stated that he called Thursday after the action was taken on Monday or Tuesday and was told he would not be in the office until the following Tuesday and the Letter of Credit expired on Friday.

Mr. Holt stated that in the future the company should be called before the Letter Credit is called letting them know the other party is making a complaint to the Board.

Mr. Liston stated that the developer received a 30-day notice from the Surveyor's office stating that the letter of credit was about to expire but did not get a response from them.

Section 52.5 Hearing - Margaret O'Brien Drain:

The Surveyor stated that when the Margaret O'Brien Drain was reconstructed as part of Crosspoint a portion of it was left in a temporary state. The final division of the property was unknown at that time. He also stated that the developer, Mr. Spillane, wishes to put a portion of the open ditch into pipe. The Surveyor stated that Mr. Spillane would like to create a new open ditch until the parking lot is constructed. The Surveyor stated that this is on Mr. Spillane's property and will be at his expense.

Mr. Dillinger asked if there was any reason that the Board shouldn't approve this reconstruction?

The Surveyor stated he did not see a problem.

Mr. Holt asked about siltation? Mr. Holt asked if this was temporary why not put the pipe in all at once?

The Surveyor stated that Mr. Spillane was working with another group on this. The Surveyor stated he needed approval from the Board on the reconstruction.

Mr. Holt made the motion to approve the reconstruction seconded by Mr. Dillinger and approved unanimously.

Crossfields Drain - Chemical Spill:

Mr. Wanninger approached the Board. He stated he received a call from a property owner regarding a chemical spill in the Crossfields Subdivision. Mr. Wanninger stated that after the investigation he noticed a rainbow colored solution coming out of the storm sewer pipe. Mr. Wanninger stated he located the area of release and contacted the area fire department. The fire department placed booms to absorb the material. The booms are still in place and the Homeowners Association is going to remove the booms. The Homeowners Association is working on getting the booms removed.

The Surveyor stated that in 1997 the problem of unidentified third party spillers was Discussed. The Surveyor stated that State Statute states that if you can identify the spiller, the spiller is responsible for the cost of clean up for the spill. The Surveyor stated that in a case like this the local fire jurisdiction is responsible for taking charge of the site. Carmel was notified in this case, they boomed the area of the spill. The Surveyor stated that since the problem was in the detention pond Mr. Wanninger notified the Homeowners Association and they agreed to pay for the removal and disposal of the booms. The Surveyor stated that the County does not always have someone to fall back on in a chemical spill. The Surveyor stated that he talked to Barry McNulty, Hamilton County Health Department, and also Mike Howard.

Mr. McNulty approached the Board at this time. Mr. McNulty stated that there have been a few calls for chemical spills over the years. The fire department gets called, puts out the booms to stop the emergency, but that is as far as it goes. Mr. McNulty asked after that point who takes responsibility for the removal of the booms?

Mr. Holt asked what the legislature states?

Mr. McNulty stated that legislature stated that you have a responsible party.

Mr. Howard stated that the public at large pays for the search of the guilty party or nothing happens. Mr. Howard stated that a non-reverted fund could be set up under the Commissioner's Budget to pay unidentified third party costs of a spill. Mr. Howard also stated that the fund should be used as approved by the Commissioners. Mr. Howard stated that the cost is in the removal of the booms once the emergency is stopped.

Mr. McNulty stated that last year hypodermic needles were found and had to be removed.

Mrs. Clark asked if Emergency Management absorbed that cost?

Mr. McNulty stated that they did but they didn't have the funds for it.

Mr. Howard stated that incurring liability to pay someone for removal of material without funds is not good government.

Mrs. Clark stated that this would be a good opportunity to put the item in the 2002 budget.

The Surveyor stated that they are suggesting the non-reverted fund specifically for removal of material in case of a spill for the unidentified third party.

Mrs. Clark asked if the initial response was through the local entity and that it was the removal of the material after the response that the cost was incurred?

Mr. Howard stated it is the cost of the third party company for removal and remediation.

Mr. McNulty stated it might be as simple as having a company pick up the booms and possibly excavating soil if necessary. Mr. McNulty also asked the Board if they wanted to set a dollar amount that can be approved of for bid? He also stated that it was not usually an emergency at that point, because it had been stopped.

Mr. Howard stated that it needed to be decided on before advertisement and the Council meets.

Mr. Holt asked if the County had a responsibility to notify IDEM when a spill occurs?

Mr. McNulty stated yes, it was usually the spiller's requirement. There was no requirement for the fire department, Health Department, or Emergency Management.

Mr. Holt asked if that was by statute that they were obligated to give notification on an unidentified spill?

Mr. McNulty stated that he did not believe so on an unidentified spill. Mr. McNulty stated that the notification rule states the responsible party has 24 hours over a certain gallon amount.

Mr. Holt asked if this was not in the County's jurisdiction and they failed to pick up the booms and a homeowner complained to IDEM, who would be forced to pick up the booms?

Mr. McNulty stated he was not sure who would. He also stated that on rare occasions IDEM has picked up orphan barrels.

Mr. Holt stated that the County did not have a funding source and IDEM does in terms of fines and permits. Mr. Holt stated that the logical thing to do is contact AIC and suggest legislation for IDEM to be responsible for payment of unidentified third party spillers. Mr. Holt stated that the Town of Atlanta would not have the funds for removal of material. Mr. Holt stated the County could put this in the budget but he doesn't believe it is good government.

Mr. Howard asked if the spill was in the retention pond, which was part of the regulated drain, would the Drainage Board be responsible? He stated that it was not in the drainage code, but have any seminars touched on this subject?

Mr. Holt stated that it was not a land owner responsibility on an unidentified spill.

The Surveyor asked if they were suggesting the drain fund be used for an unidentified spill? He also stated the drain funds could be broken if they were used for this.

Mr. Howard stated he would not want to take it out of the drain fund. Mr. Howard wanted to know if IDEM imposes liability on the Drainage Board if it was a regulated drain as opposed to a private pond or some other issue.

Mr. Holt asked if the Surveyor had a summer intern coming in and if he could use the intern for research of statutes and make an appointment with IDEM?

The Surveyor stated he did not have an intern that could do that.

Mr. Holt stated that it was a special project. Mr. Holt asked if someone on the Surveyor's staff could do the research on this and present it to AIC?

The Surveyor stated that he could talk to Travis Worl at AIC.

Mr. Howard stated that surely this is somewhere in legislation or state statutes.

Mr. Holt stated that national groups would surely get behind this as they did with the Upper White River Alliance.

Mr. Holt made the motion to approve research of the statutes and IDEM rules, seconded by Mr. Dillinger and approved unanimously. Mr. Holt asked if the Surveyor could keep this as a rolling item on the agenda until a solution was found.

The Surveyor stated he would keep it on the agenda.

Clara Knotts Drain:

The Surveyor stated that the Board members received a copy of letter regarding the intersection of 106th St. and College Ave. improvements. He stated the Highway Department was recommending that they construct the proposed line, which was proposed in phase 2 of the Clara Knotts Drain down college and then over to the outlet into the pond. Charge the cost of the pipe installation against the drain, which was \$64,300 to upsize the pipe. This would take care of the drainage shed from the College Park Subdivision. The Surveyor stated that he believed this was an excellent opportunity to get this line built. The Surveyor stated he was asking for approval from the Board for this project.

Mr. Holt asked where the water goes after the detention pond?

The Surveyor stated that the water goes under I-465 through the Duke Property, which was Parkwood, then goes under College just north of 96th St. for about 25 to 30 feet then turns south and goes under 96th St. and into Marion County.

Mr. Holt asked what it went in to in Marion County?

The Surveyor stated it was a stream, but could not remember the name of the stream.

Mr. Holt made the motion to approve the Highway Department request for the drain to reimburse them the \$64,300, seconded by Mr. Dillinger.

Mrs. Clark asked if there needed to be a hearing since it would go back to the homeowners.

The Surveyor stated that the next step was to come up with a drainage shed for this proposed drain and see what there will be to reimburse from. The Surveyor also stated that he has an agreement with Duke/Weeks for the cost of a portion of the construction, which would be on their property.

Mrs. Clark asked for the vote and the motion was unanimously approved.

Deerfield - Set Bid Date:

The Surveyor stated that the Board had asked that contractors be contacted to do work for Deerfield in lieu of an actual bid since it was under the dollar amount threshold for contracts. Andy Conover has tried and has been unsuccessful in finding a contractor. The Surveyor requested the Board set a bid date for June 11, 2001.

Mr. Holt made the motion to set the bid date, seconded by Mr. Dillinger and passed unanimously.

H. A. McMullen Drain - Continued Hearing:

The Surveyor presented his revised report to the Board.

The Surveyor stated that the Board requested that several rates be calculated for this drain. He stated he had these calculations and the Board should have copies of the letter. He also stated that the drain was in the red by \$5,400.00 and the current assessment was \$1,664.00. The Surveyor stated that the average cost of maintenance over the last 10 years was \$2,400.00. He stated that according to those figures the \$2.00 per acre with a \$10.00 minimum would work.

Mrs. Clark stated that going with the \$2.00 per acre and \$10.00 minimum would take a long time to pay off the deficit.

Mr. Holt made the motion to approve the \$2.00 per acre with a \$15.00 minimum, seconded by Mr. Dillinger and approved unanimously.

The Surveyor stated the Board would have to set a new hearing date for June 25, 2001.

Mr. Holt made the motion to set the hearing for June 25, 2001, seconded by Mr. Dillinger and approved unanimously.

Alexander Hare Drain - Drainage Shed Boundary:

The Surveyor stated that the Board requested his office meet with Mr. VerBryck on the Alexander Hare Drain. He recommended five tracts be added to the drain and those five tracts be removed from the Newton Teeter Drain per the Surveyor's report. The Surveyor stated that if the Board wishes to do this they would need to have a hearing for the addition.

Mr. Holt asked what the Surveyor's recommendation was?

The Surveyor recommended they remove these five tracts from the Newton Teeter Drain as outlined in his report and add them to the Alexander Hare Drain.

Mr. Howard stated they did not need to be notified to be removed, but they did need notice that they were being added.

The Surveyor stated that was correct.

Mr. Holt made the motion to accept the Surveyor's recommendation to set this for hearing for June 25, 2001, Mr. Dillinger seconded and passed unanimously.

Thistlewaite Liability Insurance:

The Surveyor stated that this had been taken care of. Mr. Fred Swift did not know that it was to be taken out of the liability trust fund and later found it in the Commissioner's minutes.

Hearing Requests - June 25, 2001:

The Surveyor requested the following be set for hearing on June 25, 2001: Westfield Farms Drain - Lowe's Extension, Northpointe Ridge Drain, J. S. McCarty Drain, E. E. Cornthwaite Drain and Home Place Drain.

Mr. Holt made the motion to set the hearings for June 25, 2001, seconded by Mr. Dillinger and passed unanimously.

Attorney Reports - Elwood Wilson Moratorium and Upcharge Hearings:

Mr. Howard stated that there was talk of a moratorium for the Elwood Wilson Drain in the Drainage Board Minutes. He stated that it was talked about but no motion was made to put developers on notice that no more building could be done until substantial drainage improvements could occur. Mr. Howard stated that the moratorium would be improper at this time. Mr. Howard asked the Board how they wanted to proceed? He also stated the Board could do nothing until a developer submitted plans or give notice and record an instrument so that someone doing research for purchase would find it.

Mr. Holt asked if the Board elected to do the moratorium was a public hearing required?

Mr. Howard stated this would be put in the title that notice and public hearing would be required.

Mr. Holt asked if the Board could hire an engineering firm to figure the fix on the Elwood Wilson Drain?

The Surveyor stated that initially an engineering firm had done a study of this, Cole & Associates, however the study was diverted during the Peterson & Thompson problem. He also stated that there is still a problem and it needs a study for the future.

Mr. Holt asked if the Surveyor had identified three watersheds that needed a regional detention area? Mr. Holt also asked if this was one of the three sheds?

The Surveyor stated that it was one of the sheds, John Edwards was another and Mud Creek was the third. The John Edwards report was finalized and there were two areas they're looking at for regional detention. Estridge is building one now on the Centennial Project and the other a developer was coming in on and looked like it may be put in soon.

Mr. Holt asked who was used for the John Edwards Shed?

The Surveyor stated Sam Moore & Associates. He also stated that on Mud Creek the study was being done and found out later the flood mapping was incorrect.

Mr. Holt asked if the Board went to County Council for the funding or was it being done out of the drainage budget?

The Surveyor stated they were done out of the drainage budget.

Mr. Holt asked what line was available in the drainage budget for a study for the Elwood Wilson Drain?

The Surveyor stated that it could be taken out of maintenance because of a law the Governor signed last week allowed that. The Surveyor stated that on the John Edwards study the funding was taken out of the fund. Mud Creek was taken out of GDIF (General Drain Improvement Fund).

Mr. Holt stated that if a moratorium was put on the Elwood Wilson Drain that did Noblesville and its landowners a disservice. Mr. Holt stated it would make more sense to fund for engineering.

The Surveyor stated that the key element for a fix is the 22 acres the county owns, on the East Side of S.R. 37. The Surveyor stated they needed the study to get to that point.

Mr. Holt asked how much money it would take to fund the study? Mr. Holt asked the Surveyor to talk to Cole & Associates (now DLZ) first? Mr. Holt asked if a notice needed to be sent to the drainage shed that the maintenance fund is being used for this?

The Surveyor stated that the drainage shed did not need to be notified, it would be borrowed from GDIF.

Mr. Holt made the motion to direct the Surveyor to contact DLZ for a RFP for the Elwood Wilson Drain, seconded by Mr. Dillinger and passed unanimously.

The Surveyor stated he did not have a problem telling developers "no", the moratorium was something they could have in the recorders office so landowners would know up front. The Surveyor stated he would continue to pull out Section 17 of the Drainage Code on the Developers.

Mr. Howard stated that the landowners and developers would still be informed through a different avenue.

Mr. Howard stated he did not receive the letter on the upcharge hearings.

The Surveyor stated that this could be continued at a later date.

UAW Legal Services - Michael Fahey Property:

The Surveyor stated that the Board had copies of the letter concerning Mr. and Mrs. Michael Fahey at 1903 E 161st St. in Carmel.

Mr. Andy Conover approached the Board at this time. Mr. Conover stated that the Fahey's recently purchased the home. The sump pump in their basement runs continually due to a problem with a drain on the property, which previously drained the basement, however was not working at that time. The house was purchased from Hamilton Western Utilities. The Utility company bought the property the house sits on to put a pumping station in underground in the front of this property, then sold the property after the construction of the station. Mr. Conover stated that there were no regulated drains involved. Mr. Conover also stated he could not find any records of private drains. Mr. Conover stated that when the pump station was installed there was probably a disruption to the drainage already there. Mr. Conover stated he had a call in to the attorney, but she had not returned his call. Mr. Conover stated he did not know what the Faheys wanted of the Hamilton County Drainage Board.

The Surveyor stated that the letter was addressed to the Drainage Board and was for their information only.

Weisenheimer Drainage Shed, Warrick County - Mattingly vs Warrick County Drainage Board:

The Surveyor stated this was to let the Board know the appeals court upheld the 75 foot easement and had told the developer to stay out. The Surveyor stated that the Drainage Board has every right to say that to anyone.

This was for the Boards information only.

Big Cicero Creek Minutes:

The Surveyor presented to the Board the Big Cicero Creek Minutes. He stated this was for the Boards information only. There were no questions.

Request to be on Bid List - Drainage Construction Unlimited, Inc.:

The Surveyor presented a letter to the Board from Drainage Construction Unlimited, Inc. to be placed on the bid list. The Surveyor stated he did not know anything about them, except that they are out of Greenfield. He stated he normally just puts them on the bid list. This is for installing up to 30" tile.

Mr. Holt made a motion to approve the addition to the bid list, seconded by Mr. Dillinger and passed unanimously.

Big Cicero Creek - Norm Smeltzer Property:

The Surveyor presented his report to the Board. The Surveyor stated that Mr. Smeltzer received a building permit from the Town of Arcadia Planning Department to build his residence 20 to 25 feet off the Big Cicero Creek Bank. The Surveyor stated that the Big Cicero Creek Board stated they would not give him a non-enforcement for his residence. The Surveyor stated he put a letter together for the Town of Arcadia Planning Department and sent it to them. The Surveyor stated that he contacted John Culp with the Town of Arcadia and they were going to let Mr. Smeltzer know of the circumstances. The Surveyor stated this was for the Boards information only.

Non-enforcement Requests:

Mr. Wanninger presented a non-enforcement request for Villages of Springmill Drain filed by Mr. Robert Smith for Parcel #08-09-11-00-02-037.000 to encroach within the easement with a fence. The Surveyor recommends approval.

Mr. Dillinger made the motion to approve the non-enforcement, seconded by Mr. Holt and passed unanimously.

Surety Release:

Mr. Liston stated that at the afternoon Commissioners meeting they would be releasing the following Surety: Performance Bond #885609S in the amount of \$73,758.00 for Springwood Subdivision. Storm Drains, Storm Sewers, Underdrains, and Erosion Control. This was for the Boards information only.

Budget and Permit Update:

The Surveyor presented the Board with a copy of the updated budget and permit report. This was for the Boards information only.

John Edwards Drain - 161st Street:

The Surveyor presented the Board with a letter he received regarding the Michael and Karna Baker property and stated that he believed this to be a Commissioner item.

Mr. Howard stated that the Board of Commissioners approved this at last weeks meeting. Mr. Howard also stated that the Bakers have to give the County a grading easement and the County will install the tile. Mr. Howard stated he talked to her late last week.

The Surveyor and Mrs. Clark stated that they talked to her this morning.

There were no items for an Executive session.

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

Sharon Clark-President

ATTEST: _____
Executive Secretary