

**VANDEBURGH COUNTY
DRAINAGE BOARD
JANUARY 8, 2008**

The Vanderburgh County Drainage Board met in session this 8th day of January, 2008 at 5:16 p.m. in room 301 of the Civic Center Complex with President Troy Tornatta presiding.

Call to Order

President Tornatta: Good evening. Mr. Jeffers, welcome to the Vanderburgh County Drainage Board, Tuesday, January 8th about 16 after five.

Approval of the December 18, 2007 Drainage Board Meeting Minutes

President Tornatta: I would like to approve the previous meetings' minutes.

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: All in favor?

All Commissioners: Aye.

Election of 2008 Drainage Board Officers

President Tornatta: I think we'll need to have a nomination for officers.

Commissioner Nix: I would like to nominate Commissioner Tornatta as President of the Drainage Board.

Commissioner Korb: Second.

President Tornatta: All in favor?

All Commissioners: Aye.

President Tornatta: Nomination of Vice President?

Commissioner Nix: I would like to nominate—

Commissioner Korb: Commissioner Nix.

President Tornatta: Second.

Commissioner Korb: Sorry.

Commissioner Nix: Wait, no, wait, wait, wait. You didn't do that.

Commissioner Korb: I did too.

Commissioner Nix: Somebody else has to do it.

Commissioner Korb: Why?

Commissioner Nix: No, go ahead. I'm sorry.

President Tornatta: All in favor?

All Commissioners: Aye.

President Tornatta: Okay, great.

Commissioner Korb: A little love, bro.

President Tornatta: Mr. Jeffers?

Commissioner Korb: No love, no love?

Bill Jeffers: Congratulations on your newly re-organized board.

President Tornatta: We've been campaigning months and months and months.

Bill Jeffers: I know you have.

Madelyn Grayson: Bill, your microphone is not on.

Bill Jeffers: Was that a caucus, or was that a primary?

President Tornatta: I went up to New Hampshire.

Bill Jeffers: Okay. I look forward to working with you. Let's see, you've already set by ordinance your meeting dates, I suppose. That's already been done.

The Reserve Apartments and Townhouses: Final Plan

Bill Jeffers: Today, your first drainage plan is the Reserve Apartments and Townhouses. It's located on Virginia Street behind Sam's Club, off Burkhardt Road. This is a final plan. Actually, it's a reaffirming of the previous plan. It's already been approved. It's already pretty much in working order, they just kind of re-organized the layout so they could have a clubhouse and some central gathering place, and a gazebo and a lake, and some garages, instead of carports that type of thing. Everything else essentially remains the same. The County Surveyor recommends approval of the plan, as it comports with the drainage code.

Commissioner Nix: Move approval.

Commissioner Korb: Second.

President Tornatta: All in favor?

All Commissioners: Aye.

Northgate Subdivision: Preliminary Plan

Bill Jeffers: Okay, the other drainage plan today is Northgate Subdivision. I laid that on your desk. It's a simple, three lot subdivision. However, because of Area Plan code, three lots is a major sub, and therefore requires a drainage plan approval

before it goes to Area Plan Commission Thursday night. Because it's comprised of three very large lots, about two, two and a half acres each, it doesn't require detention. There's only going to be one house on each lot. Consequently, there will be less than 10,000 square feet of new, hard surface established, therefore the code does not require detention. So, what's happening here? He's showing you the layout. Each house has a driveway entering on to three of the separate county roads that surround the subdivision on three sides. The water will take its natural drainage path at a sheet flow away from the homes and through the grass lawns, which as I said, are like two, two and a half acres in size. This is a preliminary plan. What I'm asking him to do is to incorporate it into the erosion and sediment control plan that goes to the MS4 operator. Because when you have three houses, you have one and a half acres of land disturbance, it requires a Rule Five plan. This plan will be reflected as a final drainage plan in that Rule Five plan that goes to the State. Otherwise, it comports with the drainage code, and the County Surveyor recommends approval of the preliminary plan for Northgate Subdivision.

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: All in favor?

All Commissioners: Aye.

Approval of Ditch Maintenance Claims

Bill Jeffers: My last piece of business, and I apologize our GIS photographs are down on account of the storm, apparently.

Brenda Jeffers: It's the software. It's not working.

Bill Jeffers: The software is not working. I didn't want to blame it on the software. I really didn't want to blame it on our software.

President Tornatta: Brenda, team player?

Commissioner Korb: Did you just rat him out? That's terrible.

Bill Jeffers: Okay, we have one claim for Morley and Associates for some work completed on the east side drainage study. No, excuse me, on the Sonntag Stevens and Keil Ditch drainage study along Lynch Road. Everything is in order, the paperwork is attached. The County Surveyor recommends payment of that claim.

Commissioner Nix: Move approval.

Commissioner Korb: Second.

President Tornatta: All in favor?

All Commissioners: Aye.

Other Business

Bill Jeffers: I'm sure I speak for all the Commissioners and the County Attorney when I reaffirm what Mr. Tornatta said, please be careful, anyone that's watching this, just stay home tonight until they get the roads cleared and the ditches drain out.

President Tornatta: And this will air–

Bill Jeffers: Don't drive through–

President Tornatta: –again, so, we're calling this on January 8th at about 20 after five.

Bill Jeffers: Right. Do not drive through water over the road. It could be deep, and it could be moving fast. Thank you.

President Tornatta: Any other business to the board?

Commissioner Korb: The only thing I've got is, Mr. Jeffers, if I can, I had a Commissioner from Warrick County call, and at first I thought she was kidding, it was Nova Conner, asking us, or asking me to ask you, or as a board together, to talk to them about cleaning up Pigeon Creek a little bit, so they could have better drainage. I didn't get it all.

Bill Jeffers: Okay, several years ago your board, Vanderburgh County Board and the Warrick County Board, is that who you're speaking of?

Commissioner Korb: Yes.

Bill Jeffers: Both Drainage Boards joined together, as a Joint Drainage Board–

Commissioner Korb: Okay.

Bill Jeffers: –so there is a two county Drainage Board that meets specifically for the purpose of drains that pass through or serve both counties.

Commissioner Korb: Right.

Bill Jeffers: In that case it was specifically for Pigeon Creek. There was some funds from a, each of the legislators that represent the two counties had some sort of proprietary funds from the legislature that they could assign to projects, and they had assigned like \$11,000 together to snag out some logjams in Pigeon Creek between Stevenson's Station Road and Green River Road. Then, this was a couple of administrations ago, I believe, O'Bannon, or someone, they ran into a budget crunch, the Governor withdrew the funds from that pot to try to balance the budget, and that project, we had already designed it, we had a permit from the Corp of Engineers and a permit from DNR and we were ready to go, and the money went away. So, the project died. I'm sure that the farmers that would have been served by that clearing are probably knocking on the door of the County Commissioners once again. You can, at any time, have a Joint Board meeting by simply announcing one and assigning a meeting place. Warrick County Board was the lead agency on that, because, I believe, something like nine of the eleven logjams were in their county.

Commissioner Korb: Okay. Well, with your permission—

Madelyn Grayson: I think they came here, because I did the minutes. I've got the minutes from that meeting.

Bill Jeffers: Yes, they came here because you had a better meeting place at that time, and you're broadcast live and that type of thing.

Commissioner Korb: Okay.

President Tornatta: We might work on getting a joint meeting set up.

Commissioner Korb: Yeah, with your permission, I'll have Commissioner Conner call you?

Bill Jeffers: Sure.

Commissioner Korb: That way you can set it up.

Bill Jeffers: Yeah.

Commissioner Korb: I just promised her I would address it with you.

Bill Jeffers: Okay.

Commissioner Korb: Great.

Bill Jeffers: Yes, sir.

President Tornatta: And the logistics of attorneys and all that other business, can that be worked out at some point? I mean, I don't know who serves as, the host of the board would provide the attorney, I guess?

Ted C. Ziemer, Jr.: You know, I would be happy to come, if that's what you want me to do.

President Tornatta: Okay. Alright, fine.

Bill Jeffers: I think we should go with the cheapest one. What do you think?

President Tornatta: Yeah.

Bill Jeffers: That leaves you out.

Ted C. Ziemer, Jr.: You want the Warrick County guy.

President Tornatta: Could you submit a proposal? Okay, in lieu of going any farther with that note—

Public Comment

President Tornatta: —any public comment? Seeing none. Motion to adjourn?

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: All in favor?

All Commissioners: Aye.

(The meeting was adjourned at 5:24 p.m.)

Those in Attendance:

Troy Tornatta

Bill Jeffers

Brenda Jeffers

Bill Nix

Ted C. Ziemer, Jr.

Others Unidentified

Jeff Korb

Madelyn Grayson

Members of Media

**VANDERBURGH COUNTY
DRAINAGE BOARD**

Troy Tornatta, President

Bill Nix, Vice President

Jeff Korb, Member

(Recorded and transcribed by Madelyn Grayson.)

**VANDEBURGH COUNTY
DRAINAGE BOARD
JANUARY 15, 2008**

The Vanderburgh County Drainage Board met in session this 15th day of January, 2008 at 5:30 p.m. in room 301 of the Civic Center Complex with President Troy Tornatta presiding.

Call to Order

President Tornatta: Welcome to the Vanderburgh County Drainage Board meeting, Tuesday, January 15th. It looks like it's 5:30.

Approval of the January 8, 2008 Drainage Board Meeting Minutes

President Tornatta: Could I get a motion for approval of the previous meeting's minutes?

Commissioner Korb: So moved.

Commissioner Nix: Second.

President Tornatta: All in favor?

All Commissioners: Aye.

**Approval of Notice of Hearing of Dennis-Conway-Wazny
Petition of Obstruction for February 5, 2008**

President Tornatta: Approval of notice of hearing of petition on February 5, 2008. Mr. Jeffers?

Bill Jeffers: Yes, Commissioner Tornatta, we have a notice of a hearing laying on your desk to hear the petition filed by a citizen requesting the Drainage Board order the removal of an obstruction in a waterway. It just needs your signatures, your approval of the notice so we can mail it out to all the interested parties. That would be for February 5, 2008.

Commissioner Nix: Do you need that in the form of a motion?

Bill Jeffers: I would need that in the form of a motion, yes, sir.

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: All in favor?

All Commissioners: Aye.

Bill Jeffers: Madelyn has that for your signature. The only other item that I have today—

Ted C. Ziemer, Jr.: Bill, pardon me, excuse me, on that same issue, you will be getting us more information on this before February the 5th, right?

Bill Jeffers: Yes, sir. I'll have your report, I'll send a written report to each of the Commissioners, and the staff, the attorney, etcetera, describing the conditions. There is some pictures and various things to help you make your decision during the hearing. Then you'll hear both sides. You'll hear the petitioners describe how the water has been adversely affecting their property, and you'll probably hear from the respondent, his side of the story, and then you'll have to make a decision based on the statute.

Commissioner Korb: Great.

Communication Regarding Warrick County Commissioner Connor

Bill Jeffers: The only other item I have is to communicate to Commissioner Korb that I have spoken with Warrick County Commissioner Nova, or Nova—

Commissioner Korb: Nova.

Bill Jeffers: Nova Connor.

Commissioner Korb: Yeah.

Bill Jeffers: Very nice lady. She's interested in talking to us about Pigeon Creek and whether we can snag logjams where the creek passes through both counties, between Stevenson's Station—

Commissioner Korb: Right.

Bill Jeffers: —and Green River Road. I'm going to meet with her probably next Wednesday or Thursday, and then come back to you on a subsequent Drainage Board day and tell you what our discussion was about.

Commissioner Korb: Great.

Bill Jeffers: Then, maybe you all can have your joint Drainage Board meeting some time this spring to discuss options.

Commissioner Korb: Thank you for doing that.

Bill Jeffers: Okay.

Commissioner Korb: I really appreciate that, Mr. Jeffers.

Bill Jeffers: Mr. Tornatta, that's all I have today.

Public Comment

President Tornatta: Okay. That being said, any public comment on Drainage Board? If there are none, motion to adjourn?

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So moved.

(The meeting was adjourned at 5:33 p.m.)

Those in Attendance:

Troy Tornattta	Bill Nix	Jeff Korb
Bill Jeffers	Ted C. Ziemer, Jr.	Madelyn Grayson
Others Unidentified	Members of Media	

**VANDEBURGH COUNTY
DRAINAGE BOARD**

Troy Tornatta, President

Bill Nix, Vice President

Jeff Korb, Member

(Recorded and transcribed by Madelyn Grayson.)

**VANDEBURGH COUNTY
DRAINAGE BOARD
JANUARY 29, 2008**

The Vanderburgh County Drainage Board met in session this 29th day of January, 2008 at 6:24 p.m. in room 301 of the Civic Center Complex with Vice President, Bill Nix presiding.

Call to Order

Commissioner Nix: Good afternoon. I would like to call to order the Vanderburgh County Drainage Board, Tuesday, January 29, 2008 at 6:24.

Approval of the January 15, 2008 Drainage Board Meeting Minutes

Commissioner Nix: I will entertain a motion to approve the minutes of the previous meeting.

Commissioner Korb: So moved.

Commissioner Nix: Second. All in favor?

Commissioner Korb: Aye.

Commissioner Nix: Aye. Okay.

Preliminary Report on Obstruction: Dennis-Conway-Wazny Petition

Commissioner Nix: Mr. Jeffers, good evening.

Bill Jeffers: Good evening. In the interest of getting out of here ahead of any other storms that may be coming, I was asked to produce a report for the hearing next week. This is a preliminary report. I may add details to it, but, essentially, this gives you the facts. I won't go through it. You can read it. It does quote the applicable statute at the end of the packet. Appended to the packet are some pictures showing the upstream condition, the downstream condition of the drain that is alleged to be obstructed. It shows what the County Surveyor found upon investigation, overgrown vegetation, etcetera, that kicks the flow of the storm water out of the drain and across the property of the petitioners. It shows you some alleged damage, erosion damage to the petitioners property because of the water being kicked out of the drain and across their property. It addresses some of the issues that you, as the board, will have to determine at the hearing next Tuesday, February 5th, when all the petitioners and the respondent is here to give you more evidence.

Commissioner Nix: Thank you.

Commissioner Korb: Great.

Commissioner Nix: Can we see that Commissioner Tornatta has a copy of this—

Bill Jeffers: I have an extra copy.

Commissioner Nix: —prior to the meeting? I don't know if there's a way you could maybe PDF that to him?

Bill Jeffers: I think so. Here's a color copy.

Commissioner Nix: Okay. Madelyn, I didn't know if there's a way we could see that he gets that prior to next week's meeting?

Madelyn Grayson: I can scan it and e-mail it to him.

Commissioner Korb: Okay. Great.

Commissioner Nix: Thank you very much.

Bill Jeffers: I think we have it in digital form. I can forward the digital report to Madelyn, and she can send that to Commissioner Tornatta.

Report on New Box Culvert at Green River and Morgan Avenue

Bill Jeffers: Okay, a brief report on the box culvert at Green River Road and Morgan Avenue, on which your attorney is working on a contract with Indiana Department of Transportation, INDOT. Bart Mueller from INDOT, and I'm working from notes here. I don't have a report. We met this morning between 10:00 and noon. Bart Mueller from INDOT; John Stoll, Vanderburgh County Engineer; Bill Jeffers, Vanderburgh County Surveyor; Jim Kovacs from American Structure Pointe; and Mike Wenning from American Structure Pointe. Those are our consultants that were designing, helping to gather information for RQAW to design that culvert. You'll recall that INDOT plans to do a surface improvement of Green River Road at Morgan Avenue to add some turn lanes and move traffic more efficiently. When we found out a couple of years ago that they intended to do that, the County Surveyor and the County Commissioners expressed a desire to include a pipe structure larger, as a culvert, to move the water out of the east side of the county and lower the flood plain that FEMA, Federal Emergency Management Administration, is attempting to impose a higher flood plain on us that would require several tens of millions of dollars of flood insurance for that five square mile industrial and commercial area. We're trying to lower the flood plain by putting in larger pipes. What INDOT's concerned with is that a utility conflict was discovered by INDOT, an AT&T fiber optic bank running through the alignment that we wanted to put the box culvert in. It poses a one year delay, and two to two and a half million dollars to relocate. It may dictate not letting the pipe, with the surface project, in 2008. Our concerns are, if it's not done now, when will it be done? Moving the pipe into the future increases the estimated costs, estimated in today's dollars, \$500,000. INDOT programs are locked in for '08 and '09. July '09 is the start of their fiscal year 2010, so, we would be looking at that as a minimum, 2010. INDOT typically does not come back and do, redo a surface project with a separate pipe project of this nature, because there was no pipe contemplated in INDOT's original plans for the surface improvement. I would like to emphasize the county has produced on all parts of its understood commitments. We did provide the size, material and invert elevations for the structure, as part of our commitment. We did set aside \$500,000 in county Bridge Funds to pay for the pipe and its installation. We did acquire and do have in our possession all environmental permits required for working in a water of the U.S. INDOT agrees that we have met our commitments. The contract is in the process of being worked out. But, what I'm here to inform you is that I am working with our consultant on a supplemental agreement to do a little more study to come up with some new pipe sizes and alignments that might work here, and to amend the

permits. They'll be preparing an estimate for that supplemental agreement, and I'll bring that back to you in a week or so. We would like to still stay on schedule.

Approval of Ditch Maintenance Claims

Bill Jeffers: That's all I have, other than some, if you have any questions, but first, I have a big packet of claims here for work that's been completed. All the signatures and paperwork is affixed, and the County Surveyor recommends payment for those claims.

Commissioner Nix: Can I have a motion for that?

Bill Jeffers: And if you have any questions now, or would like to call me, I can fill you in on this pipe project.

Commissioner Korb: Move we pay those claims.

Commissioner Nix: I second. All in favor?

Commissioner Korb: Aye.

Commissioner Nix: Aye. Opposed same sign.

Resume Discussion of INDOT Project: Green River & Morgan

Ted C. Ziemer, Jr.: Just for the record, you say the contract is being on, it was being worked on until about a month ago, when I spoke to an attorney with INDOT, and we agreed to the changes that she would make in that agreement. It is now one month later and I have heard absolutely nothing from her. So, we're sitting here waiting for INDOT.

Bill Jeffers: Well, I'm trying to paint a positive picture, and I'm having a hard time with my colors, okay?

Commissioner Nix: Do we want to make contact with them then?

Bill Jeffers: There's a lot of blue in this.

Commissioner Nix: Would it be out of order to ask Mr. Jeffers, or, I didn't know if—

Ted C. Ziemer, Jr.: That's fine.

Commissioner Nix: Maybe just see where we're at with that?

Bill Jeffers: Okay.

Commissioner Nix: Okay.

Bill Jeffers: In the interest of time, I'll bring it back to you next week, maybe?

Commissioner Nix: Thank you very much.

Commissioner Korb: Great. Thanks, Mr. Jeffers.

Commissioner Nix: Is there any other business? Seeing none.

Public Comment

Commissioner Nix: Any public comment?

Commissioner Korb: I move for adjournment.

Commissioner Nix: Second. All in favor?

Commissioner Korb: Yo.

Commissioner Nix: Aye.

(The meeting was adjourned at 6:25 p.m.)

Those in Attendance:

Bill Nix

Ted C. Ziemer, Jr.

Members of Media

Jeff Korb

Madelyn Grayson

Bill Jeffers

Others Unidentified

**VANDERBURGH COUNTY
DRAINAGE BOARD**

Bill Nix, Vice President

Jeff Korb, Member

(Recorded and transcribed by Madelyn Grayson.)

**VANDEBURGH COUNTY
DRAINAGE BOARD
FEBRUARY 5, 2008**

The Vanderburgh County Drainage Board met in session this 5th day of February, 2008 at 5:54 p.m. in room 301 of the Civic Center Complex with President Troy Tornatta presiding.

Call to Order

President Tornatta: Well, I guess, we're going to open up the Drainage Board meeting, without our Drainage Board Chair. I guess I'm the Chair. He's the man. Without our Surveyor. 5:54, February 5, 2008. We're waiting on our Surveyor. There he is.

Commissioner Korb: Don't tell me you got a Coke. Don't even tell me you went to get a Coke.

Madelyn Grayson: A diet, caffeine free Coke.

President Tornatta: No endorsements please.

Commissioner Korb: And you didn't bring enough to share, obviously.

Bill Jeffers: Would you like one?

Commissioner Korb: No, I'm good.

Bill Jeffers: Anyone else?

President Tornatta: No, no, we're good.

Approval of the January 29, 2008 Drainage Board Meeting Minutes

President Tornatta: Do I hear a motion to approve the last meeting's minutes?

Commissioner Korb: So moved.

President Tornatta: A motion, and a second. So ordered.

Northgate Subdivision: Final Drainage Plan

President Tornatta: Bill?

Bill Jeffers: Good evening. Your first drainage plan is Northgate Subdivision. It's on your desk, marked up in yellow. That would be it. It's a very simple, three lot subdivision located north of Mill Road, east of Mesker Park Drive. Out there on Kramer Lane. Up on your screen we see lot two, lot one, lot three. Because it's three lots, it's a major subdivision and requires drainage board approval. The only issues that came up, because the lots are all two and a half acres or larger, was from a neighbor who was concerned about preserving the natural watercourse that runs through lot two, and I've marked that up in green. From the southwest corner you can see the trail running through here to midway across the north line, then it runs off down through a waterway. They want to preserve that and make sure that if someone puts a driveway across it, it doesn't divert the flow over to these existing

residences. So, I ask that the engineer for the developer show pipe sizes, which are marked there in yellow on your sheet, shows 18 inch pipes required if a driveway crosses that watercourse and gives an approximate location, or a pretty precise location as to where to put them. Over here on notes, on the side of the plat that will be recorded in the Records office, are a series of directions given to the contractor to preserve the natural surface watercourse, etcetera. With that, the plan comports with the drainage code, and I ask you to approve the plan for Northgate Subdivision.

Commissioner Korb: So moved.

President Tornatta: Second, and so ordered.

Commissioner Korb: Bill, do you want these back?

Bill Jeffers: I'll pick them up here in a second.

Commissioner Korb: Okay.

Harbour's Edge Phase II: Modified Final Drainage Plan

Bill Jeffers: The other drainage plan for today is called Harbour's Edge phase two. This is an existing subdivision located just outside the Knight Township levee on Waterworks Road, across from the Waterworks. There were some lots contemplated to be used for either condos or apartments, at one time. They're reconfiguring those lots for a different market use. That's all it amounts to, but it required a revision of the drainage plan, a couple of new pipes, a couple of new open water courses. All the water still goes directly into the Ohio River. There's no need for detention. It's just a formality to bring, to modify the original plan and bring it up to date. I ask you to approve it. I believe this is in the area that's going to be annexed by the city, but it's still in the county at this time.

President Tornatta: Yes.

Bill Jeffers: They use the same requirements as we use for their drainage plans. So, there would be no difference whether it were reviewed by the City Engineer or the County Surveyor. It would still be reviewed under the same requirements. A representative of Cash Wagner Associates who designed the plan is here if there are any questions. Otherwise, I ask the County Drainage Board to approve the amended plan for Harbour's Edge phase two.

Commissioner Korb: So moved.

President Tornatta: Second and so ordered.

Bill Jeffers: I'll pick those up at the end of the meeting, and put them in our files.

Public Hearing of the Petition to Remove an Obstruction: Petitioners: Clark-Conway-Wazny

Bill Jeffers: Our next order of business is the hearing for the Dennis, Conway, Wazny petition to remove an obstruction in a drain or watercourse. I'm looking for my copy of my notes, because I know you want me to read every word of them.

President Tornatta: You gave them to me, but you could do that off the top of your head.

Commissioner Korb: How did that go?

Bill Jeffers: How did what go?

Commissioner Korb: The meeting.

Madelyn Grayson: We're going to have it right now.

Commissioner Korb: Oh, we're having it right now?

Bill Jeffers: We're going to have it right now, and you're invited.

Commissioner Korb: I'm yippy skippy. Oh, this is where you said bring your lunch. Is that what you said?

Bill Jeffers: I said pack your lunch.

Commissioner Korb: Got it, okay.

Bill Jeffers: Yes, sir.

Commissioner Korb: Dang it.

President Tornatta: Then don't read everything.

Bill Jeffers: Okay.

President Tornatta: Because I've read it.

Madelyn Grayson: I'll second that.

Bill Jeffers: Good. A petition was submitted to the County Drainage Board, and a petition and subsequent investigation by the County Surveyor, his report, this hearing, your findings, your determinations, and your final order will all be in accordance with Indiana Code 36-9-27.4, removal of obstructions in a mutual drain or natural surface watercourse. In case anyone would like to read through that, it's available on line under Indiana Codes. In this case, the petitioners are Gerald and Linda Dennis, 2740 Anthony Drive, here in the audience tonight; Clark and Linda Conway, 2724 Anthony Drive, also here in the audience tonight; and Patty Dee Wazny, 5725 Caesar Court. If you'll look at your map over here, you can see the location of the Wazny, Conway and Dennis properties. They are the petitioners. The respondent is Tim Harris, 2701 Pine Tree Drive, Evansville, Indiana. The Harris property is located north of the petitioners. The grade is downhill in this direction, to the south and along the property line to the east and into Oak Ridge Subdivision. The petition is attached to the report. In the back, notification of the petitioners and the respondents were properly notified by the County Auditor, and the County Auditor received all four return receipts, which are also on file, and copies attached to the back of this report. In the petition, the petitioners allege an obstruction of a natural surface watercourse or drain on the Harris property consisting of overgrown bushes and vegetation, the removal of which will cause better drainage of the petitioners property. I've included for you definitions of a natural surface

watercourse, the statutory definition. The statutory definition of a drain, so that we'll know what we're talking about. The statutory definition of obstruction, which essentially is a condition or materials that exist within or near a drain and prevents or impedes the flow of water through the drain. Obstructions include those that are created intentionally, or those which occur naturally or are created unintentionally. So, it could be either. I show you a clip from the statute that says that the County Surveyor shall promptly investigate whether the alleged petition exists. I will tell you that the County Surveyor did investigate the site, and found an area of open drainage, or a waterway, meeting both definitions of a watercourse, in particular in this area. Coming down the hill from Ward Road it is more of a watercourse. As it proceeds through the Harris property, especially as it exits and, again, or continues running eastward in this area, the channel gets deeper, and it fully meets the statutory definition of a drain. Skipping along here, the County Surveyor also reports the existence of an obstruction, according to the definition of the statute of this waterway, and it does consist of materials and conditions as alleged by the petitioners, and existing at the location alleged in the petition. Okay, appended to the report, or your earlier report, and viewable on the screen here today are photographs taken January 28, 2008 by the County Surveyor of the drain. We can look at those now. A series of photographs. Okay, this photograph you're looking uphill towards Ward Road, and you can clearly see a channel between this line of trees and these little pine trees. I'm calling this a watercourse, because it meets the definition of a watercourse.

Madelyn Grayson: Does that help or not?

Ted C. Ziemer, Jr.: That scared me. I thought the storm was here.

Bill Jeffers: Okay, number three, now I'm standing in the same position I was when I took the previous picture, but I'm looking downhill towards the corner of Mr. Harris' property, and you can see the watercourse starts becoming a little bit more well defined as it approaches the property line. On the right hand side of the picture is the Wazny property. This property over here is a neighbor of Mr. Harris and the Wazny's. Okay, let's go to page four. Picture four, just another closer view of the same thing. Picture five, as we approach that grass clump you saw in the previous two pictures, you can see that the trail, the defined trail of the water, the path of the water encounters this overgrown brush right here and next to the Vectren electric transformer box. That's where it encounters the obstruction. Okay, next picture, is looking between the clump of grass. Now, I'm looking into the Wazny property. We were previously looking directly into this clump of overgrowth. Now you can see that the direction of the water has been diverted by this clump of overgrowth and kicks out and runs south, rather than continuing to run east. This is the area where Wazny is petitioning you for relief, so that the water will follow it's previous path rather than jumping out onto her property.

Commissioner Korb: So, Bill, is it going from right to left, or left to right?

Bill Jeffers: It is going, it used to be going due east, now it's kicking out and going southward.

Commissioner Korb: And, I know that, but on, I don't have a compass there. So, I'm looking at the clump of grass on the—

Bill Jeffers: Go back to four. Okay, it was going due east.

Commissioner Korb: Right.

Bill Jeffers: And when it gets to this point right here, it kicks out to the right—

Commissioner Korb: Got it. Okay.

Bill Jeffers: —behind this clump of grass—

Commissioner Korb: Got it.

Bill Jeffers: —then it's going down through—

Commissioner Korb: Okay.

Bill Jeffers: —this is the watercourse that the petitioners are asking you to amend.

Commissioner Korb: Is that, has that been cut? Or is that just naturally—

Bill Jeffers: That just naturally—

Commissioner Korb: Laid down?

Bill Jeffers: —created it's own pathway--

Commissioner Korb: Okay.

Bill Jeffers: —leaving it's previous course.

Commissioner Korb: Okay.

Bill Jeffers: Number seven shows the overgrowth in more detail. Number eight, the watercourse previously traveled through this area of overgrowth, essentially in this direction, which is eastward. Okay, next picture, now I'm standing below, again, looking uphill, and you can clearly see the well defined channel. This is the Harris eastern property line. Looking into the overgrowth from the opposite direction that we have been looking, you can see that the channel exists back in the Harris property, but it's overgrown. Now we're in his neighbors property where it's maintained, and you can clearly see a well defined channel. Number ten, there is, that's how it would look if it were cleared of it's overgrowth. This is the neighbors yard downstream of, Mr. Harris' yard is up here. This is the neighbors yard. Then, the last picture, let's just skip to the last one, I think, well, we can go to number 12. Again, we're back where it kicks out. This is just a closer view. It's coming out from behind that clump of grass and running first through Wazny, and then through the Conway's down through here. You can see a new pathway it's taken because it can no longer go through its previous course. Then the last picture, number 13, is a close up of one of the petitioner's property where it's gouged out a pretty good eroded pathway. That's basically their complaint, that they would like to put the water back in its previous course so that they can fill in this erosion and it won't happen again as it winds its way down uncontrollably through their yards.

Commissioner Korb: So, Bill, as we're looking at that, that's our clump of decorative grass there, the saw grass, I guess, to the left?

Bill Jeffers: Right. Yes, sir.

Commissioner Korb: And, this is the overgrowth to the right?

Bill Jeffers: This is where the water should have gone—

Commissioner Korb: Right.

Bill Jeffers: —it previously went, according to the petitioners. Historically it went, it continued from here on down.

Commissioner Korb: Okay.

Bill Jeffers: But, now its kicking down and its coming out—

Commissioner Korb: Right.

Bill Jeffers: —and it's coming down through the petitioners property and gouging out its own channel now. Okay, so that takes care of what I saw. I'm sure the petitioners have their own pictures of water, because it wasn't raining this day. They have told me that huge amounts of water come through their yard, that they would prefer to go down the historic waterway. Okay, I'm saying in my report that due to the length of time that the obstruction has existed on the Harris property, in the form of overgrowth, the County Surveyor cannot determine, specifically, the size, shape or condition of the drain prior to the occurrence of the obstruction. Because it happened several years ago, conditions have compounded. I cannot determine specifically the exact date at which the alleged obstruction began to occur, or at which the occurrence came to the degree that was found aggravating by the petitioners. I'm sure it happened over a long period of time. I mean, we can look at those trees and figure out what kind they are, and say, well, this one probably is ten years old, maybe 12 years old. This clump of rose bushes probably didn't get that way over less than ten years time, etcetera. Why is it important how long it's been there? I can only say that the applicable statute became effective in 1996. So, if it's of greater age than 1996, you might want to take that into consideration. Also, Mr. Harris, I believe, from evidence I've been able to ascertain, did not come into possession of the property until much more recently. So, we may want to hear from Mr. Harris as to what condition it was in when he purchased it. The board may wish to consider that information before making a decision. The board also, obviously, would like to hear testimony from the other parties. So, I'll cut mine short here. There are other clips from the statute that I believe are pertinent to your decision, and we can go over those as the hearing proceeds.

President Tornatta: Okay.

Ted C. Ziemer, Jr.: Excuse me.

President Tornatta: Sure.

Ted C. Ziemer, Jr.: Mr. Jeffers, probably the board would take this under advisement after they hear all the testimony that's to be heard today. I would think that the matters that we want to hear testimony about have to do with whether this is a drain or a watercourse for one thing. Number two, whether it was intentional or unintentional. Then, number three, whether, in your opinion, I guess, the, depending on the findings, whether the action sought by the petitioners will, in fact, improve the drainage and not cause undue harm to the property of the respondent. With all of those things in the record, then all the various things the Commissioners need to do,

I can advise them on that, under the law. But, I think those are the factual determinations that need to be made. That's my suggestion anyway.

Bill Jeffers: I think you're exactly right. You've hit three or four nails right on the head. Those are the things you need to know before you can make your findings and your determinations. In particular, whether it was intentional or unintentional, and whether it's a drain or a watercourse at any specific spot, because that will determine who fixes it and who pays for it. I believe, as Mr. Ziemer is pointing out, you may extend this hearing to any day or time in the future, and, in the meantime consult with the petitioners, the remonstrators, I mean, the respondent, the County Surveyor, etcetera, in your way towards making a final decision. I've noted that on the last page of this report, those things. But, I would encourage you to listen to the petitioners testimony at this time so you have all of that on record.

President Tornatta: Thank you very much. At this time we hear from the petitioners. If you would come up here and state your name and your address, please. Take your time.

Gerald Dennis: Hi, my name is Gerald Dennis at 2740 Anthony's Drive. I live on the far east end of where everything kind of drains down to. Technology is great, about ten years ago we couldn't have done this. We have a CD that our neighbors took that shows a lot of the water as it comes down through the path that was created by the obstruction. I also have some hard copies if you would want to take a look at those as well.

President Tornatta: If you wouldn't mind, you can bring those up now, and then we'll wait for those other pictures to come through.

Gerald Dennis: (Inaudible. Not at mic.)

President Tornatta: Okay.

Gerald Dennis: Bear with us here. This is kind of a dark day, we had a storm come through, so we did have a lot of water that came down.

President Tornatta: If you could hit those lights, it's fine with me.

Gerald Dennis: This is looking from the back of the Conway's property, which is just west of ours. It's looking east. There is an access road, a utility access road on the far right side. There is a drainage ditch that runs along there, and at the bottom of that ditch, I believe there's either a pump station or a pump lift, I'm not exactly for sure. Again, this is the water build up as it comes along through the Conway's property, branching out from what has been dug out. There's a ditch there, and as this water comes down the ditch it is eroding the dirt away from several mature trees, exposing the root system.

Commissioner Korb: When you say dug out, you don't mean man made dug out? You mean naturally dug out?

Gerald Dennis: Naturally dug out, yes.

Commissioner Korb: Got it.

Gerald Dennis: Again, the water flow as it's coming down bringing debris with it from the obstruction. More of the same. That's from, at the very top of the obstruction looking down towards east of the affected properties. That's right at the obstruction that Mr. Jeffers has pointed out.

President Tornatta: Okay, now what is, to the left?

Gerald Dennis: I believe—

President Tornatta: How long has that been there?

Gerald Dennis: I'm not for sure how long that has been there. I believe Mr. Harris' neighbor planted that to help control some of the water coming to his property. I believe, this is looking—

President Tornatta: Well, that is some type of utility.

Gerald Dennis: Yeah, Mr. Jeffers pointed that out. That is inside the obstruction.

Commissioner Korb: Inside the saw grass?

President Tornatta: Yeah, okay. Now, my question is was that before the saw grass, or was that after the saw grass? Or, were they both developed at the same time?

Gerald Dennis: I believe that's after the saw grass. This was taken just recently, but the obstruction occurred prior to the saw grass. The neighbor to the west of Mr. Harris planted that to help control some of the water going into his property. That, I believe, has increased the flow of water to our property.

Commissioner Korb: Okay.

President Tornatta: Right, and, I guess, what I'm trying to figure out is another view of that shows there are some wires coming out of that. For instance, it would appear to be a cable wire for cable t.v. or something of that nature.

Gerald Dennis: Yes, there is—

President Tornatta: Or an access line.

Gerald Dennis: — access for utilities along the property lines. There are overhead cables that I think Vectren maintains. I believe some of the cable companies as well. Maybe even a phone line.

President Tornatta: And, you don't know when those were placed there?

Gerald Dennis: No, I sure don't.

President Tornatta: Because, if I could borrow our Surveyor for just a second. Would that have been an impediment in the waterway?

Bill Jeffers: In that previous dark picture on the stormy day, you were looking at the back side of this grass clump. The pole, with all the conduit coming down the pole and underground—

President Tornatta: But, that waterway would be to the left of that?

Bill Jeffers: It would be to the right of this picture here. We're, that picture was taken by someone standing over about here. Just looking, you know, into—

Commissioner Korb: So, it's going in there and turning right, right, Bill?

Bill Jeffers: It's over here.

Commissioner Korb: Yeah.

Bill Jeffers: He was standing behind that, you know. Now you're back over here on the opposite side.

Commissioner Korb: Yeah.

Bill Jeffers: Okay, and that clump of rose bushes right here, and there's a transformer right there, there's a (Inaudible) right there.

Commissioner Korb: Right.

Bill Jeffers: So—

President Tornatta: So, in no way—

Bill Jeffers: —now I'm going to go back to the other side of this clump of grass that's over here. Okay, the water should be going straight ahead through here.

President Tornatta: Okay.

Bill Jeffers: But, a combination of hitting all of this stuff over here, it's turning and going to the right.

President Tornatta: Okay, but that transformer we believe was there?

Bill Jeffers: I would say the transformer's been there a good 12 to 20 years.

President Tornatta: And, as you would—

Bill Jeffers: This pole behind the clump of grass has been there, well, I could look, since you will probably continue this hearing, I will go get the date off the pole. Those poles are stamped with a date.

President Tornatta: Well, I guess, my question is, do you believe that either one of those two articles have caused this problem?

Bill Jeffers: This did not, this didn't help a bit, and, I would say if there was any trenching between the pole, when they installed the conduit, if that conduit happens to be connected to this unit over here, whenever utilities trench back and forth across a waterway, they do damage and cause obstructions. So, it could be a combination of utility activity trenching across this watercourse and over to this box. Plus the overgrowth of the vegetation. I mean, it's never as simple as one thing or the other. It's always a combination.

President Tornatta: What would allow them to put that box close to a natural waterway, I guess, is what I'm looking at?

Bill Jeffers: There was a utility easement there. See, okay—

President Tornatta: And, who does that serve?

Bill Jeffers: —let's go back to Knob Hill Subdivision was platted at a time when there weren't separate drainage easements and separate public utility easements, back in the 60's, 70's whatever. They would have just platted a public utility easement down through here and said it was for the purpose of all public utilities. That would be sewer, water, electric, cable, if they had it, and surface water drainage. So, all utilities were crammed into a 12 foot easement, and often times the underground utilities severely interfered with the surface water drainage. So, what gives them the right to make these installations? It's a public utility easement.

President Tornatta: Uh-huh.

Bill Jeffers: What we're trying to determine, is this a mutual drain that was established for the purpose, to serve all these properties? A mutual drain definition, "an open channel that serves two or more properties, common drainage". If that was the intent of that open watercourse, then it is a drain. We can get into that later. How it became obstructed, I'm saying it happened historically over a period of time. It is accumulation of what the petition identifies overgrowth of vegetation, and, obviously, some other incidental happenstance.

Ted C. Ziemer, Jr.: When you say incidental happenstance, do you mean, perhaps, the transformer box sitting there?

Bill Jeffers: Perhaps.

Ted C. Ziemer, Jr.: I think that's very important, because what we're trying to find whether or not the petitioner is causing the obstruction. Obviously, the petitioner can't control whoever put the transformer box in there. So, anyway, that's just another factor to be considered.

Bill Jeffers: That's another factor to consider. Neither the petitioner nor the respondent had any control over the utility companies. I can't tell you how many different utilities are underground at that point. I can tell you what's above ground, and we've seen that.

President Tornatta: But, I mean, to just kind of cut to the quick here, if the vegetation were not there, it seems to me, no matter that box or whatever, there would be a flow through that area. Compounding the problem is the vegetation.

Bill Jeffers: Correct. Yeah, vegetation—

President Tornatta: Because the natural flow was not to do a zigzag—

Bill Jeffers: Right.

President Tornatta: —through these people's backyards.

Bill Jeffers: Correct.

President Tornatta: Okay.

Bill Jeffers: And, that's what we're trying to determine. The vegetation, is it significant enough of an impediment to impede the full flow of water? And, does its removal, would its removal constitute, or cause better drainage of the petitioners property? My experience is, whenever you have vegetation to this extent located where the watercourse should be, or in the watercourse, every fall, as the water comes down from Ward Road, it brings leaves with it. Those leaves accumulate at this point, and they become soil, over years, they decompose into soil, and that builds up, and after a period of several years of build up, then the water kicks out and finds a more easy path.

President Tornatta: Anywhere in this line, from top to bottom, or from, I guess, it would be, what west to east?

Bill Jeffers: Yes, sir.

President Tornatta: Anywhere in that line do we have anything close to this type of vegetation overgrowth? Or is this just subject to this one area? Have we had any problems in that line, except this area?

Bill Jeffers: Okay, that's two questions. We have had many problems since 1996 between Ward Road and Oak Ridge Subdivision. But, if you look at this, you can see that the watercourse is fairly clear up here by Ward Road. These trees here, you saw that in a previous picture, they were off to the side, and only when it comes to this point is there vegetation growing right smack dab in the middle of the watercourse. So, to separate the two questions, yes, there's always been problems of excess water coming down through here. The county tried to fix that between '96 and '98 with some improvements on Ward Road. There's still a significant quantity of water coming down through here—

President Tornatta: But, is it causing the same type of problem? I mean, is it leaving the channel and making its own waterway?

Bill Jeffers: It leaves the channel up here at Mr. Tabor's house. We can't scroll that way can we? Yeah, we can, okay. I believe Mr. Tabor lives either, I think he lives in this house. Mr. Bell lives in this house. That water cuts behind Mr. Bell's house either here or here and comes down to the road. Mr. Tabor has had a problem. We tried to solve those problems back in '96 to '98 by increasing the pipe sizes up on Ward Road and taking more of that water due south along Ward Road. That was a County Engineer's project. But, you still have all this significant acreage up here contributing water down into this watercourse. This is Knob Hill. Okay, so, yes, to answer, there are other places where it kicked out when it got too deep for the watercourse, and, specifically, at Mr. Bell and Mr. Tabor's property. Then, it had a pretty good channel until it gets down to where the channel is overgrown.

Commissioner Korb: So, where exactly are we trying to get here tonight with the petitioners? What are you requesting? Do you want to have the vegetation cut down? Do you want to have Mr. Harris pay to fill in the gully? Where are we going with this?

Gerald Dennis: Well, actually, what we are asking for is a permanent solution to the obstruction. To have that removed out, to return the natural flow of the water to that

drainage area, so they can go straight shot down from Ward Road all the way down to that pump or lift station.

Commissioner Korb: Okay, but we understand from what Mr. Jeffers just said, there is no guarantee that if those obstructions are removed, that that will happen, correct? Did I hear you say that, Bill?

Bill Jeffers: If the vegetation were removed, and the channel were restored to its previous condition—

Commissioner Korb: It would make a lot of improvements.

Bill Jeffers: —it would improve the situation. It would lessen the amount of water that kicks out—

Commissioner Korb: Okay.

Bill Jeffers: —and goes across the petitioners property. During extremely heavy rainstorms like we may have had today or tonight, you would still have some overflow, unless you made the ditch two feet deep. I don't think we can make the ditch two feet deep on account of the utilities.

President Tornatta: Mr. Dennis?

Gerald Dennis: Yes?

President Tornatta: Are you in search, and, of course, I've read this a few times, but are you in search to have the respondent pay for any of the fillage on your property at this point?

Gerald Dennis: That's something we haven't discussed, but we wouldn't expect him to repair our property. We just want the obstruction removed so that it does go back where it was.

President Tornatta: Right.

Gerald Dennis: The petitioners had discussed amongst themselves on ways that we could remedy this situation; pea gravel, PVC pipe and dirt, but that's not stopping the actual formation of the water through our properties. That's just creating a place for it to flow.

President Tornatta: I understand. Okay, and, now I'm trying to formulate this, and we haven't talked to the respondent, want to do that, but one of the things that I wanted to make sure is, if it, you know, if the respondent decided that, he took it upon himself to take a measure to make a channel, just where you all would sit, if that were one of the outcomes. Obviously, there are several outcomes that we can look at today, but just finding that out. I think I know what you want, you just don't want a reoccurring problem.

Gerald Dennis: Right.

Commissioner Korb: Okay.

President Tornatta: Anything else that you want to add? Did you need to see these?

Commissioner Korb: No, I'm good.

Gerald Dennis: Is that enough photos?

President Tornatta: Do you need these back?

Gerald Dennis: Um, can I?

President Tornatta: We'll enter them in the record. So, they will be a public record, if that's okay?

Gerald Dennis: Okay. We could even make a copy of the disk, if you would like.

President Tornatta: Okay.

Gerald Dennis: I don't believe you saw all the slides.

President Tornatta: Do you want a copy of the disk?

Madelyn Grayson: I don't know that that's absolutely necessary. If you want to submit one for the record, I would be glad to incorporate that.

Commissioner Korb: I mean, I get the picture. You get the picture.

President Tornatta: If that's it, we appreciate, any other comments from the Conways or the Waznys?

Linda Conway: I might just (Inaudible. Not at mic.)

President Tornatta: Come on up. Sure.

Linda Conway: (Inaudible. Not at mic.)

President Tornatta: Hold on a second. We need you up here.

Linda Conway: You were talking about a ditch.

President Tornatta: If you can give me your name and address first.

Linda Conway: I'm sorry.

President Tornatta: That's okay. That's alright.

Commissioner Korb: You don't do this all the time. That's okay.

Linda Conway: Linda Conway.

President Tornatta: Linda is here with Clark?

Linda Conway: Uh-huh.

President Tornatta: Okay.

Linda Conway: You had mentioned, this is the back end of our property, the Conway's, and we have cleaned, had that all cleaned up just recently all the way up to, you know, where the—

President Tornatta: Obstruction.

Linda Conway: —obstruction is. So, you know, it is pretty defined, it doesn't look real defined here, but it is a pretty defined ditch that we have.

President Tornatta: Yes.

Linda Conway: So, and you can actually see the water running through there, so.

Commissioner Korb: And, that's before we get to the obstructions, right? The obstructions are—

Linda Conway: The other side of—

Commissioner Korb: This is after the obstruction?

Linda Conway: Uh-huh.

Commissioner Korb: Okay.

Linda Conway: Yeah, I just wanted to bring that up.

President Tornatta: Okay. I've tripped over that ditch 50 times. So, I'm aware of this area. This is old stomping grounds here. So, yeah.

Clark Conway: We can move forward on the slides, if you would like.

Brenda Jeffers: Okay.

Clark Conway: There's a good photo there of the runoff. I can honestly say, excuse me, when we moved in 14 years ago, I can remember distinctly the amount of the runoff, the actual what I call the ditch was no more than a handful. I mean, it was that shallow, but over the course of the years, 14 years we've been there, with the obstruction growth and the amount of rainfall and the erosion, it started to cut a path through our yard. It's basically severed our yard in half. So, we have almost one acre in the backyard, and when I go to cut on the riding lawnmower, I actually have to take it around the ditch into either the Dennis' yard or our neighbors on the left to cross over the ditch, unless I just want to drive through it. But, it's a good foot, almost a foot deep now in 14 years. I really think that's what we're looking for, as far as neighbors, is to remove the obstruction where the natural waterfall, water flow comes from the top of the hill. As Mr. Jeffers said earlier, they did some pipe rework up, and it is, Knob Hill, the actual movement of the water from Ward Road, from west to east, that is a steep area until you get to our back yards and then it levels out. Then, once it hits that obstruction, it just goes straight into the backyards. I think, I know you've seen the photographs, but it's a swamp anytime we get some major rain.

President Tornatta: I would like to kind of clarify, I mean, obviously, there are some other contributing factors. There's been a lot of development in that area. A lot more houses than when it was intentionally set out to have that kind of shared waterway. So, you know, would just like to reference the fact that, although it's increased every

year, maybe not as much rain drain off from other houses that weren't there 14 to 18 years ago, back when it was less developed. But, so noted.

Clark Conway: Thank you.

Ted C. Ziemer, Jr.: Just if I may ask a question? I don't think we've heard, Bill, you can correct me if you think I'm wrong, I don't think we've heard any evidence from the petitioners as to, number one, is the obstruction on Mr. Harris' property? Has that been established?

Bill Jeffers: Um—

Madelyn Grayson: Bill, before you answer, can I change the tape?

Bill Jeffers: Sure.

(Tape change)

Madelyn Grayson: Okay.

Bill Jeffers: I did not survey the property while I was out there, but I did find some t-bar fence posts that marked property corners, and just eyeballing it, I would say that the watercourse that we've shown you in the pictures, the original watercourse, and the obstruction in the form of the overgrown vegetation is largely on the respondents property. As alleged by the petitioner.

Ted C. Ziemer, Jr.: Okay, and then my second question, I guess, is we haven't heard any evidence as to whether that was intentional or whether it happened over time. For example, did someone see the respondent go out there and plant the brush? Or did he put the brush in to try to divert the water from his property? Or, I don't know, there's been no testimony at all about any of those things, and I think that's important for the members of the Drainage Board to hear something on that.

Bill Jeffers: From my observation, I can safely speculate, because the vast majority of the overgrown vegetation that I viewed was natural, native species. They weren't ornamental trees, they weren't the kind of trees you get at Combs Nursery. They were the kind of trees that grow up when a yard is left untended. Multiflora roses, sassafras, brush, the kind of things you find along untended tree lines. But, you can get the testimony of the respondent as to what he bought when he bought the place, and what he left, or what he planted.

Commissioner Korb: I'll be right back.

Bill Jeffers: Going for that Coke now?

Commissioner Korb: No, I've had too many today.

President Tornatta: When we're talking about, could you go over one more time the natural, or intentional obstruction?

Bill Jeffers: Okay, this is taken from the applicable statute;

“An obstruction means a condition that exists within or near a drain, and prevents or significantly impeded the flow of water through the drain. The term includes the presence of one or more objects inside or near the drain. A quantity of material inside or near a drain, or damage to a drain that prevents or significantly impedes the flow of water through the drain. Obstructions include those created intentionally, and those which occur naturally or are created unintentionally.”

Now, the way we have interpreted that since 1996 on several of these hearings and decisions, was that those materials could be deposited by man, dirt dumped into an open drain because the guy didn't like that ditch there. That would be intentional. The other objects in this case are utility objects. They were placed there intentionally, but certainly not by the respondent. The overgrowth of vegetation, from what I've viewed, and purely objectively I'll say, or subjectively I'll have to say, it looks like unintentional, natural overgrowth just left to grow. But, it still constitutes, in my interpretation of the statute, an obstruction. But, it's up to the board to decide, after hearing everyone, whether it was intentional or not.

President Tornatta: And, if, although it could be natural, is it considered intentional if the respondent does not keep the waterway?

Bill Jeffers: Now you're into a legal interpretation that I can't give you a ruling on, or an interpretation of. It hasn't been interpreted that way before.

Ted C. Ziemer, Jr.: What was your question?

President Tornatta: I said, if it's a natural factor, trees, brush that obstruct the natural waterway, is it the respondent's position that they should take care of that, to clear the waterway, and make that flow?

Commissioner Korb: Do you mean the petitioners?

President Tornatta: Then is that considered intentional?

Bill Jeffers: Is neglect intentional?

Ted C. Ziemer, Jr.: Yeah, well, let me ask a question—

President Tornatta: A better way to put it.

Ted C. Ziemer, Jr.: —different from this one, let's just assume that there is a ditch running north and south and that it runs through ten people's properties, and for the water to flow through that ditch it has to be unimpeded. If my neighbor stacks bricks in that ditch up to the top of it, that's going to impede the flow of water from his property to mine, and the water, I guess, might, over time, go in some other direction.

Bill Jeffers: We have had that happen. Exactly.

Ted C. Ziemer, Jr.: Okay, and that clearly would be intentional.

Bill Jeffers: Yes, sir.

Ted C. Ziemer, Jr.: Alright, let's say that brush grew up in my neighbors ditch, do people have an obligation, in your opinion, to keep their ditch on their property cleaned out so that it doesn't stop the flow of water? I mean, I've seen a lot of ditches, when I grew up out on Kratzville Road we had ditches, and we had to mow them, or sickle them, which they used in those days instead of weed eaters, and keep the high grass out of them so that the water would continue to flow that way. I think we expected the people who lived upstream of us and downstream of us to do the same thing. That was just cleaning out your ditch. Is that something that the respondent hasn't done? Or is it something else?

Bill Jeffers: Well, is it something that this respondent has not done? Yes. Is it something that the previous owner of the respondents property did not do? You'll have to ask him.

Ted C. Ziemer, Jr.: Okay.

Bill Jeffers: He may have bought it that way. All I can tell you is that, yes, customarily, or traditionally we think people should keep their ditches open. It's a common ditch, it's a mutual drain, it serves 20 properties, as in Mr. Ziemer's example, all 20 property owners should keep their ditch open for the benefit of all 20 properties. It doesn't happen. There are ditches all over the county where people just neglect to keep them open. They cause problems all the time. That's why in 1994 when we wrote the drainage ordinance all new subdivisions that came into being after 1994, one of the requirements is that the waterways be maintained in a condition like a lawn.

President Tornatta: So—

Bill Jeffers: As you saw below this one, that person maintains it as if it were his lawn.

President Tornatta: But, going off of the direction we're leading, who's responsibility is the obstruction clear out? I mean, the ditch cleaning, the obstruction clear out, who's responsibility would it be if it were—

Bill Jeffers: If it didn't come here tonight?

President Tornatta: Yes.

Bill Jeffers: The property owner.

President Tornatta: Or the respondent, in this case?

Bill Jeffers: They are called the respondent in this case.

President Tornatta: In this case?

Bill Jeffers: Yes, sir.

Commissioner Korb: Can we hear from him now?

President Tornatta: Yes.

Bill Jeffers: Sure.

Commissioner Korb: Please.

Ted C. Ziemer, Jr.: I have one more question before we do that. I'm just trying to help you with your record.

President Tornatta: I understand.

Ted C. Ziemer, Jr.: As you know, it's your decision, but I want to see that we have a full record before us. We haven't heard any, any testimony as to what it might cost to remedy this problem. To me that means something about brush growing up in a ditch, I don't know, probably I might get out there and pull the brush out of the way, and I've solved the problem, and that didn't cost very much money. Unless you're going to pay me my per hour charge as a lawyer.

Bill Jeffers: And, it's about the same for an excavator, 150 bucks per hour.

Ted C. Ziemer, Jr.: But, in that case, we're not fighting over very much, and maybe we can even get the people to talk to each other and resolve it that way. Anyway, we've heard no testimony about what the cost of curing this obstruction might be. I think that's important.

Bill Jeffers: Right, \$150 per hour, plus disposal of the residue.

Ted C. Ziemer, Jr.: How long?

President Tornatta: He said about, his estimate was—

Bill Jeffers: One day.

President Tornatta: —is that all?

Bill Jeffers: I think it could be done in one day, but the problem would be cutting the trees down. You're going to have to bring in a separate company, possibly—

President Tornatta: His number was \$10,000, as an estimate.

Bill Jeffers: Well, that was a high estimate, yes. We did one on the east side, it turned out to be \$8,800 in 1998. Very similar.

Ted C. Ziemer, Jr.: How big are the trees? I thought we were talking about grass?

Bill Jeffers: I would say 12 inches in diameter or less. Some of them four inches, some of them eight inches.

President Tornatta: Alright, let's hear the respondent.

Bill Jeffers: The one on the east side had three willow trees all less than 18 inches in diameter, and it was \$8,800.

Tim Harris: Questions?

President Tornatta: Your name and address, please.

Tim Harris: Tim Harris, 2701 Pine Tree Drive.

President Tornatta: Okay. By no means are we against you, we just want to hear from you.

Tim Harris: I know. I understand. I'll give you a little history. I bought the property in 1983, that bush was there in 1983. Now, if my neighbors would have come to me and talked to me about this, instead of us having to come down here, it probably would be a different story. But, go ahead, do you have any other questions of me? I mean, I haven't done anything.

President Tornatta: No, and, I guess, the thought is that it's, as far as I'm concerned, it's not that you haven't done anything, it's if you had the opportunity, would you be willing to make that drain back to whole as if it were a natural waterway?

Tim Harris: Yeah. I don't, that grass that's shown there, that's on my neighbor's property. I don't know if that's hurt or helped since he planted that. Now, that was, he put it in intentionally. What you're not seeing is, you're seeing it in the wintertime. I'm not entirely sure that, you know, it's that ugly. It's a wild bush. It's not something that was intentionally planted.

Commissioner Korb: Tim, how big is that area there? Is it that big?

Tim Harris: Well, it was a fence row. If you look down that, from day one, actually the neighbor on the other side of that has that fence row. You know, it's a 300 foot lot.

Commissioner Korb: Uh-huh.

Tim Harris: So, it's quite a ways back. You know, you're seeing it with all the leaves down and everything else. That part of the ditch shouldn't be a problem, as far as, you know. I don't think I should have to go in there and cut all those trees down though, just to get the water flowing. That ditch is between those trees. Those trees are not actually impeding the ditch there.

Commissioner Korb: That was going to be my question. I mean—

Tim Harris: It's just right there at that one point. I mean, we're fussing over—

Commissioner Korb: Because it seems like—

Tim Harris: I talked to an excavator, and he said he could probably do it in a couple of hours.

Commissioner Korb: Yeah.

Tim Harris: But, obviously, I wish they would have came and talked to me about it first, which is very disappointing.

Commissioner Korb: Here's a question. Obviously, the saw grass has got to go, because, well, I mean, it cuts right through there. That's, to me, that's where the first obstruction is, because it goes straight towards there and then hangs a right.

Tim Harris: Hangs a right, right after that saw grass, which is not on my property.

Commissioner Korb: No, so—

Tim Harris: And, the other point about the transformer, it's been a problem since SIGECO put that transformer in. So, you can't go digging around there much, because there is underground wires there. So, that's all got to be figured out.

Commissioner Korb: Okay.

Tim Harris: So, you know, this problem's been there for years. It's not like this cropped up over night.

Commissioner Korb: Okay.

Tim Harris: I guess, my only point is, it's not that big a deal really. To come down here for two or three hours and waste everybody's time over.

President Tornatta: In fairness, whatever the disconnect is, sometimes that's what we play—

Tim Harris: I know.

President Tornatta: —as the connecting body. You know, maybe one thing, and, Mr. Jeffers, could you pop back up here? I enjoy seeing you.

Bill Jeffers: Jeff, he's doing this to me now. Don't blame me later.

President Tornatta: Okay. What would be the opportunity if you were to start, between the time that we make a decision, and as we've done at some point, you come back with an agreement, before we make a decision, but what would happen if you worked with the respondent on a waterway or waterway plan, and were able to take that back to the petitioner, they might have to do some type of modification to their side as well, but you put that in that plan, and if everybody's agreeable, a time table when the respondent would take care of his side and when the petitioner would take care of their side, or vice versa, and then bring that back to us just for approval?

Bill Jeffers: We can try that again. We tried it last year. I was supposed to come back in November and tell you how it went there on, what was the name of that one?

Ted C. Ziemer, Jr.: And it worked.

Bill Jeffers: They went away, and then I got a letter last week that says nothing's happened. But, you know—

President Tornatta: Yeah, but the deal on what will happen—

Bill Jeffers: —that has nothing to do with this fellow, you know, and the other folks.

President Tornatta: But, that will affect the remonstrator, or the respondent at that point. I mean, that can all be remedied as well.

Bill Jeffers: Yes, if that's the pleasure of the board, when I come back, I'm going on vacation Friday, and I'll be back the following Friday, I will get with Mr. Harris' excavator, I will get my own excavator, Naas Brothers, or Mark Naas and Son, and we will go out there and look at this and come back to you at a subsequent continuation of this hearing, if that's what you wish, with some sort of plan to move

that water through there, and let you know what it's going to take. If that's what you want to hear.

Commissioner Korb: Here's my question. Go ahead, Mr. Ziemer.

Ted C. Ziemer, Jr.: I just want to ask, we do need your professional opinion on this, is this a drain or a watercourse?

Commissioner Korb: I'm thinking it's a watercourse.

President Tornatta: I guess, we would have to go look it up, would we not?

Commissioner Korb: We could google it.

Bill Jeffers: Well, no, the statutory definition of a drain is, a natural, or artificial open channel, you know, where you can see a channel. It meets that. Whether it's man made or natural. It carries surplus water. It does that. It's located on two or more tracts of land that are under different ownership, that's the case, and was established by the mutual consent of all the owners and was not established or made subject to any other statute. I mean, if it meets that, it's a drain.

Ted C. Ziemer, Jr.: Okay, that's a drain. What's a watercourse?

Bill Jeffers: Much simpler. An area of the surface of the ground over which water from falling rain or melting snow occasionally and temporarily flows in a definable direction.

President Tornatta: This would be a drain.

Bill Jeffers: So, that's more or less a meandering, low area of water.

President Tornatta: Okay, now, while you're on vacation, and I'm glad you're getting away, hope you enjoy that.

Bill Jeffers: You'll be glad not to see me next week, right?

Ted C. Ziemer, Jr.: There's no meeting next week.

President Tornatta: That's right.

Commissioner Korb: Poor planning on your part, Jeffers. Poor planning on your part.

President Tornatta: And your birthday, right?

Bill Jeffers: Correct, next Tuesday is.

President Tornatta: In the meantime, if the respondent and the petitioners would get together and find out a way to make this happen, and present that to you, are you acceptable of that?

Bill Jeffers: Absolutely.

President Tornatta: Okay.

Bill Jeffers: That is truly the intent, this is all just legal language—

President Tornatta: Yeah, I understand.

Bill Jeffers: The true intent by the legislator who did this was to take these things out of civil court, and put it into a venue where people can agree to get it done between themselves.

Commissioner Korb: Sure.

President Tornatta: Okay. Go ahead.

Commissioner Korb: Yeah, thanks. The Dennis', the Conway's, and the Wazny's, is Patti Dee here? There you are, okay. What happens if we can shave this thing off here, dam that up over there, because see that's how it's running, dam that up, and get this thing going that way, and we dig a channel, basically through that thing of trees, is it your desire to see that whole patch of woods come down? Or do you care as long as there is a natural water flow through there? I'm just asking.

Patti Dee Wazny: I don't care.

Commissioner Korb: Okay.

Patti Dee Wazny: As long as the water—

Commissioner Korb: Flows.

Patti Dee Wazny: —flows, and doesn't make me have to go through two yards to (Inaudible. Not at mic.)

Commissioner Korb: Okay, Conways?

Tim Harris: I've got a letter from Steve Parker, the neighbor to this side, he doesn't believe that this is going to solve the water problem, because there is a garden planted in this ditch about four houses up, and other things, and he lists it. I didn't spend any time looking at this to be honest with you.

Commissioner Korb: Okay.

Tim Harris: He did, he thought it was important, because he's trying to, you know, fix the other things. If you want to see it, I can give it to Bill, or whatever, but there's other issues.

President Tornatta: You can submit that.

Bill Jeffers: I'll take it and look at it. Do you have a copy of it?

Tim Harris: No, I do not have a copy. He gave it to me this morning.

Bill Jeffers: Okay, I'll get a copy from you here in a minute. In the past these things have ballooned into neighborhood—

Commissioner Korb: Fights.

Bill Jeffers: –yeah, and you’ve been there.

Commissioner Korb: Oh, yeah.

Bill Jeffers: Out in your neighborhood.

Commissioner Korb: Right, and that’s why I almost said, okay, how was the food fight between the neighbors, because I didn’t know they were here, so, I’m glad I didn’t say that.

Bill Jeffers: These neighbors are civil.

Commissioner Korb: Right.

Bill Jeffers: Okay? What I’ve found in this situation is to try to hone in exactly on what the petition identifies as the obstruction, and not to expand out into every neighbor out here’s issue. Because I’ve already had real issues up the way, long standing issues up towards Ward Road that have never been resolved–

Commissioner Korb: Okay.

Bill Jeffers: –and I don’t intend to expand this–

Commissioner Korb: To that.

Bill Jeffers: –hearing into, back into history. I’m honing in on what the petition specifies as the obstruction. I went out there and verified that it does exist, and, you know, I might go 75 feet this way and 75 feet this way, but I’m certainly not going to go all through the neighborhood looking for more problems.

Commissioner Korb: Well, my thought is if we can get this thing trimmed down, I don’t care if we delete part of it, because it’s obviously not all in the way, but then dam that up and then get ourselves a natural watercourse going down through there, and I think that we need to obviously call the utility folks so we don’t rupture something and go through there like that.

Tim Harris: Right.

Commissioner Korb: Then badda bing, badda boom, we’ve got ourselves drainage.

Tim Harris: Yeah, I don’t–

Commissioner Korb: I mean, if you all are agreeable with that, my thought is, let’s make that dog hunt. Is that okay with you?

President Tornatta: Hold on, hold on, we have to have, no, we can’t do that.

Commissioner Korb: Why?

President Tornatta: We have to have our Surveyor look over what plans that they want to do before we go through with this process. So, we can’t do that. We will have, they will have to get together in the week, which will take longer than that, and they will have to submit some type of proposal to our Surveyor, and then he will have to come to us with approval of that plan, and then, and only then will they be able to

go and go through this process. But, I won't, there's no way that I'll be acceptable of just ad hoc going through there with a trencher and going through that. There's stuff that needs to be developed, and you guys need to talk about it, come up with a plan, submit that to the Surveyor, or get the Surveyor involved, and at that point it comes to us very clean.

Commissioner Korb: Well, that's kind of what Bill said. He's going to meet out there with Tim and his excavator, and he'll get out there with his, and see what it's going to take to trench through there, because from what I'm hearing—

Tim Harris: I don't know what it's going to take.

Commissioner Korb: Yeah, the neighbors are saying they don't necessarily want that woodsy thing to disappear.

President Tornatta: No, and that's fine, but that's why they're going to try and get together. If it falls through that they can't get together and talk about things, at that point, then we'll have to go to another direction.

Commissioner Korb: But, if they were just all nodding their heads, yeah, that's okay we can live with that. Did I just miss something? Or, am I okay with that? So, I don't think we need to make this complicated. If Bill's okay when he gets back from vacation—

Bill Jeffers: That's fine. Look, basically what we're doing is we're jumping ahead of where your attorney was steering you.

President Tornatta: Right.

Commissioner Korb: I'm just trying to stay away from another three hour meeting that's not really necessary.

Bill Jeffers: Right, okay. But, since we're jumping ahead, there is a point at which you find whether an obstruction exists, and you will probably find that it does exist. Then you determine whether it was intentional or unintentional, and you determine whether it's in a drain or watercourse. If you were, hypothetically, to determine that it exists in a drain, and it was unintentional, then you could authorize the petitioner, the County Surveyor, and the respondent, according to the statute to all work together and the solution that's arrived at would be paid by all those properties benefitted. That's why your attorney's trying to get us to the point, is it a drain, is it a watercourse? If it's a drain, and the removal of the obstruction from the drain would benefit all the properties that are sitting here tonight, and the obstruction occurred unintentionally, then all the properties served by the project share in the cost.

Commissioner Korb: Okay.

Bill Jeffers: And you can tell all of us to work together to do it. Then, Mr. Tornatta's concern would be addressed as well. I'm going to look at the plan, and bring it to you and tell you, yes, it will work, or, no, it won't.

Commissioner Korb: And, we need that, because there's no sense in doing the work if it won't work.

Bill Jeffers: So, if you want to bypass, or, if you want to suspend making all the findings and determinations and just tell me to go ahead and do this, that's what I'll do.

Ted C. Ziemer, Jr.: Well, I think that's what they're saying, and, no need to make the findings, if, in fact, the parties can agree on a way to solve this problem.

Bill Jeffers: And, we did that last year.

Ted C. Ziemer, Jr.: And, we did that.

Bill Jeffers: Right.

Ted C. Ziemer, Jr.: So, that, I don't think there's anything wrong with that procedure. So, what I understood was that Mr. Harris would get together with his estimator, and you'll get together with your estimator, and look at what does it take to have that drainage reversed?

Bill Jeffers: Then you'll have two ideas, two prices, they might be the same, and then we'll present that to the group and see what they think.

Ted C. Ziemer, Jr.: See what they think, yeah.

Commissioner Korb: The group meaning the Dennis', the Conway's—

Bill Jeffers: Everyone involved back here behind us, and they say, well, that's too much money, we'll look at doing it a way without having to remove as much trees.

Commissioner Korb: Yeah, and I'm really sorry. I don't mean to be critical when I say this all, I just, I think it's about talking to each other. If you've done that before, I'm sorry I didn't catch up on that. But, from what I've—

Tim Harris: We've never spoken on this issue.

Commissioner Korb: Yeah, so I'm thinking, okay, you ask the question do I think this was intentional? No. Do I think there's an obstruction? Yes. So, I mean, that's fine, do I think we can resolve this? Uh-huh. I really do, without spending a ton of money and everybody else's time. I just think that, obviously, Tim has said I'm willing to talk to them, they haven't talked to me. Maybe they have and we're not aware of that, I don't know, but they seem like reasonable folks. No one is getting, beating on anybody's desk. This has been one of the more pleasurable long, elongated meetings I've been to, but, jeepers, if you can go on vacation and come back relaxed, tanned and ready, get together with them and come up with the estimate, let's see if we can just do this.

Bill Jeffers: If I'm not tan when I come back.

Commissioner Korb: Well, I'll have to get some sunglasses on so I'm not having this whole glare thing off of your forehead.

President Tornatta: You'll be a year older.

Commissioner Korb: I don't mind coming back and going through all this stuff again. I really don't, but is it really necessary? We've got a drainage problem. I can't, Tim, I can't address this guy's garden four houses up, I don't really care about that.

Tim Harris: I don't care either.

Commissioner Korb: Those aren't the pictures I'm looking at. Let's make this thing so it flows straight through there and we're good.

Tim Harris: That letter is not to lay any blame on anybody.

Commissioner Korb: No, I don't take it like that.

Tim Harris: I think what Steve Parker was saying in that letter is, is this really going to solve the problem? Which he addressed earlier. Is this really going to solve the problem for the whole? Now, if we fix this thing and there's water laying in the yard, then we really haven't accomplished anything.

President Tornatta: But, it does accomplish the volume of water that would be in their yard, and I think that's the main purpose. Can I get a motion to continue this to the, Bill, are you okay with the 19th, or do you need it past that?

Bill Jeffers: That's fine.

President Tornatta: The 19th is a rezoning.

Commissioner Korb: So, you all can get together between now and then?

President Tornatta: So, if we do this, it will—

Bill Jeffers: That's pushing it, but I'll see what I can do.

President Tornatta: Do you want to do it on the 4th? No rezoning that day.

Bill Jeffers: Great.

President Tornatta: March 4th. Okay, if we can come to terms with March 4th.

Commissioner Korb: And if you all even decide to do this yourselves, I'll come out and help you dig with a shovel. We'll just have to get the Courier & Press out there, because Troy and I ain't comin' out for free. It's going to be, look what these Commissioners are doing, working together to dig a ditch.

President Tornatta: I make lemonade.

Tim Harris: (Inaudible) out there?

Commissioner Korb: You know, I don't know. No, but, you know, thanks for being so reasonable, all of you. I think we can make this work. I really do.

Bill Jeffers: I will say, all of the Commissioners were out in their hip boots on Ward Road in 1996, I guarantee ya, all three of them.

Commissioner Korb: Okay.

Tim Harris: It's been an issue, I mean, the hill's too big. I mean, the water—

Commissioner Korb: It just runs off of there.

Ted C. Ziemer, Jr.: The County Attorney was not there, right?

Commissioner Korb: I don't have hip boots.

Bill Jeffers: He wasn't as pro-active as our current County Attorney.

Commissioner Korb: I move we continue this thing. Are you all okay with that? Do you feel like you've had any resolution here tonight? That's what I'm after. Yes or no?

Linda Dennis: I hope it's to the point where (Inaudible. Not at mic.)

President Tornatta: You'll have to come up to the—

Commissioner Korb: I am so sorry that the government is so cumbersome like this, that you have to speak into a microphone.

Linda Dennis: My name is Linda Dennis, and I live at 2740 Anthony's Drive.

Commissioner Korb: Great.

Linda Dennis: When we first went and talked with Patti Wazny, Geri and I, and Linda, I think, went and talked to Steve, and I was told that people have talked to you about this obstruction, and that it was said, absolutely not, we're not taking it down.

Tim Harris: Never.

Commissioner Korb: Yeah, you know—

Linda Dennis: Then, I know that you talked to Steve after you got the notice, if I would have thought you were approachable, we would have approached you, but I didn't want to end up with a conflict.

Commissioner Korb: Here's my only response to that, we're in politics—

Linda Dennis: Yes.

Commissioner Korb: —we prefer to call ourselves public servants, it doesn't sound as sleazy, and people say stuff about us all the time that is flat out not true.

Linda Dennis: Right.

Commissioner Korb: And, that's, obviously what this was. Tim is willing to work, as long as we can bury the hatchet and go forward, we'll do that. I hope you all can. Because you all seem reasonable on both sides of the aisle.

Tim Harris: Can I ask one question?

Commissioner Korb: Sure.

President Tornatta: Hold on, hold on. You've got to come up.

Madelyn Grayson: We're typing all of this out.

Tim Harris: Who said I was unapproachable?

Linda Dennis: People that have talked to you before. I know I had talked to Steve.

President Tornatta: Hold on, you've got to come to the mic. on this.

Commissioner Korb: Who's Steve? Steve Parker?

Linda Dennis: Steve Parker is his neighbor.

Commissioner Korb: Okay.

Linda Dennis: So, he would be—

Tim Harris: Here's the letter. He's—

Commissioner Korb: Here's the deal. Don't know, don't care.

Linda Dennis: Right.

Commissioner Korb: Tonight we're talking. Let's move forward. We're done.

Linda Dennis: So, we're willing.

Commissioner Korb: Okay, super. Then we'll wait to hear about this when Mr. Jeffers comes back and says it was the Clampett's and whoever, the McCoy's, and that was it. Mr. Jeffers, please tell me you don't have anything else to say.

Bill Jeffers: I don't have anymore to say on this issue until the 2nd.

President Tornatta: We haven't—

Madelyn Grayson: The 4th.

Bill Jeffers: The 4th.

President Tornatta: We haven't went through this yet.

Commissioner Korb: We're not done?

President Tornatta: We need a motion.

Commissioner Korb: You're killing me. So moved to table it.

President Tornatta: To the 4th?

Commissioner Korb: Or whenever Mr. Jeffers wants to bring it to us. All those in, yeah, okay.

President Tornatta: Alright, next on the agenda?

Discussion of INDOT Project at Green River and Morgan

Bill Jeffers: I have one claim from Structure Pointe.

Commissioner Korb: You all are free to go. You're welcome. Thank you for coming.

Unidentified: Thank you for your time.

Madelyn Grayson: There's actually two.

Bill Jeffers: Well, two claims from Structure Pointe bring to a conclusion our payment for the work they've performed up-to-date except, I mean, unless we do a supplemental to address this problem we're having with INDOT on the pipe at Green River Road.

Commissioner Korb: Now, that's the story that never ends right there.

Bill Jeffers: Right, and it's probably not the story you want me to go into tonight. I've e-mailed you everything I have.

President Tornatta: I went up and talked to INDOT over the issue, and, of course, in Vincennes, and, you know, they're trying to get some direction on where they're going too. So, I did try and address that, but it's getting ugly.

Bill Jeffers: It's not what—

President Tornatta: It wasn't by the book. That's for sure.

Bill Jeffers: My main concern is not to point fingers, or argue with INDOT, or RQAW, or anybody else, Bell Telephone, AT&T, whoever it is. The city is annexing all of this land that this drain serves, and the pipe under Green River Road is not big enough to serve that three or so acres that they're annexing. When they annex that, there's already a developer who has an option on a square mile of it that currently is farm ground. When, for example, Eastland Estates, I mean, excuse me, Eastland Mall when it was a soybean field it paid \$1,800 in taxes, \$2,100 in taxes a year. The very year that it became fully developed as a mall, I think 18, 1983 or so, it paid \$985,000. Now, you have a TIF district out there, and when that farm ground goes to commercial ground, you're talking about a million dollars for every 80 acres, if that holds true, okay? We've got a developer that's put an option on a square mile of that, and FEMA's saying you've got to bring in an extra foot and a half of dirt, because our flood plain, FEMA's flood plain investigation shows another foot and a half of flood plain. I don't think it's there. But, we can't do anything about it. FEMA says bring in a foot and a half of dirt, you bring in a foot and a half of dirt. Over a square mile, that developer might drop his option and go to Warrick County where there's no regulation like that. I don't want to see that. All we're talking about is one pipe. So, there's my frustration, and I'll take that on vacation with me.

Approval of Ditch Maintenance Claims

President Tornatta: Alright, any claims, did you say? Or we need to approve claims?

Bill Jeffers: Just make a motion for those two claims that represent final payment for Structure Pointe on the work they've done to date.

President Tornatta: Do I have a motion?

Commissioner Korb: So moved.

President Tornatta: Second and so ordered.

President Tornatta: No other business? No public, so no public comment. Do I have a motion to adjourn?

Commissioner Korb: He's public.

Madelyn Grayson: But, he doesn't have any comment.

Bill Jeffers: He might have something to say about that development issue.

President Tornatta: That motion to adjourn? Jeff?

Madelyn Grayson: That's you, Jeff.

Commissioner Korb: So moved that we adjourn.

President Tornatta: Second and so ordered.

Commissioner Korb: Have a great time on your vacation.

(The meeting was adjourned at 7:10 p.m.)

Those in Attendance:

Troy Tornatta

Ted C. Ziemer, Jr.

Gerald Dennis

Tim Harris

Others Unidentified

Jeff Korb

Madelyn Grayson

Linda Conway

Patty Dee Wazny

Members of Media

Bill Jeffers

Brenda Jeffers

Clark Conway

Linda Dennis

**VANDERBURGH COUNTY
DRAINAGE BOARD**

Troy Tornatta, President

Jeff Korb, Member

(Recorded and transcribed by Madelyn Grayson.)

**VANDEBURGH COUNTY
DRAINAGE BOARD
FEBRUARY 19, 2008**

The Vanderburgh County Drainage Board met in session this 19th day of February, 2008 at 5:40 p.m. in room 301 of the Civic Center Complex with President Troy Tornatta presiding.

Call to Order

President Tornatta: Okay, we’re going to start the Vanderburgh County Drainage Board meeting. It’s approximately 6:40.¹ I need a motion to approve the previous meeting’s minutes.

Commissioner Nix: So moved.

President Tornatta: Were you here? For drainage?

Commissioner Nix: Oh, wait. No, wait, did we have drainage board last week? Oh, I’m sorry.

President Tornatta: You weren’t, you can’t.

Commissioner Korb: Move for approval.

President Tornatta: Second and so moved.

Integrity Landscape: Final Drainage Plan

President Tornatta: Mr. Jeffers?

Bill Jeffers: Good afternoon. We have one drainage plan in front of you for Integrity Landscape. It’s a final plan. It’s a one lot commercial project located at 5800 Virginia Street, at Metro Avenue, out there on the east side, right across Metro from Nagasaki Inn. The plan is presented by Landmark Designs, David Stallings, Professional Engineer. You’ll see his stamp affixed to it. The plan, and its details, comply with the drainage ordinance. The County Surveyor recommends approval.

Commissioner Nix: Move approval.

Commissioner Korb: Second.

President Tornatta: Approval and a second. So moved.

Approval of Ditch Maintenance Claims

Bill Jeffers: Okay, I have a half a dozen claims on your table, in front of Ms. Grayson. They’re all by local farmers who contract and maintain ditches in Scott and Armstrong Township. All of the paperwork is in order. The work is complete. It was done in 2007. This is the final payment. The County Surveyor asks that you pay those claims.

¹Actual time was 5:40.

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: A motion and a second. So ordered.

Bill Jeffers: Unless the board has any questions or comments, I have no further business.

Public Comment

President Tornatta: Alright. Any public comment? If not–

Bill Jeffers: Thank you.

President Tornatta: That's right.

Commissioner Nix: Motion to adjourn.

Commissioner Korb: Second.

President Tornatta: So moved.

(The meeting was adjourned at 5:42 p.m.)

Those in Attendance:

Troy Tornatta

Jeff Korb

Bill Nix

Bill Jeffers

Ted. C. Ziemer, Jr.

Madelyn Grayson

Others Unidentified

Members of Media

**VANDERBURGH COUNTY
DRAINAGE BOARD**

Troy Tornatta, President

Bill Nix, Vice President

Jeff Korb, Member

(Recorded and transcribed by Madelyn Grayson.)

**VANDEBURGH COUNTY
DRAINAGE BOARD
MARCH 4, 2008**

The Vanderburgh County Drainage Board met in session this 4th day of March, 2008 at 6:41 p.m. in room 301 of the Civic Center Complex with President Troy Tornatta presiding.

Call to Order

President Tornatta: I would like to call to order the Vanderburgh County Drainage Board, Tuesday, March 4, 2008 at approximately 6:41.

Approval of the February 19, 2008 Drainage Board Meeting Minutes

President Tornatta: Motion to approve the minutes?

Commissioner Nix: Move approval.

President Tornatta: Second. So ordered.

Discussion of Drainage Issues at Hamilton's Golf Course

Bill Jeffers: Okay, I guess, we're waiting for Commissioner Korb, in case we might need a vote. While we're waiting, I would like to ask the Commissioners, as the Drainage Board to consider that at Hamilton's Golf Course there are at least two or three structures, manmade structures, that are within or across Little Pigeon Creek that represent some drainage problems, have caused some drainage problems over the last several years. In all the negotiations that you go forward with, that possibly we could look at remediating or improving the condition out there as things change hands, okay? It's caused problems for the Highway Department, and it's caused problems for residents of Old Petersburg Estates. I can go into more detail on that when someone calls upon me to elaborate on it at a later time.

President Tornatta: And, I'm sure we'll need that.

Bill Jeffers: Okay.

Acceptance of the Surveyor's 2008 Annual Report

Bill Jeffers: Today, and I put one on Commissioner Korb's desk, so he can review it at his leisure, representing the Vanderburgh County Surveyor's 2008 annual report, required by statute. There's no need to go into any detail tonight on it. It was compiled by Charles Alvey in our office. It was edited, and subsequently finished by Brenda Jeffers in our office. It contains a statement of the condition of all the drains in Vanderburgh County, and some of the conditions we intend to address with maintenance and repair contracts over the year. Let's see if there's anything else that doesn't require a vote.

President Tornatta: We would probably make a motion to accept that report, would we not?

Bill Jeffers: Sure, you can do that.

Commissioner Nix: So moved.

President Tornatta: Second, and so ordered.

Update on the Dennis-Conway-Wazny Obstruction Petition

Bill Jeffers: We're in kind of suspended animation on the obstruction hearing. You had directed me to seek advice from an independent contractor, and Mr. Harris was going to do the same with his contractor. Neither of us have been able to obtain an estimate on the work to be done due to weather conditions. Obviously, there's nothing we can do, if we had an estimate, with the soil conditions the way they are. So, I'm going to ask you to move the hearing forward to April 1st, rather than tonight. Mr. Harris was here earlier, he's left, he's aware of the situation. Ms. Wazny was here, and she's left, and she's aware of the situation. I talked with the Dennis' on the telephone this afternoon, and they were to call the Conway's. So, everyone is aware of the situation. I will send out a notice, if you move that forward to April 1st, I will send out a written notice to all the parties.

Ted C. Ziemer, Jr.: Question, at that continued hearing, is that when we would hear whether the parties have resolved their differences or not? In which case we would go ahead and make the determinations that the statute provides for? Or, is that just going to be an information meeting? Or, what do you contemplate?

Bill Jeffers: Well, I contemplate first that it will be informational, that I will bring forward my information about an estimate of the costs anticipated for removing the obstruction. Mr. Harris could bring forward his information of a cost that his contractor would estimate for the same work. Then, if the other parties to the problem would like to present additional information that they haven't had the opportunity to do so, they would probably want to say something. Then, if the Board chose, it could make a determination at that time, or it could continue the hearing for a legitimate reason.

Commissioner Nix: (Indaudible).

Ted C. Ziemer, Jr.: Yes, I would, so it's in the public record.

Commissioner Nix: That was April 1st, Bill?

Bill Jeffers: Yes, sir.

Commissioner Nix: Motion to move the meeting to April 1st.

President Tornatta: Second, and so ordered.

Update on INDOT Culvert Project at Green River Rd. & Morgan Ave.

Bill Jeffers: I guess, everyone's seen the e-mails that I've been shooting around on Green River Road and Morgan Avenue? Two of the Commissioners have indicated their optimism towards the solution that INDOT has proposed. That, basically, is that because there is no way, this year, that we can put a culvert through that intersection, that Indiana, or AT&T, American Telephone and Telegraph, estimates that it will take over a year and \$1.2 million to move their installation. That would kick everything forward into another budget period for INDOT, and that budget period

would be beyond 2009. It would most likely be 2010-2011 before it got into a budget period, and, therefore, it might be 2012 before the intersection was improved. I think there's a little more urgency to the surface improvement, and our consultant is telling us that if the headwall situation were improved, they anticipate that we could almost achieve the quantity of storm water flow that we would with a new culvert. Not quite, but almost achieve it, and that that might achieve our goal to a degree that would be, would indicate it would be more appropriate for us to move forward with the surface improvement, because it would serve so many thousands of trips per day. What 40,000 trips per day go through that intersection? I'm not sure of the exact count. But, the urgency is to get that improvement done at Green River and Morgan. Basically, my proposal was that we take our \$500,000 and move it elsewhere. John Stoll, through the Commissioners, would use that \$500,00 for other bridge projects, other drainage projects, and INDOT would design, install and pay for the headwall improvement. The County Surveyor would continue to work with the consultant, American Structurepoint, to modify the permits through the various regulatory agencies to allow for the modification to a headwall, rather than a full blown culvert. If that was agreeable to the Drainage Board, which also is the Commissioners, that we would move forward with that with INDOT. I think it's an appropriate and economical solution to our problem.

President Tornatta: I would like to say that after reviewing all of the messages you've sent, and the notices that, I don't know how we would have gotten that done without you. You were very adamant that we were sticking on the \$500,000, as we were on this board, but, you went over and above and you got them to focus on the headwall, and we could take our \$500,000 and move it somewhere else, still almost achieving the same goals. So, hats off to you, Bill, for the job you did to get that done. I appreciate it.

Bill Jeffers: Thank you. I was happy to be able to serve in that capacity.

Commissioner Nix: Bill, you had mentioned that it will almost accomplish the same, is there an elevation difference that you can put a number to?

Bill Jeffers: I'm still waiting for that figure from American Structurepoint. They indicated, we were looking for a quantity equal to the 100 year storm flow. They're saying they think we can achieve the 75. You know, that's like a theoretical figure that we don't have a full handle on right now. But, rather than, let's say, rather than achieving a full one and one half foot reduction in flood elevation, we may only achieve one foot reduction. But, these are just numbers coming off the tops of our head at this point in time. Both from American Structurepoint and from me. Rather than having those, I know they're in the minutes of the meeting, but before they are cast in concrete, I would like to see those figures from our engineers.

Commissioner Nix: Is there a difference in the amount of insurance all these people would pay if the difference between the 75 year and the 100 year? Because, that was really the whole issue was to make sure that (inaudible) insurable.

Bill Jeffers: It might not make a difference in the amount of the insurance initially, because anytime you're in a flood plain, if it's a designated flood plain by FEMA, you have to pay the flood insurance. Excuse me, if your parcel of property has the blue shading anywhere on that parcel of property, you have to pay the flood insurance, until you get a letter of map amendment, or a letter of map revision. But, it would make it easier if we could lower that a foot, then the developers and the property owners would have to bring in one foot less of dirt to achieve the elevation of their

finished floor, and it would make it more economical for them to obtain , ultimately, overall it would be more economical, because they could go ahead and obtain their letter of map amendment at a lower cost, because they didn't have to bring in as much fill dirt. So, it doesn't achieve everything we wanted to achieve, but there were indications from the Morley study that no matter how much water we got through that intersection, we would never totally erase the zone A flood plain from that five square miles. We would just be able to lower it. So, considering that, I think it's the most expedient, appropriate and economical way we can do it.

President Tornatta: Alright.

Hunter Chase Estates: Preliminary Plan

President Tornatta: How about Hunter Chase Estates, preliminary plan?

Bill Jeffers: Okay, that's on your desk in two copies, if you wanted to share a copy with the Commissioners to your right. That's located on Green River Road, catty corner from the soccer complex, south of Millersburg Road on the east side of Green River. It's a mixed use development with condominiums proposed along with strip commercial development fronting on Green River Road. Basically, the developer at this time has to record a plat in order to build a model condominium. He's been through site review and got approval from everyone else on this single model condominium. The plan in front of you is from Sitecon. There are two representatives of Sitecon in the audience should you have any specific questions.

President Tornatta: This is directly across from the soccer complex, is it not?

Bill Jeffers: Slightly to the north.

President Tornatta: Yeah.

Bill Jeffers: I mean, just catty corner to the north.

President Tornatta: Right, okay.

Bill Jeffers: You've seen them moving dirt there.

President Tornatta: Yeah, and adjacent to the Randall Craig—

Bill Jeffers: Yes, sir.

President Tornatta: Yeah.

Bill Jeffers: That's correct. The other rezoning that took place to the south of it right next to the creek. Was that the Randall Craig, I believe? Kendall.

President Tornatta: Kendall, yeah, Kendall.

Bill Jeffers: This is immediately north of Kendall, that's correct. Kendall is right across from the soccer complex.

President Tornatta: Yes.

Bill Jeffers: This is a preliminary plan. So, there may be modifications that bring it to its final form of approval, but we are asking for approval of the preliminary plan for Hunter Chase.

President Tornatta: Motion?

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered.

Stonefield Crossing Subdivision: Revised Final Plan

Bill Jeffers: The second and last drainage plan is Stonefield Crossing Subdivision. This is where Menard's or Menard's Home Improvement would go. It came to the attention of the developer through the Corp of Engineers that his proposed alignment for a 48 inch pipe was not in accordance with the Corp of Engineers jurisdiction. So, he's had to move that and run it parallel with Green River Road. The plan has been presented to the County Engineer, who may make comments to you during a subsequent hearing. However, the plan comports with the drainage ordinance. I think I made note in my e-mail to you that it would be subject to a mandrel testing. It's a very important drainage structure, but the engineer also submitted details of the bedding of the pipe that was of great concern to John Stoll and myself. The bedding details comport with the manufacturer's recommendations. So, therefore, the County Surveyor recommends approval of the revised final plan for Stonefield Crossing Subdivision.

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered.

**Permission to Advertise the Notice to Bidders for
2008 Regulated Drain Maintenance**

Bill Jeffers: The last order of business I have to come before you is a notice to bidders. On the copy that I handed to Commissioner Korb and Commissioner Nix, you'll notice a typographical error where I appointed Jeff Korb President of the Drainage Board. I'm sorry for my mistake. On the copy that I put in front of Madelyn and Commissioner Tornatta, I have—

Commissioner Korb: Who is the President.

Bill Jeffers: —who is the President, I crossed out member and put Troy Tornatta, President. I crossed out President behind Jeff Korb and put member.

President Tornatta: I'm going to have nightmares about this all night tonight.

Bill Jeffers: I know. You wish that you got out of being President, but, nonetheless, if you would sign that, we'll be able to advertise on two subsequent days, seven days apart, and then open the bids on April 1st.

President Tornatta: Motion?

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered. Any other business?

Bill Jeffers: I just wanted to let Commissioner Korb know that he missed some exciting action while you were out of the room.

Commissioner Korb: Did I?

Bill Jeffers: I have nothing else to bring before you.

Bill Jeffers: Yeah, you can stay up and watch it.

Commissioner Korb: How did we ever do with the three families and the one individual with the drainage issue? Is that what you talked about?

Bill Jeffers: We have moved that, the Board has moved that hearing forward to April 1st for collection of more information to bring back to you.

Commissioner Korb: Okay.

Public Comment

President Tornatta: Okay, public comment? Anybody? With no public comment, motion to adjourn?

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered.

(The meeting was adjourned at 6:55 p.m.)

Those in Attendance:

Troy Tornatta

Bill Jeffers

Others Unidentified

Jeff Korb

Ted C. Ziemer, Jr.

Members of Media

Bill Nix

Madelyn Grayson

**Vanderburgh County
Drainage Board
March 4, 2008**

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**VANDERBURGH COUNTY
DRAINAGE BOARD**

Troy Tornatta, President

Bill Nix, Vice President

Jeff Korb, Member

(Recorded and transcribed by Madelyn Grayson.)

**VANDEBURGH COUNTY
DRAINAGE BOARD
MARCH 18, 2008**

The Vanderburgh County Drainage Board met in session this 18th day of March, 2008 at 5:45 p.m. in room 301 of the Civic Center Complex with President Troy Tornatta presiding.

Call to Order

President Tornatta: I would like to start the Tuesday, March 18th Vanderburgh County Drainage Board meeting. It's about a quarter till six.

Approval of the March 4, 2008 Drainage Board Meeting Minutes

President Tornatta: I ask for approval of the minutes.

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered.

Highway 41 Industrial Development: Bramco Parcel

President Tornatta: Mr. Jeffers?

Bill Jeffers: Good afternoon. Our first and only drainage plan tonight is Highway 41 Industrial Development. It's a Bramco parcel. What's on our overhead display is the entire 40 acres being developed by Industrial Contractors. John Stoll had just brought in the roadway that comes in and accesses this for your approval in your previous meeting, across from Boyle Lane and then into this parcel. What I'm bringing forward to you is the northern 16 and a half acres, up here where it says Highway 41 Industrial Park. Now, we'll see a shot of what that 16 acres is going to look like. It's a Bramco development. It will consist of a display yard for their machinery that they have for sale, heavy equipment, and their parking area for customers, their warehouse and parts, their equipment shop, their truck service parking area, and their rental return area. They also lease and rent equipment. I believe it's an industrial zoning. The drainage plan is on your desk. It's been prepared by Bernardin Lochmueller and Associates. It's surrounded on two sides by farm ground, so, I have asked for a berm along the north line and around the west line to direct all the interior drainage into a drainage basin that's up here in the northeast corner on your plan. The rest of the drainage that's not captured in that method will run down here to an existing detention basin that Industrial Contractors has already implemented in the southwest corner. Then that discharges into an existing farm drain. The one up here in the northeast corner discharges into U.S. 41 right-of-way. The plan comports with the drainage code. The County Surveyor recommends approval of the final drainage plan for Highway 41 Industrial Development, Bramco parcel.

President Tornatta: Any questions? I look for a motion to approve.

Commissioner Korb: So moved.

President Tornatta: Second and so ordered.

Bill Jeffers: The only other item of business—

Commissioner Nix: And, I abstain. I'm sorry.

Bill Jeffers: I'm sorry. Excuse me.

Commissioner Nix: I abstain.

Waterford Place Subdivision, Section II: Withdrawn

Bill Jeffers: I did have Waterford Place Subdivision, Section Two on the agenda, but due to some notification issues, that will be brought to you April 1st, so that we can notify a neighbor. We want to make sure he got his notification.

Approval of Ditch Maintenance Claims

Bill Jeffers: I have two claims for work done on Barr Creek and Maidlow Ditch. This is for the final 15 percent retainage fee, guaranteeing completion. We have inspected it, it is complete, everyone's been paid. We recommend approval of these two claims.

Commissioner Nix: Move approval.

Commissioner Korb: Second.

President Tornatta: So ordered.

Bill Jeffers: Thank you.

Public Comment

President Tornatta: Alright, any other business?

Commissioner Korb: Motion to adjourn.

President Tornatta: Hold on.

Commissioner Korb: Sorry.

President Tornatta: Any public comment? I don't think I see anybody. Okay.

Commissioner Korb: Motion to adjourn.

Commissioner Nix: Second.

President Tornatta: So ordered.

(The meeting was adjourned at 5:47 p.m.)

Those in Attendance:

Troy Tornatta	Bill Nix	Jeff Korb
Bill Jeffers	Clay Havill	Madelyn Grayson
Others Unidentified	Members of Media	

**VANDEBURGH COUNTY
DRAINAGE BOARD**

Troy Tornatta, President

Bill Nix, Vice President

Jeff Korb, Member

(Recorded and transcribed by Madelyn Grayson.)

**VANDEBURGH COUNTY
DRAINAGE BOARD
APRIL 1, 2008**

The Vanderburgh County Drainage Board met in session this 1st day of April, 2008 at 5:14 p.m. in room 301 of the Civic Center Complex with President Troy Tornatta presiding.

Call to Order

President Tornatta: Okay, let's go. Good afternoon. We're going to start the Tuesday, April 1, 2008 Drainage Board. It's about fourteen minutes after five.

Approval of the March 18, 2008 Drainage Board Meeting Minutes

President Tornatta: I need a motion for approval of the minutes.

Commissioner Korb: So moved.

Commissioner Nix: Second.

President Tornatta: So ordered.

Cross Pointe Boulevard Extension Drainage Plan

President Tornatta: We're going to skip this first part, if that's alright with you, Mr. Jeffers.

Bill Jeffers: Right. I have three drainage plans for your approval. You've probably seen the first set of plans. It is the Cross Pointe Boulevard extension drainage plan, where the County Commissioners contemplate building on the extension of Cross Pointe Boulevard through the TIF district, and the drainage for that new boulevard will discharge into Kelly Ditch, a regulated drain in Vanderburgh County, along the south side of Morgan Avenue, in front of Lowe's. I believe it's called Burkhardt Crossing commercial subdivision, out by the YMCA. Here's a set of plans, but I know you've seen it. John Stoll has been working with you on that. The reason it comes to the Drainage Board is whenever an owner, in this case the County Commissioners, wants to construct or extend a drain, and the outlet of that drain is into a regulated drain, it is subject to the drainage statute, which requires that the owner, in this case, the Vanderburgh County Commissioners, file with the County Surveyor for permission to connect the new drain to the existing regulated drain. The owner shall file the request, along with plans and specifications, of the new drain to be constructed, and the County Surveyor must determine that the regulated drain, Kelly Ditch, in this case, is adequate to handle the additional flow of water. The County Surveyor has examined the plans that were prepared by Bernardin Lochmueller and Associates for the new drain and finds that Kelly Ditch, the regulated drain is adequate to handle the additional flow of water from the new drain, and recommends that the County Surveyors grant, or excuse me, recommends that the County Drainage Board grant approval for the connection to Kelly Ditch.

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered.

Waterford Place Subdivision: Section II: Final Drainage Plan

Bill Jeffers: The second project is Waterford Place Subdivision, Section Two. On your screens it is outlined in purple. It's on the west side of Burkhardt Road, between Vogel and Columbia, oh, let's see some landmarks would be Sonic restaurant, Los Bravos, Kruckemeyer and Cohn, etcetera. Back in here is the land that is going to be now developed with new commercial shops. I withdrew it from the agenda last meeting because of notification. All of the adjacent owners have now been notified. The County Surveyor has reviewed the plan and finds that it comports with the drainage code and recommends approval of the final drainage plan for Waterford Place Subdivision, Section Two.

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered.

Commissioner Korb: For those of you sitting in the audience, we kind of switched gears on you. We were originally starting as a County Commissioner meeting, of which I'm the President, and we still have some unfinished business there opening up some bids that our County Attorney is doing. So, we went to a second department meeting, which is the Drainage Board, which Mr. Jeffers is the head of that department, but Commissioner Tornatta's the President. So, in case you're trying to figure out how that transitioned, that's how and why that worked. So, just kind of sometimes it's easier to know what's going on, if you know what's going on.

Grand Traverse Pie Company: Waterford Place Subdivision: Lot 6

Bill Jeffers: Okay, I placed on your desk another drainage plan for the Grand Traverse Pie Company. A new restaurant to be built at the location of the existing Old National Bank building, which is in the process of being demolished this week, on lot six of Waterford Place Subdivision at the corner of Vogel Road and Burkhardt Road. The new Old National Bank building has been constructed and is occupied, just north of Sam's Wholesale down here on, this photograph is three years old, so, you don't see it, but it's in this lot right here across from Sonic. Okay? So, Old National has occupied their new bank building, the old bank building is being torn down, and Grand Traverse Pie Company will build a restaurant on that lot. They're converting the existing drainage facilities into underground storage facilities so that they have sufficient parking for a restaurant. The County Surveyor has reviewed the drainage plan, finds it comports with the drainage ordinance, and recommends approval of the revised storm drainage plan for lot six, Waterford Place, Grand Traverse Pie Company.

Commissioner Nix: And, excuse me just a second, when you say revised, it was revised from the original construction design when ONB was put there to this new design? The reason it's coming back in front of us?

Bill Jeffers: Yes, sir.

Commissioner Nix: Okay, thank you.

Commissioner Korb: So moved.

Commissioner Nix: Second.

President Tornatta: So ordered.

Bill Jeffers: I have no ditch claims from ditch contractors this month. We've pretty much wound up and paid everyone for 2007. When we let the bids at the next Drainage Board meeting, we'll start our new contracts for 2008. So, right now we're in between and everybody's paid.

Permission to Open Bids for 2008 Annual Ditch Maintenance

Commissioner Tornatta: Let me have a motion to open the bids for the annual drainage ditch maintenance, if I could.

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered.

Recess of Drainage Board Meeting

Bill Jeffers: You don't want to go back to your Commissioners meeting? Because the only other item of business I have, at this time, other than those bids being opened is the continuation of the Conway-Dennis-Wazny petition hearing. Were you ready to do your, finish up your Commissioners business now?

Commissioner Korb: Yes.

President Tornatta: Okay, we need a motion for recess of the Drainage Board.

Commissioner Korb: So moved.

Commissioner Nix: Second.

President Tornatta: So ordered.

(The Drainage Board meeting was recessed at 5:20 p.m.)¹

Re-Open Drainage Board Meeting

(The meeting was re-opened at 5:22 p.m.)

President Tornatta: Okay, we're going to re-open the Drainage Board. The hopscotch of government. Okay.

Bill Jeffers: Do any of the students need their things signed? Is everything okay back here?

¹Commissioner Nix left the meeting at 5:20 p.m.

President Tornatta: Alright.

Bill Jeffers: Okay. Sometimes some of the teachers require that they have their agenda signed. Okay, are we back in Drainage Board yet?

President Tornatta: Yes.

Continuation of Conway-Dennis-Wazny Obstruction Hearing
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Bill Jeffers: Several meetings ago, a month or so ago you had the hearing of the Conway-Dennis-Wazny petition to the Drainage Board asking them to order the removal of an obstruction behind their properties, that they allege exist on the property of Tim Harris, and causes, and the removal of which would cause better drainage of the petitioners property. I believe we've seen the pictures, had a discussion, recessed that hearing for the purpose of obtaining an estimate for the cost of the removal, and then present that estimate to the petitioners and ask them for their feeling about whether that estimate was appropriate and within the means, or, you know, within reason. I visited the site with Allen Relleke, a licensed contractor for excavation in Vanderburgh County, and he gave me an estimate of \$1,850 for the removal of the obstruction and the restoration of the open drain. Basically, consisting of removing some trees, some brush, some accumulated sediment, chipping the trees, or removing them wholesale as firewood from the property or logs, whatever, running the small branches and brush through a chipper and removing that from the properties, and disposing of it properly, and then using a backhoe to excavate the accumulated sediment and restoring the open channel. He proposes to waste the excavated dirt into low areas and eroded areas within the project site, rather than cart it off. That's one way he lowered the price. I would hope that that spoil would not have any vegetated debris in it, it would be mostly dirt. I will see to it that that's the case when we're on the job site, if it goes forward. Then he proposes to construct somewhat of a berm on the south side of this new channel to prevent any water hopping over onto the petitioner's land, so that it all stays within the channel, and to use seven foot wide, approximately 100-120 foot long roll of erosion control fabric to line the new channel and seed it until the grass is restored. I called each of the petitioners and presented that to them, and they indicated that that seemed reasonable to them, although I would prefer that they voice that to you personally. Ms. Wazny has missed three meetings in a row of a club that she's a member of to come down here for the hearing, or to anticipate a hearing. It's a monthly meeting on the first Tuesday of each month, and she said she really wanted to go to that meeting, a social meeting. She indicated to me that she was good with that, so long as her cost did not exceed 25 percent of \$1,850, or a maximum of \$500, for her share. I believe the other petitioners are here and can tell you their feelings. Mr. Harris is here, and he indicated to me Thursday that he would like to still have a chance to talk with his landscaper or his contractor. I asked him to have any estimate from his landscaper or contractor available today. He's here in the audience and can respond to that.

Commissioner Korb: Mr. Jeffers, on yours, with your contractor, or our contractor, does that include leaving the largest majority of the patch of trees that was there?

Bill Jeffers: Several will have to come out.

Commissioner Korb: But, not all of them?

Bill Jeffers: The ones in alignment with the ditch will have to come out, yes, sir.

Commissioner Korb: Right.

Bill Jeffers: There probably are some that will not have to come out, but their roots may be damaged by the excavation of the ditch. I can't guarantee that they will live. Anytime you take out "x" amount of root, you're going to lose the tree within the next year or two.

Commissioner Korb: Right.

Bill Jeffers: So, let's say, 25 to 50 percent of the root is excavated, even though the tree is still standing, it may die. So, I'm not guaranteeing the life of any of the trees that are close to the ditch.

Commissioner Korb: What's going to be the width of this ditch?

Bill Jeffers: Approximately seven to nine feet wide. No, in other words, the ditch will always be at least one foot deep.

Commissioner Korb: Okay.

Bill Jeffers: With three to one side slopes, that makes the minimum ditch seven feet wide.

Commissioner Korb: Okay.

Bill Jeffers: If it gets a foot and a half deep, you're talking ten feet wide.

Commissioner Korb: Okay.

Bill Jeffers: Nine and a half for the side slopes and one foot width on the bottom.

Commissioner Korb: Okay.

Bill Jeffers: So, seven to ten feet wide.

Commissioner Korb: Okay. Great.

President Tornatta: Alright. Do we want to hear from the petitioners first?

Gerald Dennis: Good evening. Gerald Dennis at 2740 Anthony Drive. I'm on the southern, or the eastern end of all the slope down. Very reasonable presentation. I think from my stand point, my wife and I's stand point that it's very agreeable. Just a couple of questions I had was if there are any unforeseen problems as they get into the excavation, how will that cost be relayed to the rest of us? And, there's a utility box in there, I'm not for sure how that's going to be handled, if that's going to be disrupting any kind of utilities that we have? But, other than that, I think that's pretty agreeable with us.

President Tornatta: Okay, and what we can do is have Mr. Jeffers go over with his excavator, and if he sees any issues we would bring that to you before we would go into the process. But, you're okay with the split of the \$1,850?

Gerald Dennis: Yeah.

President Tornatta: Okay.

Gerald Dennis: Thank you.

President Tornatta: Thank you.

Clark Conway: Good evening, gentlemen. Clark Conway, 2724 Anthony Drive. I also agree with the estimate that's been brought forward by Mr. Jeffers. From the conversation I had with him the other day, it sounds fairly reasonable. From what I take he's been in the business for a while and done some prior business with this gentleman. So, from what it sounds like, I'm good with the estimate.

President Tornatta: How did the water affect you over these past couple of weeks?

Clark Conway: Uh, like everywhere else in Evansville. It's been wet, but the damage has been done more or less, you know. The drainage is, you know, sits in the yard until, you know, it flows through, and the ditch is what it is. So, I'm hoping the work can repair that so in the future, you know, we won't have this issue.

President Tornatta: Okay. Thank you.

Clark Conway: Thank you.

President Tornatta: Anybody else from the petitioners side? Mr. Harris?

Tim Harris: His estimate was better than mine. I'm okay with it.

President Tornatta: Okay. Alright.

Commissioner Korb: I'm just dying to know, did you all ever wind up talking with each other?

Tim Harris: No.

Commissioner Korb: No? Okay.

President Tornatta: Alright. Okay, Mr. Jeffers, I feel that we've got a job well done, and everyone is at least satisfied with the number, which is a good thing.

Commissioner Korb: Do we need a motion?

President Tornatta: No. They've got their information between them.

Commissioner Korb: Okay.

President Tornatta: To the best of my knowledge.

Bill Jeffers: If you want me just to move ahead with Allen Relleke doing the excavation, and presenting the bill to the individuals, split four ways, or presented to them at their residences, that's fine with me.

President Tornatta: If you want to make that in the form of a motion, we can go that direction.

Commissioner Korb: So moved.

President Tornatta: Second and so ordered. That's for \$1,850 split four ways.

Bill Jeffers: Split four ways.

Commissioner Korb: Whoa, what about though the extra cost? That was a question, if there is any extra cost incurred?

Bill Jeffers: Sounds to me like Allen's going to have to eat it.

Commissioner Korb: Okay.

President Tornatta: I don't--

Bill Jeffers: I don't anticipate, I don't mean to put it that way.

President Tornatta: I understand.

Bill Jeffers: I queried Allen repeatedly at the site, what if we run into, you know, he said I will notify the call before you dig, Indiana underground--

President Tornatta: Right.

Bill Jeffers: --I'll take care of that. I don't see any problem. I said, you know, what if we run into something, he said, I don't see any problem.

President Tornatta: Well, it's not as drastic, because it's a foot. You're just digging a foot.

Bill Jeffers: We're digging a shallow ditch--

President Tornatta: Right.

Bill Jeffers: --that will match what's upstream--

President Tornatta: Right.

Bill Jeffers: --and match what's downstream, and in between will be a blend of that.

President Tornatta: I don't anticipate there will be much of a problem there. Okay.

Commissioner Korb: You all are free to go if you want to. There's no need to stick around.

President Tornatta: Bids?

Tim Harris: One other question.

President Tornatta: If you could come up here, please.

Tim Harris: How are they going to get to the site?

Bill Jeffers: Oh, yeah, Tim's question is how are they going to get to the site? Allen thought he could come through the end of Caesar Court, which is a little cul-de-sac that comes off Anthony Drive and go across Ms. Wazny's back lot, which is a vacant lot. We also looked at coming in the, there's a sewer pump station at the very eastern end of this project. It's owned, the easement there is owned by the Water and Sewer Utility as a gravel road. We looked at that, if the ground is dry we could come in and go across the petitioners property from that direction. I thought that possibly Tim might want some of this dirt, if there, you know—

Tim Harris: They want to put it somewhere?

Bill Jeffers: If they need to put it somewhere and don't have a place to put it on the petitioners eroded area, he has a camper at the end of his driveway, I meant to ask him if we could come in his driveway and cross his yard from that side.

Tim Harris: Yeah, the only thing I ask is that the ground dry out enough to do that, to where it doesn't tear the yard up.

Bill Jeffers: Right.

President Tornatta: If you would have Mr. Relleke just get with the lots they would cross.

Bill Jeffers: We will notify any lot owner before we cross their lot, and I hope that the ground will eventually dry out. We're not going to do it under the current soil conditions.

President Tornatta: Okay.

Commissioner Korb: Great.

President Tornatta: Alright. Super.

Discussion of the Recent Flooding Event

Bill Jeffers: While we're waiting for the bids, I suppose that I could say that President Tornatta asked me, during the recent flooding events, if there was some way we could do something to at least partially relieve the flooding of the north side. Now, much of that flooding, I'm looking for some figures, pardon me. Much of that flooding is inside the City of Evansville, you know, and we're talking about Pigeon Creek flooding. A lot of the flooding was in Vanderburgh County, in your jurisdiction, particularly north of Lynch Road, Green River Road area, over towards the Burkhardt Road area. All the areas that, I wish I could find my notes. Anyway, we went out and did some high water investigation and shot the elevations of all the high water marks in your jurisdictional area, and those areas of concern like Voight Road where the National Guard went in and helped sandbag. The areas out on Green River Road north of Heckel where the National Guard sandbagged, and that type of thing. We found some pretty curious things. If I could find my, here they are, the good news is that this was not a 100 year flood. This was a foot or two short of the elevation you can anticipate during the 100 year flood. So, we didn't have as much damage as could possibly be caused during a 100 year event. Of course, then

there's bad news that when we do have a 100 year event, it will be worse than what we experienced this month, in the month of March. I started down at the Marina, where the river gauge is, and the water at its highest point was 372.5 feet above sea level. The 100 year elevation is 376.3, or almost four feet higher than what it was in March. We then went to Weinbach Avenue on the outside of the levee, again the water was about, the river was at 373, and the base flood elevation for that spot, that's in front of Mike's Towing, would be 379, or six feet above what it was in March. We continued around on Green River Road, etcetera, to Lynch Road. At Good Shepherd parking lot on Burkhardt Road, north of the nursery there, Combs Landscape, there's a large church parking lot that was flooded. That was flooded at 381.6, the base flood elevation is 384, or two and a half, almost two and a half feet higher. That was true all through that Hirsch Road area, that elevation. At the end of Peacock Lane we shot an elevation of high water at 381.7. FEMA tells us that the high water will get up to 384. So, 381.7 is 2.3 feet lower than what the potential. With the Spring Lake Apartments, on Spring Valley Road, it was 380.5, that's just below Day School, to give you an idea, across from Schnuck's, base flood elevation there is 383.5. So, we were exactly three feet below the 100 year elevation there. Oh, yeah, Morgan Avenue, in front of the old Romain Buick dealership at Theater Drive, in 1983 when INDOT said that they were going to build that new bridge there, we asked them to build the road level instead of going through the dip. That we estimated that the high water would be 382 during a 100 year event. They told us they had already designed that bridge and that they were going to build it the way they built it. For us to go on back to our office and take care of local business. In 1983 it flooded up to the guardrail, half way up the guardrail. Well, this time it did the same thing, 379.2, which is short of the 100 year event, but it closed that road for two or three days, didn't it? Lynch Road I've always thought was an obstruction, because the upstream 100 year elevation set by FEMA is 384, and on the south side downstream side of Lynch Road it's 383, a one foot step. But, when we shot the high water there, they were both 380.6, or just, you know, again, 2.4 feet below the 100 year elevation. However, when we went up to Elmrige, no, excuse me, 379.7. But, when we went to Elmrige, which there's a house there that has been flooded several times since it was built in 1983, the elevation there is 382. You probably got, well, you saw that on t.v., Elmrige Drive, there was a couple of homes pumping water there. The water there was 380.6, and the base flood elevation is 382. So, anything built below 382 is going to flood. Apparently, some of those houses, the garages of two of them, and the finished floor living area of one of them is below base flood elevation, because at 380.6 they flooded this month. Voight Road, 381.05, the base flood elevation there is 385. So, anything that flooded in March at 381.05, is going to have another four feet of water in it if we ever have a 100 year flood.

Commissioner Korb: So, do you have any solutions to—

Bill Jeffers: I know I'm reading the bad news here.

Commissioner Korb: I mean, you can go down—

Bill Jeffers: Do I have any solutions? We could open up Pigeon Creek completely. Go down through there and take every tree out of the channel, remove every obstruction, and I still think we would have some degree of flooding when the river is high and you get an eight inch rain storm. Ten inch rain storm in Gibson County, eight inches in Warrick, and six to eight inches in Vanderburgh County. I still think you will have some degree of flooding. We could look at installing additional waterway openings under Lynch Road possibly, relieve some of that upstream of

Lynch Road. If you wanted to initiate an engineering study on that, that might be a possibility. There's obviously a one foot step in the flooding from the south side of Lynch Road to the north side. So, that's a possibility that we could relieve some of that. You might have to go through some federal departments to get that done. My suggestion there would be to hire out an engineering study to look at that, if that's your pleasure. Possibly there's some federal or state money we could obtain to do some snagging and get some logjams out of Pigeon Creek, that might help a little, but I still think that when you have some of these monumental storms, you're gonna still have flooding of houses that were built below the flood plain elevation.

President Tornatta: But, also as we talked, if the river is at an elevation that it's pushing back water, you're still going to have—

Bill Jeffers: You're pretty much done.

President Tornatta: —you're going to have water pushed back to a point to where it's going to start to build up.

Bill Jeffers: Yes, you are.

President Tornatta: So, well, we'll keep that, definitely keep that in mind, and appreciate you going the extra effort to get that.

Bill Jeffers: We'll continue to look at things and bring those to you bit by bit. I was just using it as a filler today, because I think they have the bids open now.

Reading of the 2008 Annual Ditch Maintenance Bids
--

President Tornatta: Alright, how about those bids?

Ted C. Ziemer, Jr.: Alright, I'm going to read the bidder, and just say the name once and then I'll read all of the various ditches on which that bidder bid, and then go to the next bidder. So, the first is RR Rexing Farms, for Pond Flat Lateral A, \$743.54. For Pond Flat Lateral B, \$391.58. For Pond Flat Lateral D, \$641.06. The next bidder is John Maurer. For Baehl Ditch, \$865.25; Hoefling Ditch, \$557.10. The next bidder is Union Township Ditch Association. For Cypress Dale Maddox, \$688.04; for Helfrich-Happe Ditch, \$507.92; for Barnett Ditch, \$243.84; for Edmond Ditch, \$452.88; for Kamp Ditch, \$446.40. The next bidder is Rexing Enterprises, Kamp Ditch, \$446, no, excuse me, Kamp Ditch, no, Singer Ditch. Rexing Enterprises, only one bid, Singer Ditch, \$367.50. The next bidder, Eldon Maasberg. For Kneer Ditch, \$410.40; Maasberg Ditch, \$220.60; Wallenmeyer Ditch, \$1,253.25; and Baehl Ditch, \$1,102.40. The next bidder is Big Creek Drainage Association. For Rexing Ditch, \$2,051.52; Maidlow Ditch, \$4,861.57; Barr Creek Ditch, \$4,461.53; Buente Ditch, \$4,039; Pond Flat Ditch, \$2,948.16. The next bidder is Shideler Spray Service, for dormant spraying. For the Aiken Ditch, it's \$340, and the Eagle Slough Ditch, \$5,407.20; Barnett Ditch, \$260.13; Cypress Dale Maddox Ditch, \$728.77; East Side Urban South ½ Ditch, \$2,472.22; Edmond Ditch, \$443.95; Henry Ditch, \$346.51; Keil Ditch, \$256.02; Sonntag Stevens Ditch, \$586.92. For, let's see, foliar spraying, on the, still by Shideler Spray Service, for foliar spraying on the Aiken Ditch, \$842.43; on Eagle Slough, \$4,776.36. Still Shideler Spray Service for broadleaf and brush spraying at East Side Urban North ½, \$1,795.79, and for Keil Ditch, \$256.02. For East Side Urban South ½, \$2,472.22; for Kolb Ditch, \$380.37; for Harper Ditch, \$250.75; and for Sonntag Stevens Ditch, \$586.92. Then, Shideler Spray Service—

President Tornatta: Ted, Ted, Ted, hold on one second.

Ted C. Ziemer, Jr.: I'm sorry?

President Tornatta: We got, go under the broadleaf and brush for Shideler.

Ted C. Ziemer, Jr.: Yeah?

President Tornatta: And you've got East Side Urban North ½, you skipped like three there. You got Keil, Kolb and Sonntag Stevens.

Ted C. Ziemer, Jr.: Okay, I'm sorry. Alright, we'll start up with broadleaf and brush, Eastside Urban North ½, \$1,795.72; Keil Ditch is \$256.02; then we've got some extra that are not on your sheet, and they are written in, so that's what your problem is, I think.

President Tornatta: Oh, okay. Okay, okay.

Ted C. Ziemer, Jr.: Then, the next one is Eastside Urban South ½, \$2,472.22. Then Kolb Ditch, \$380.37. Another one not on your list is Harper Ditch, \$250.75. Then, on your list, Sonntag Stevens, \$586.92. Then, Shideler Spray Service for sterilization of ditch bottoms, Eastside Urban South ½, \$1,677.15.

Commissioner Korb: It's for bugs, you twit.

Ted C. Ziemer, Jr.: For Harper—

Linda Freeman: He needs a drink.

Ted C. Ziemer, Jr.: No, I'm fine. For Harper Ditch, I hope that's on t.v., \$221.25. For Kolb Ditch, \$335.62. For Sonntag Stevens Ditch, \$517.87. Now, the next bidder, Terry Johnson, for Aiken Ditch, \$4,677; for Kolb Ditch, \$1,831.83.

Linda Freeman: Once you get tickled, it's hard to get un-tickled.

Ted C. Ziemer, Jr.: It's okay. We'll be alright.

Bill Jeffers: Well, Ted, in our business we like those ditch bottoms sterile. If everybody's—

Ted C. Ziemer, Jr.: Come on, don't get me going again. For Harper Ditch, \$2,299.53; for Eastside Urban South ½, \$1,130.27; for Sonntag Stevens Ditch for fall spraying, \$8,344.55; and for Sonntag Stevens Ditch for spring spraying, \$2,400.86. That also was not on your list. Now, here's a whole list of them that aren't on your list. Mark Naas, N-a-a-s, Kolb Ditch, \$1,296.25; Stockfleth Ditch, \$990; Eastside Urban South ½, \$899; and Aiken Ditch, \$3,900.

President Tornatta: That was wonderful.

Bill Jeffers: Thank you, Ted.

President Tornatta: Motion to take those under advisement now?

Commissioner Korb: Second.

Bill Jeffers: Okay, we're going to bring those back to you—

President Tornatta: So ordered.

Bill Jeffers: —after we've examined them to make sure everything's in order, make sure we have sufficient budget, etcetera, and we'll be back on Tuesday, Linda will be back on Tuesday, April 15th.

Ted C. Ziemer, Jr.: We don't have to read them all again then.

President Tornatta: What?

Bill Jeffers: Look, as long as those ditch bottoms are good and clean, we're happy.

President Tornatta: Okay, and sterile. Okay, any other business?

Bill Jeffers: And, when they say sterile, what they're doing is they're spraying a herbicide on there that kills all the weeds in the bottom of the ditch. On the sides we're just after the broadleaf and the brush and we leave the grass. In the bottom we don't want anything, so that's why it's called sterile.

President Tornatta: Any other business?

Discussion and Reminder of High Water Safety for Drivers

Bill Jeffers: I don't think I do have, oh, Jeff asked me something right when I was, I hadn't quite made it to Millersburg Road, in front of Christian Fellowship Church with my elevations, but what I wanted to say there was that when we were out there two or three different times, the first time I went out there I saw a really nice car over in the ditch, I mean, off the road, and that's a deep ditch there, and the passenger side window was open, and the drivers side window was full of water, and you could see that the person had to climb out of the ditch, climb out of the water to escape the rushing water. Okay? I hope there's still people watching Channel 9 right now and aren't all over at the stadium hearing, I'm surprised we weren't pre-empted, but, we tell them over and over again, do not drive through moving water on these roads. There were barricades there. These little cars float, and when they float, the wheels are up off the pavement, and then they're washed right over into this ditch. I'm surprised that person didn't drown.

President Tornatta: Unless they have better tires.

Bill Jeffers: Unless they have better tires? And, I know where you get some, but, also—

President Tornatta: You set that up.

Bill Jeffers: —then, when I went back out there two days later, there was an SUV over there in the ditch. The other one had been hauled off, there was a brand new SUV over in that ditch. So, these cars, you might think you have a four wheel drive, etcetera, these people were over in that ditch and could have drowned. In the meantime, they lost two good cars. So, please don't drive through this water.

Discussion of 2008 Road School & Surveyors Conference

President Tornatta: Saw you at road school. You went to the Surveyor's conference—

Bill Jeffers: Yes.

President Tornatta: –anything that we need to know out of that conference?

Bill Jeffers: More regulation on its way. You know, every time I go up there, there's people from DNR and FEMA, etcetera, more regulation on the way.

President Tornatta: Okay.

Bill Jeffers: I wish I could, and really, it's all about local government, and I think we do a good job locally, the city units, the county units, Warrick County, whatever, but for some reason it just seems like more and more at the higher level they're trying to pile it on us, but they don't send any funds down here with their mandates.

Commissioner Korb: Right.

Bill Jeffers: I know that's a litany and I'm preaching to the choir, but that's all I learned up there.

President Tornatta: Alright.

Bill Jeffers: More regulation on the way.

Commissioner Korb: Motion to adjourn.

Public Comment

President Tornatta: Well, public comment? Anybody? Okay. Motion to adjourn, so moved.

(The meeting was adjourned at 5:55 p.m.)

Those in Attendance:

Troy Tornatta
Ted C. Ziemer, Jr.
Clark Conway
Others Unidentified

Jeff Korb
Madelyn Grayson
Tim Harris
Members of Media

Bill Jeffers
Gerald Dennis
Linda Freeman

**VANDERBURGH COUNTY
DRAINAGE BOARD**

Troy Tornatta, President

Jeff Korb, Member

(Recorded and transcribed by Madelyn Grayson.)

**VANDEBURGH COUNTY
DRAINAGE BOARD
APRIL 15, 2008**

The Vanderburgh County Drainage Board met in session on this 15th day of April, 2008 at 5:00 p.m. in room 301 of the Civic Center Complex with President Troy Tornatta presiding.

Call to Order

President Tornatta: Good afternoon. We're going to take our meeting out of order real quick, and go to the Drainage Board meeting.

Approval of the April 1, 2008 Drainage Board Meeting Minutes

President Tornatta: If we can quickly get approval of the Drainage Board minutes.

Commissioner Korb: Motion for approval of Drainage Board minutes.

Commissioner Nix: Second.

President Tornatta: So ordered.

Awarding of 2008 Annual Ditch Bids

President Tornatta: Linda?

Linda Freeman: Yeah! Basically, I've given you all a spreadsheet of the ditches that, or the bids that we opened on April the 1st. There were only about –

Commissioner Korb: Is this the one that wouldn't end? Is that the one we had?

Linda Freeman: Yeah.

Commissioner Korb: Okay.

Linda Freeman: When Ted and I sat and opened all the envelopes. Actually, I think Marissa started part of it, and then–

President Tornatta: Alright.

Linda Freeman: Basically, there's 50 contracts that we would like to award to the lowest bidder in each case, We had like five contested bids, and that was it. I mean, I did send notices to a lot of people. It actually got into a Construction News Digest magazine, but we just don't get that much interest.

President Tornatta: Okay, and once you got these bids back, these are qualified recommendations?

Linda Freeman: Yeah, everything was included.

President Tornatta: Okay.

Linda Freeman: Yes, everything was in order. We had a couple of bids off a penny, but that was a penny.

President Tornatta: Okay. Motion to approve?

Commissioner Nix: Move approval.

Commissioner Korb: Second.

President Tornatta: So ordered.

Madelyn Grayson: Can I just have a recommendation that once she gets the contracts signed that I can have permission to stamp and initial the Commissioners names on the contracts?

Linda Freeman: On the contracts, there's going to be 50 of them when I get them all back. But, I'll send them out to the different bidders, they'll send them back to me haphazardly, and eventually I'll get them all back. I usually take them to Madelyn, and previously, I mean, it's just what says, you know, how many feet—

President Tornatta: Okay, let's get a motion to approve that Madelyn would sign that for us, if that's okay?

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered. Is that it?

Linda Freeman: That's all. Thank you so much.

Commissioner Korb: You're welcome. Good night.

President Tornatta: Alright, motion to adjourn?

Commissioner Nix: I make that motion.

Commissioner Korb: Second.

President Tornatta: So ordered.

(The meeting was adjourned at 5:03 p.m.)

Those in Attendance:

Troy Tornatta

Ted C. Ziemer, Jr.

Others Unidentified

Bill Nix

Linda Freeman

Members of Media

Jeff Korb

Madelyn Grayson

**VANDERBURGH COUNTY
DRAINAGE BOARD**

Troy Tornatta, President

Bill Nix, Vice President

Jeff Korb, Member

(Recorded by Madelyn Grayson. Transcribed by Nicole Grayson & Madelyn Grayson.)

**VANDEBURGH COUNTY
DRAINAGE BOARD
MAY 13, 2008**

The Vanderburgh County Drainage Board met in session this 13th day of May, 2008 at 5:55 p.m. in room 301 of the Civic Center Complex with President Troy Tornatta presiding.

Call to Order

President Tornatta: Motion to open up the Vanderburgh County Drainage Board meeting, Tuesday, May 13, 2008. It's, looks like it's 5:55.

Approval of the April 15, 2008 Drainage Board Meeting Minutes

President Tornatta: Motion to approve the previous meeting's minutes.

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered.

**Aldi Food Store (Burkhardt/Oak Grove): Final Plan &
Drainage Easement Encroachment Agreement**

President Tornatta: Bill? Good afternoon.

Bill Jeffers: Good afternoon, President Tornatta, and other members of the Drainage Board. The first drainage plan is Aldi Food Store at Burkhardt Road and Oak Grove Road. This is a final plan, and it includes an easement encroachment agreement that's on your desk with your Recording Secretary from the developer. There's, the plan is on your desk as well. There are some minor details that must be worked out with John Stoll where the interior drainage system hooks into the existing street system for Oak Grove Road, and regarding the post-construction pollution capture device, which is now required, both of those items are within John Stoll's jurisdiction to approve. With those qualifications, the County Surveyor recommends the final drainage plan for Aldi Food Store in Burkhardt Crossing Subdivision, along with the submitted easement encroachment agreement that also acknowledges a reduction of the regulated drain easement from 75 feet to 30 feet along the west side of the property line. It's a new food store, and it's within your TIF, Burkhardt TIF district.

Commissioner Korb: Okay.

President Tornatta: Do we have a motion?

Commissioner Nix: Move approval.

Commissioner Korb: Second.

President Tornatta: So ordered.

Bill Jeffers: And that would require your signatures on the encroachment agreement, which I will then be recording.

Oak Hill Baptist Church (Oak Hill/Bergdolt Road)

Bill Jeffers: I apologize, we don't have any digital displays for the audience or the Commissioners today. Apparently, the mouse—

Commissioner Nix: Died?

Bill Jeffers: —has died. We called the help desk, but no help is forthcoming tonight. So, we'll do it the old fashioned way. Now, on your desk is the plan for Oak Hill Baptist Church. It's located at Oak Hill Road and Bergdolt Road. It is a final drainage plan. It's for a major expansion of Oak Hill Baptist Church. I've outlined that expansion on the paper plan on your desk. It about doubles the size of their facility. It comports substantially with the county drainage code, and the County Surveyor recommends approval as submitted as a final drainage plan for Oak Hill Baptist Church.

President Tornatta: Motion?

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered.

**Walgreen's at Grant Hill (Boonville-New Harmony/U.S.41):
Preliminary Plan**

Bill Jeffers: Okay, now on your desk is the Walgreen's drug store at Grant Hill. That's located at Boonville-New Harmony and U.S. 41 in Grant Hill commercial subdivision. This is a preliminary plan for your consideration for the development of a drug store on lot four of Grant Hill Subdivision, along with a second building by the same developer on an adjacent, platted lot zoned commercial, but that lot is not part of the Grant Hill plat. A natural creek separates the two lots, and that creek will be piped with a 60 inch diameter pipe, requiring a new drainage easement shown on the final plan, and the final document is to be recorded, and a subsequent easement encroachment agreement to allow paving a parking area over that pipe. So, basically, what I'm saying, the plan looks good, but you're going to have to go forward to a final plan that includes some more details and documents. Also, an existing drainage easement that is platted as a part of Grant Hill, lot four, for a detention basin, will be vacated and replaced with an underground detention vault to serve in lieu of open detention storage to allow sufficient parking for the drug store. So, we're having a slight change in plan there from the original plan. The developer wishes to move quickly with this project, so the County Surveyor is recommending or suggesting a temporary encroachment agreement for the detention basin easement while the easement vacation process proceeds. These and other details of the plan will come to the board with the final drainage plan in a week or two. The County Surveyor recommends approval of the preliminary plan.

President Tornatta: Do I have a motion?

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered.

Arnett Petition to Remove Obstruction: 12th Ave. North of Allen's Lane

Bill Jeffers: Okay, now comes Mr. Jerry Arnett, 3221 North 12th Avenue, Evansville, Indiana, 47712, petitioning the county Drainage Board to order the removal of overgrown brush, trees and other materials impeding the flow of storm water from his property, thence through a drain on other properties to the south of his and into a culvert under Allen's Lane. To give you an idea of how long Mr. Arnett has struggled with this drainage problem, he first came to our office when Commissioner Suzanne Crouch referred him several years ago. Since then Mr. Arnett has requested several persons owning property to the south of his to remove various obstructions and restore the drain to a sufficient condition and grade to serve the entire neighborhood, as it once did. The condition of the drain has not improved, and probably has worsened since Mr. Arnett first sought relief from the periodic and frequent flooding of his property. This petition is his most recent attempt at a solution. When Mr. Arnett first brought the problem to Commissioner Crouch's attention, I visited the drain and made a number of reports to the Commissioners and had correspondence with Mr. Arnett and other interested parties. However, a more recent inspection report by David Horning, Environmental Officer for the County Health Department, which accompanies the papers I laid on your desk here, also accompanies Mr. Arnett's petition and describes the problems as clearly and as accurately as any report I could offer you at this time. But, I will reinspect the site and update my report to you and file it with your Board, so that you can set a hearing date, no sooner than 30 days, and no later than 90 days from today, according to statute. The submittal is with your Recording Secretary, along with the filing fee, and if you would like to wait for my report to set a hearing date you may, or you can set one today, as long as it's within 30 days from today and 90 days from today.

Ted C. Ziemer, Jr.: Then, when that notice is sent, or the date for the hearing, you then notify all the interested parties, do you?

Bill Jeffers: Mrs. Grayson notifies all of the parties.

Ted C. Ziemer, Jr.: Okay, I mean, is that by publication? I don't remember. Or by certified mail?

Bill Jeffers: We have to send out registered—

Madelyn Grayson: Certified mail.

Bill Jeffers: —certified mail.

Ted C. Ziemer, Jr.: Certified mail.

Bill Jeffers: Yes, sir.

Ted C. Ziemer, Jr.: Then, how does she know who the respondents are to whom to give notice?

Bill Jeffers: The petition includes all the addresses of the respondents—

Ted C. Ziemer, Jr.: Thank you.

Bill Jeffers: –and then we go through the property tax records to find the appropriate owners.

Commissioner Korb: Is there a reason why this wasn't remedied before, Bill? What's the scoop on that?

Bill Jeffers: Basically, Mr. Arnett did not want to file the petition, he wanted to do it in a friendly, neighborhood manner and went to each of the property owners and mailed letters to all the property owners, etcetera. He made contact with them in some form, but he got no help.

Commissioner Korb: Okay.

Bill Jeffers: No one cleaned up the mess, the overgrown mess in the ditch.

Commissioner Korb: And this has been going on for how long? Four years?

Bill Jeffers: Since at least 2001, was it?

Commissioner Korb: Okay.

Bill Jeffers: I would have to check the record, but–

Commissioner Korb: That's okay. It sounds like it's too long.

Bill Jeffers: –that's why I put Commissioner, or Suzanne Crouch's name in there to give you an idea, because I would have to look in, just a second, we have the file here.

Commissioner Korb: That's okay.

Bill Jeffers: I'm going to say five or six years that he's struggled with it.

Commissioner Korb: Okay. So, now he's taking the legal steps that he needs to to remedy the situation?

Bill Jeffers: Four or five years. Yes, this is his only way to go. He could either go through Circuit or Superior Court saying that the property owners downstream of him are maintaining a nuisance and ask a judge to rule maintenance of a nuisance, or he can come to the Drainage Board and ask you to do what we did a couple of weeks ago.

Commissioner Nix: We know that there's no easements, any kind of drainage easements? This is just property owner property, is that correct?

Bill Jeffers: This is, that's correct, there is no drainage easement, this just is an open ditch that was put in back when the subdivision was first laid out, 30, 40, 50 years ago, and now it's grown up.

Commissioner Nix: Excuse me, Mr. Jeffers, and I know that we've discussed this before, and there's a paragraph in there really that kind of summarizes, I think, what we need to really look at, and this is from Mr. Horning after his investigation says,

“ I cannot find any kind of documentation showing an easement specifically for this drainage ditch. So, the responsibility for removing the brush and debris is that of the homeowner, since the drainage ditch that serves your property is actually located on your property.”

So, what he's saying there is, basically, that each homeowner is responsible for their own debris removal, not to impede the flow of water from one parcel to another.

Bill Jeffers: That's correct.

Commissioner Nix: Okay.

Bill Jeffers: It's not a regulated drain, and it's not in an easement. It may be in a power easement, there is an overhead power line running down through there.

Commissioner Nix: But, it wouldn't affect any kind of a drainage easement?

Bill Jeffers: No, sir. There's no drainage easement there.

Ted C. Ziemer, Jr.: Refresh my recollection, there are two, the statute speaks to two different kinds of drains, I can't remember what they are?

Bill Jeffers: Okay, right. This would be a mutual drain that serves two or more pieces of property and runs across two or more pieces of property.

Ted C. Ziemer, Jr.: Okay, and that's covered by the statute, right?

Bill Jeffers: Yes, sir. It probably would be an unintentional obstruction due to natural growth of brush and vegetation, what have you. So, if we were to resolve it—

Ted C. Ziemer, Jr.: Well, it might be—

Bill Jeffers: —we would probably resolve it the same way we did about a month ago.

Ted C. Ziemer, Jr.: I mean, the growth would be unintentional, but the failure to remove it could be intentional.

Bill Jeffers: Well, that would be a decision of the Board, how they rule on that. That's correct.

President Tornatta: So, in your recommendation, would you rather bring out that report and discuss it with the homeowners first? Or would you rather us set a date?

Bill Jeffers: You know what, it worked real well last month when you had your homeowners in here, and eventually agreed to pony up an equal share of the money and get the job done. That would be more neighborly than possibly going a different direction and levy an assessment, so to speak.

President Tornatta: Right. So, in that, would you recommend going ahead and setting a date at this time, instead of waiting for your report?

Bill Jeffers: Oh, I see where you're going. That would be up to you.

President Tornatta: I'm looking for a recommendation.

Bill Jeffers: As long as we have a hearing no longer than 90 days from today, you're okay. If you want me to try to do it—

President Tornatta: Let's say we set up a date, if needed, we could set up a date, if they come to some consensus, then we don't have to do that, but if they come here, then we have the potential to levy them an amount.

Bill Jeffers: Right.

Commissioner Nix: How about not this next meeting, but the following meeting?

President Tornatta: So, the first meeting in June, June 3rd?

Bill Jeffers: Yeah, sure, okay.

President Tornatta: Will that give—

Ted C. Ziemer, Jr.: Is that enough time to get your report?

Bill Jeffers: Oh, yes, sir. Like I say, this report from the Health Officer is as good as anything that I'm going to be able to give you. He did an excellent job there.

President Tornatta: Is it really giving them enough time to assess damage and get a cost?

Bill Jeffers: Okay, I'll get you a cost by June 3rd. I'll take a contractor out there with me and give you an estimate of what—

President Tornatta: Alright, as long as it gives you enough time. If not, we can do it the third week.

Bill Jeffers: No, I would rather do it as soon as possible.

President Tornatta: Okay.

Bill Jeffers: Yes, sir.

President Tornatta: So, can I have a motion?

Commissioner Nix: I make that in the form of a motion.

President Tornatta: For June 3rd?

Commissioner Nix: I guess, a formal hearing for that? Is that what that's called?

Bill Jeffers: Yeah, it would be a formal hearing that you would set.

Commissioner Nix: That is in the form of a motion.

Commissioner Korb: Second.

President Tornatta: So ordered.

Claims for Ditch Maintenance

Bill Jeffers: Okay, I believe this is the last item that I have, unless there's other business or public comment, is the claims from our ditch contractors. These are standard claims for work completed on regulated drain maintenance.

Commissioner Nix: Move approval.

Commissioner Korb: Second.

President Tornatta: So ordered.

Public Comment

Bill Jeffers: While you're wrapping up there, I will say that, on the two, on the previous meeting, the Commissioner's meeting, I accompanied Mike Wathen and a gentleman from the County Garage to the site of the complaint by Mr. Fehd out on Boonville-New Harmony Road. If there's anything that I could, at a later time, add from my observations, I would be happy to add. And, with regard to the second gentleman—

President Tornatta: Michael.

Bill Jeffers: —Mike Ingram, the new president of the Windemere Farms Neighborhood Association, or Homeowners Association. I had a lot of contact and quite a full file from Mark Perfitt who preceded him in that position. Yes, there is a substantial amount of sediment that has come from the upstream development. I would like to point out that prior to that upstream development, about 17 acres flowed through that pipe into Windemere's lake, and during the planning and before this Board and in our office also with John Stoll's office, we were able to get a plan from the developer upstream that diverted about 12 of those acres into a different detention basin, but still five acres flows through that pipe, which is enough to keep the water in his lake over there.

Commissioner Nix: And, I think his concern or his complaint was really the construction debris and the silting—

Bill Jeffers: Right.

Commissioner Nix: —which are things that we can address.

Bill Jeffers: During these wind storms, the construction debris is loose, finds its way into the ditches, through the pipe and into the lake. I've observed that on many occasions. That's the responsibility of the construction site from which the debris has become fugitive, and should be cleaned up by them. The sediment, while it appears to be significant, at this point, built up over time in minimal amounts, a little bit at a time, and, yes, now it is, there's a significant sediment bar that should be removed from that lake.

Commissioner Korb: Do we need to address the ground covering?

Bill Jeffers: It is strictly an erosion and sediment control issue, covered by Rule Five in the local ordinance.

Commissioner Nix: I know what to do with that.

Bill Jeffers: Mike Wathen is totally aware of it, and has tried to remain on top of it, and the only thing that I really wanted to point out, I guess, is that the development recently changed hands. So, now, the responsibility for the maintenance of the control measures has gone to another corporation, and Mike, if I can speak on his behalf, is trying to bring the second developer up to speed with his responsibilities.

President Tornatta: Okay.

Commissioner Korb: Okay, great.

Bill Jeffers: Just to bring you up to speed on that.

Commissioner Korb: Thanks.

Bill Jeffers: Yes, sir.

President Tornatta: Alright, public comment?

Commissioner Korb: Mr. Fehd?

Wayne Fehd: I'm Wayne Fehd again. I would like to make it part of the record of this meeting that my comments from the meeting, the County Commissioners meeting, are transferred to this meeting.

President Tornatta: And we will be—

Wayne Fehd: So, I don't have to keep going over it again.

(Comments by Wayne Fehd from the May 13, 2008 County Commission meeting are inserted below.)

Wayne Fehd: I'm Wayne Fehd. I live at 13040 Green River Road, Evansville, Indiana.

President Korb: Okay.

Wayne Fehd: The reason I'm here, we've got a section of Boonville-New Harmony Road over at Daylight between Young Road and Schlensker Ditch, when Boonville-New Harmony Road was extended from I-164 interchange, and since it's been built about 18 years ago, or 15, there's been no maintenance done on it. The ditches are full of siltation on the north side, up to the top of the pipes that go underneath the road. I've been in contact with the County Garage over the years, begging them to clean the trees off of the right-of-way. A couple of years ago they took the trees off the north side, on the right-of-way on the ditch on the north side. On the south side they've got about two thirds of it done, they quit in front of the house that sits on the south side. From the house driveway to the creek, or Schlensker Ditch, they've left the trees there. This is creating a problem, the water is bowing out of that south ditch and going across my field. It's got a rut there, it's cut pretty deep, about a foot deep, and, eventually, if we don't get this corrected, it's going to go across that field and cut a new ditch down through that farm.

Commissioner Nix: Mr. Fehd, if you would, let me talk to Mike Duckworth about that tomorrow. He had to leave the meeting today, but I would like to get with him tomorrow, and we'll get out there and take a look at that.

Commissioner Tornatta: That would probably be an opportunity to talk to Bill Fluty, or Bill Jeffers.

Commissioner Nix: Yeah, but it's more a drainage, it's more an easement issue along the roadway, isn't it?

Commissioner Tornatta: It's drainage.

President Korb: It's not an easement issue, it's—

Commissioner Nix: I'm talking about it's within the easement, the county easement for maintenance.

Wayne Fehd: Yes, yes.

Commissioner Nix: Okay.

President Korb: Okay.

Wayne Fehd: As far as I know.

Commissioner Nix: Right.

Wayne Fehd: I'm just here because the water is going out across my field.

President Korb: Sure.

Commissioner Nix: Let me get with Mike.

Wayne Fehd: And it's creating a ditch out across my field.

Commissioner Nix: Let me get with Mike tomorrow, and I'll see what he's done to it, and what else we can do with it.

Wayne Fehd: They've been out there, all of them. John Stoll's been there. Bill Jeffers' been there. Mike Wathen's been there. Nothing gets done. I was promised last year by Scott Wischer that he was going to get the siltation out of the ditch.

President Korb: Scott works for Mike, yes.

Wayne Fehd: Now I'm getting the answer that the county equipment ain't big enough to get that dirt out of that north ditch. That's why I'm here.

President Korb: Okay.

Commissioner Nix: Let me look into it. I know you had mentioned that a couple of weeks ago in a meeting we had, and I did not get a chance to do that yet, but I will.

President Korb: Mr. Fehd, for the record, could you just give us some contact information. Not your home address, well, you gave us your home address, but a

telephone number, or if you would like to do that off the record, you can. We would be happy to contact you and update you.

Wayne Fehd: Yeah, well, if, my home phone number is area code 812-867-5758.

President Korb: Okay.

Wayne Fehd: That's my fax number also.

President Korb: Okay, we'll give you a call.

Commissioner Nix: Yeah.

President Korb: And we'll get to it.

Wayne Fehd: Okay.

President Korb: Okay?

Wayne Fehd: Now, do I need to stay for the Drainage Board?

Commissioner Nix: For this same issue?

Wayne Fehd: Yes.

Commissioner Tornatta: Uh-uh.

President Korb: No, sir.

Wayne Fehd: Okay.

President Korb: Not unless you want to. You're welcome to stay if you want to, but you don't have to.

Wayne Fehd: You'll let me know what you're gonna do?

President Korb: We'll do it. We'll take care of it.

Commissioner Nix: Thanks.

Wayne Fehd: And, how long will that take until I get an answer?

Commissioner Nix: Let me look at it, and we'll get back with you.

Wayne Fehd: Next week?

Commissioner Nix: If I can get out there between now and next week, yes, sir.

Wayne Fehd: Before the next meeting?

Commissioner Nix: Well, we have a meeting next Tuesday, is that right? Yeah, let me try, I'll try to get that done before then.

Wayne Fehd: We want to get that field planted if it quits raining.

Commissioner Nix: Yeah, that's the other thing too.

Wayne Fehd: We started on it last week.

President Korb: Because, I'm wondering, it might be too soft to get equipment in there.

Commissioner Nix: Well, we'll just have to look at it and see.

President Korb: Okay, yeah, we'll take a peek and see what we can find out for you.

Wayne Fehd: Also, where that ditch is bowing out, through that bank there where that culvert pipe, the farthest, I think there's three culvert pipes that goes underneath the road, the farthest east one, where it's bowing out on that bank there and cutting out across the field there needs to be some rip rap there or something to take that water when it comes out of that pipe so it doesn't keep eating on the dirt there.

President Korb: Okay.

Wayne Fehd: I think our biggest problem is that north ditch is full of siltation, about three to four feet deep.

President Korb: Wow.

Wayne Fehd: And, it's level with the pipes that go underneath the road pretty near.

President Korb: Which definitely obstructs the flow.

Wayne Fehd: It doesn't let that water on the north side get off into that creek before the other water comes from Scott School down Schlensker Ditch—

President Korb: Right.

Wayne Fehd: —and where we're putting them all together there and putting pressure on that pipe trying to take that water over there.

President Korb: Sure. We'll get out there and take a look at it as quickly as we can, and we'll contact you.

Wayne Fehd: But, you will let me know something in a couple of weeks?

President Korb: Absolutely.

Wayne Fehd: Absolutely in two weeks? Okay, thank you.

(End of Wayne Fehd's comments from the May 13, 2008 County Commission meeting.)

Wayne Fehd: Another thing too, I wanted to ask, the damage this water is doing going out across the farm, until you get it corrected, the county is liable for the damage of this water going across my farm. Is that right, Mr. Ziemer? You're the attorney here.

Ted C. Ziemer, Jr.: I have not had an opportunity to review that, Mr. Fehd. So, I won't give an opinion at this time. If I'm given a full state of facts, I'll be glad to review that on behalf of the county.

Wayne Fehd: Okay. I feel that it is, and that's why I hope you all act on it before it does come another big rain.

President Tornatta: Alright.

Wayne Fehd: We was talking about two weeks earlier, but in the meantime we may get another one of them 11 inch rains that we got here in March.

President Tornatta: Right. Let's go ahead and get a motion to transfer the minutes of the regular Board meeting to the Drainage Board meeting.

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered. Okay, that's done.

Wayne Fehd: Thank you.

Commissioner Nix: Thank you, Mr. Fehd.

President Tornatta: Any other public comment? If there isn't, motion to adjourn?

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered.

(The meeting was adjourned at 6:12 p.m.)

Those in Attendance:

Troy Tornatta

Bill Jeffers

Wayne Fehd

Bill Nix

Ted C. Ziemer, Jr.

Others Unidentified

Jeff Korb

Madelyn Grayson

Members of Media

**VANDERBURGH COUNTY
DRAINAGE BOARD**

Troy Tornatta, President

Bill Nix, Vice President

Jeff Korb, Member

(Recorded and transcribed by Madelyn Grayson.)

**VANDERBURGH COUNTY
DRAINAGE BOARD
MAY 20, 2008**

The Vanderburgh County Drainage Board met in session this 20th day of May, 2008 at 5:52 p.m. in room 301 of the Civic Center Complex with President Troy Tornatta presiding.

Call to Order

President Tornatta: Alright, now we're going to start Drainage Board immediately.

Commissioner Korb: Does that mean like right now?

President Tornatta: Yes. We did talk about, just kind of going back to our regular meeting, about the USI, those who want to see that report in its entirety, can see the written version and the video version on the Commissioners website.

Madelyn Grayson: Just for the record, I do not have the minutes from the last meeting. So, we'll approve those on June 3rd, for the Drainage Board.

President Tornatta: Good afternoon, Mr. Jeffers. This is the May 20, 2008 Drainage Board meeting, starting a couple, well, 52 minutes after 5:00.

Receive Paul Esche's Comments: Clear Creek Village Subdivision

Bill Jeffers: Good afternoon, President Tornatta. Thank you for taking the rezonings first, and thanks to Mr. and Mrs. Esche for waiting for the Drainage Board meeting to commence. They are the only item of business I have on the agenda for today. I had promised them last week that we would hold a meeting this week, and they wish to come state some concerns they have about a drainage problem in their backyard. Mr. Esche, I believe can come state that for himself, as best as anybody could.

Paul Esche: Thank you. My name is Paul Esche. I live in Clear Creek Village, on the north side off of Mt. Pleasant Road off of 41. I had called the Surveyor's office last fall about a problem with my neighbor behind me. My house was there about three years ago. She built after me. She brought in a tremendous amount of dirt in her backyard to raise the level of her backyard, because she didn't like the slope. That was after she had moved in. Last fall she came over to my house, a couple of different times, complaining of the ditch bank, saying that she couldn't mow it with a riding lawn mower. Which, obviously, you can't. I can't mow my side, I don't expect her to mow her side. She said she wanted to revamp the ditch bank, put even more dirt in it. I told her I didn't think it was good idea. It was going to mess up the drainage system, putting that much more dirt in there and whatever else she was going to do to it. It was my understanding, after talking to Mr. Jeffers, that she had tried to get approval to do that. I guess tried to get a permit. It was denied. So, she proceeded to do it anyway. I'm not sure who she even had do it, but she did it on Labor Day last fall. So, I called the Surveyor's office, and, you know, said that, you know, we have a mess out here. It's out of control. There's straw bales that are completely stuck right over top of the culvert. I knew that it was going to eventually lead to a problem as the water, because we live at the bottom of the hill, so, obviously, water comes draining all the way down. So, I, you know, called to complain to the Surveyor's office. I have a letter here from Mr. Jeffers that he sent certified mail. I got a copy of it, it went to her. The amount of dirt that she put in without approval came to 27 loads. I guess, that's what she told him. We're talking

about a quarter acre here, and this is just in the backyard and on the ditch banks. So, that tells you how big of an issue it was.

Commissioner Korb: Like dump truck loads?

Paul Esche: Yes. I have pictures here of what it's amounted to, which is just a mess. These were taken on two different days. This was taken two weeks ago. As you can see, she takes zero care of her ditch bank, for instance, her weeds. This was taken on Mother's Day. You can actually see that I mowed the ditch bank, because she won't take care of it. You can see, I mean, there's probably four foot of water next to the, on the culvert end. The culvert runs underneath the road. So, I'm not sure exactly what happened. I think, probably what happened is those straw bales that have been sitting there since last fall have started to break apart. I mean, they've been rained on I don't know how many feet, and I would say that probably that straw got sucked back up in the drain. Well, the first pictures that were there that were a couple of weeks ago I saw it, and I was like, great. Luckily, it finally went down, by the next morning it was all the way down. Well, then, that second picture I think was on Mother's Day, it did again, it filled up again and it slowly drains. I don't know if the straw is going to push through. I had talked to Mr. Jeffers about that, he said probably if it's straw, and that's what the issue is, it's probably not going to suck through. So, at this point, you know, I talked to him again and he said that I probably needed to come in and talk to you guys about it.

Commissioner Nix: I was out there yesterday with Mr. Jeffers and Mike Wathen from John Stoll's office, and after looking at that, I mean, she's, you can tell she's added a tremendous amount of dirt and it's changed the contour of her yard to where the dirt is actually sloughing off into the ditch. There's been an attempt to place some rip rap to hold it, but it's not holding. The straw is an obstruction. I would like to, just to cut to the quick here, because I feel like there's something we need to do, and you guys if you have questions, but Mr. Jeffers has made some recommendations in this letter that he sent us, basically to remedy this situation. I think we need to look at this and have this taken care of, or get it taken care of.

President Tornatta: At that point, are you making a motion?

Commissioner Nix: Well, let me back up first. This is a dedicated drainage, the technical term, Bill, so that we're clear on this?

Bill Jeffers: This is a subdivision that was platted during and after 1994. It falls under the ordinance, the most recent drainage ordinance. It is, the area we're talking about is a platted drainage easement, and it clearly states on the plat, I've provided you that with the top of the last page, any pipe, fence, wall, building, pool, patio, planting, stored material, excavation, fill or other construction improvement or addition to, or alteration of the land within the drainage easement requires the prior written approval of the County Drainage Board.

Commissioner Nix: It's obvious what she's done. She's added a bunch of dirt to give her more yard, but, at the same time, it's caused this ditch, problems for the ditch. So, it's not in the original intent or the design of the subdivision that this has taken place.

Bill Jeffers: That's correct. The lady who owns the property at 9223 Big Hill Drive, directly behind Mr. and Mrs. Paul Esche, who live at 9224 Arbor Grove Drive, the lady imported the fill after she came to our office and was explained, as it says in this

letter, rather than read the whole thing, you have it, it was explained explicitly that any alteration of that ditch would require an engineered drainage plan, brought to our office, reviewed and brought to you with the recommendation of approval. And, after you approved it, she could proceed. I would like to point out that pretty much the waterway of the ditch and where she would have put a pipe, had she put a pipe, as she originally intended, was on Mr. Esche's property. So, I did show that to her and say, if you do this work, you're working the majority on his property. You need to get with Mr. Esche before you do anything on his property.

President Tornatta: Mr. Jeffers? At this point, would we need to have a hearing, or is that covered by the denial of the work?

Bill Jeffers: I gave Mr. Esche two options, he could file a petition and have the hearing under the state statute that allows for him to petition you to order the removal of an obstruction. That, as you know, that's a long, drawn out process. Or, the option of coming here today and simply putting it to you that it's our feeling that the drainage code has been violated, and on the last page I give you some pertinent sections of the drainage code for remedies of violation, so that your legal counsel can help you with that decision. If this falls under a direct violation of the drainage code, a more quick and immediate solution might be, as I point out on the next to last page, give the lady ten days to remove the obstructions, and 30 days to initiate the removal of the excess fill dirt, rip rap, and other materials caused by her, to be placed within a platted drainage easement, restore the ditch to its original configuration as the developer constructed it three or four years ago, restore the flow line, the side slopes, the vegetative cover as it was shown in the plans that the Drainage Board originally approved. Or, present an engineered plan for the alterations and go forward in that appropriate method. But, the Drainage Board can impose a penalty, the way I read it, of course, you have your legal counsel to interpret it more exactly to you, of \$100 per day for violation existing after 30 days beyond the date on which a violation notice was sent to the lady.

Commissioner Korb: Mr. Jeffers, I'm assuming you are probably going to hand this off to Mr. Ziemer, how comfortable are you with our legal standing at this point to proceed with what you've recommended?

Bill Jeffers: I feel completely comfortable.

Commissioner Korb: Mr. Ziemer?

Ted C. Ziemer, Jr.: I agree with Mr. Jeffers.

Commissioner Korb: I then make a motion to accept Mr. Jeffers recommendations, as presented to this board, to pursue, to let this lady know, to give her advance notice and to pursue any kind of legal remedies we should be deserving for this. So, I make that motion.

Commissioner Nix: Second.

President Tornatta: Alright, before we, before we go forward with that, I do want to find out one thing. It does say ten days to remove the obstruction, or potential obstruction from open ditch. My question is, could that be changed for a suitable plan to do that? I'm not wanting to prolong this. I guess, what I'm trying to go for is, right now there's a lot of people doing a lot of business, and things are pretty busy.

Commissioner Nix: Plus, Commissioner, while you say that too, it is extremely wet out there right now.

President Tornatta: Right.

Commissioner Nix: That may give them a little bit more time to let things dry out.

President Tornatta: I mean, ten days to come up with a plan is probably appropriate, with business as it is. But, that's just a proposal, to change the wording there, I don't know what you see.

Bill Jeffers: I understand what you're saying, President Tornatta, and I agree with what you're saying, however, I think I asked her, or indicated to her in September 2007 that she should remove the silt fence and the straw bales and so forth before they got stuck in the pipe, and at least to go out and, now, I mean, in other words I don't think ten days would be unreasonable to physically walk out into the ditch and pick up the straw and get it out of the ditch before any more of it washes into the pipe.

President Tornatta: I just don't know her physical condition. I don't know what the scenario—

Bill Jeffers: Well, then order me to do it, because it's got to come out of there.

Commissioner Nix: Well, but besides that, the sloughing off of the dirt—

Bill Jeffers: That—

Commissioner Nix: —and all that, that's something that needs looked into pretty quick.

Bill Jeffers: —right, that's something that might take more than ten days.

Commissioner Nix: The whole hill is sliding into this ditch. Eventually, it's going to all end up in the drain down the way.

President Tornatta: So, do we, is ten days appropriate? I guess, that's what I'm asking, for her to do it, or to come up with a plan? To submit a plan to the county in ten days? That's all really I'm asking.

Bill Jeffers: I understand where you're going. When I wrote this, I was thinking specifically of the straw and the things that are in the ditch right now that could be just picked up by hand.

Commissioner Nix: In half an hour. Somebody could go out there in half an hour and pick it up.

Bill Jeffers: Right, but I understand what you're saying. It's up to you to exercise your prudence.

President Tornatta: I guess, let me ask that to the Board. If in ten days she comes up with a plan, are we okay with that? Then, from there—

Commissioner Nix: I am.

Commissioner Korb: Yes, but after that ten day period, what's her window? Ten days? Thirty days?

President Tornatta: Thirty days to initiate the removal of dirt, rip rap, and other materials, right?

Bill Jeffers: Yes, sir.

Commissioner Nix: Once again, I would like to see a little leniency there. It's extremely wet and to do this she's going to have to probably get on your property a little bit. To keep from tearing up your yard anymore and hers.

Bill Jeffers: That's correct.

President Tornatta: In other words, they have no question that I think we have a wrong situation here, but in making it right—

Commissioner Korb: Shady.

President Tornatta: —we're to respect everybody else's, including—

Commissioner Korb: Shady.

President Tornatta: —contractors.

Commissioner Nix: After looking at that yesterday, Mr. Jeffers, I thought about this going back into the office, the easiest way out for her is to add a pipe to the length of that and bring some more dirt in. Which would help your yard out too.

Paul Esche: Right, right.

Commissioner Nix: If she wanted to entertain that, I don't know.

President Tornatta: Okay, so amending it, the ten days to come up with a plan, keeping the 30 days to initiate the plan. We have a motion and a second. So, I'll order that into the record.

Bill Jeffers: Thank you. For the record, Mr. Esche and I did not speak with each other and coordinate our jackets before the meeting.

Commissioner Nix: Motion to adjourn.

Commissioner Korb: Second.

President Tornatta: So ordered.

Commissioner Korb: Bill, can you stay on top of that for us?

Paul Esche: Thanks, gentlemen.

Bill Jeffers: Yes, sir.

Commissioner Korb: Okay. Thank you, Mr. and Mrs. Esche for your patience.

Bill Jeffers: I'll report back to you June 3rd, when I report back on the one from last week, Mr. Arnett.

Commissioner Korb: Thank you. We are adjourned.

(The meeting was adjourned at 6:10 p.m.)

Those in Attendance:

Troy Tornatta

Bill Jeffers

Paul Esche

Bill Nix

Ted C. Ziemer, Jr.

Others Unidentified

Jeff Korb

Madelyn Grayson

Members of Media

**VANDERBURGH COUNTY
DRAINAGE BOARD**

Troy Tornatta, President

Bill Nix, Vice President

Jeff Korb, Member

(Recorded and transcribed by Madelyn Grayson.)

**VANDEBURGH COUNTY
DRAINAGE BOARD
JUNE 17, 2008**

The Vanderburgh County Drainage Board met in session this 17th day of June, 2008 at 6:25 p.m. in room 301 of the Civic Center Complex with President Troy Tornatta presiding.

Call to Order

President Tornatta: Okay, motion to open the meeting, Tuesday, June 17th, Vanderburgh County Drainage Board meeting.

Approval of the May 13, 2008 & May 20, 2008 Drainage Board Minutes

President Tornatta: Motion to approve the minutes of the prior meeting.

Commissioner Korb: So moved.

Commissioner Nix: Let me ask, was there a drainage board meeting last week?

Madelyn Grayson: It's actually from May 13th and May 20th that you're approving.

Commissioner Nix: Okay, second. I couldn't approve them if they were.

President Tornatta: A motion and a second, so ordered.

Discussion of Ditch Complaint: Theresa Phillips: Schmitt Lane

President Tornatta: Mr. Jeffers. Before you, I've presented a, something from a Karen Joest on a ditch issue. If you will address that, and sometime get in contact with me, and then we can address that at the next drainage board meeting, please.

Bill Jeffers: Yes, sir. I'll bring that back to you July 1st.

President Tornatta: Thank you.

Commissioner Nix: Before we go on, I just wonder on that, if maybe we can contact Mr. Duckworth, because this looks like—

Bill Jeffers: Yeah, I think I have heard of this one, and I believe it came over the e-mail, and I believe, it appears as if that's out in the county roadway right-of-way, possibly—

Madelyn Grayson: They sent it to the Auditor's office again today saying that no one had responded.

Commissioner Nix: Okay, because this is the first I've seen this. I'll call Mike tomorrow, if that's okay, and if there's a problem beyond that, we can address it at the next drainage board meeting, if that's okay, Mr. President?

President Tornatta: Sure.

Bill Jeffers: Well, since it came to us here, we will fill out a report and respond, or pass it on to the appropriate personnel.

President Tornatta: Okay.

Bill Jeffers: Thank you.

Commissioner Nix: So, you will call Mike then on that?

Bill Jeffers: Yes, sir, I'll take care of it.

Commissioner Nix: Okay, thank you, I'll disregard that. Thank you.

Walgreen's at Grant Hill: Boonville-New Harmony & U.S. 41: Final Plan

Bill Jeffers: The first item is Walgreen's at Grant Hill, Boonville-New Harmony Road at U.S. 41. It's a final plan. It will be up on your screen shortly. It will show you that 511 Boonville-New Harmony Road is lot four of Grant Hill Commercial Park, 601 Boonville-New Harmony is an unplatted lot of record east of and adjacent to 511. 511 will be Walgreen's, 601 is a spec building, the project is proposed by Gene Hahn. A creek currently flowing through 601, the unplatted lot of record, will be encased in a five foot diameter pipe requiring a drainage easement be granted via miscellaneous record, because it won't be on a plat, to ensure that that easement's got a chain of title. Since the parking lot is shown paved atop the pipe and within this new easement that will be created, an easement encroachment agreement must be recorded to ensure preservation of the agreement through chain of title. We're still trying to get your picture up for you, but since the plan otherwise comports with the county drainage code and the developer desires to work quickly with construction, the County Surveyor recommends approval of the plan, as presented, with the condition that the certificates of occupancy be withheld until the easement is dedicated and the encroachment agreement is entered into with the Commissioners, and both documents are recorded. These conditions can be enforced through the commercial site review process at APC, of which I'm a member.

Commissioner Nix: Move approval per the Surveyor's recommendation.

Bill Jeffers: There's your, okay, lot four is where Walgreen's will be. The "p", the letter "p" represents the unplatted parcel that will be the spec building. I'm sorry to have interrupted your motion.

President Tornatta: We have a motion.

Commissioner Korb: Second.

President Tornatta: So ordered.

Public Hearing Date Set: Jerry Arnett Obstruction Petition

Bill Jeffers: The second item, I sent you by e-mail, and I hope you had time to, or will have time to read the comments that I plan to make tonight, but in the interest of time, I will be brief and simply ask that you enter all my comments into the permanent record in case they are needed at a subsequent hearing, or if one of these issues go to court, that they would be in the record. Item two, set a hearing date for Jerry Arnett petition. You'll recall that Mr. Arnett presented his petition to you May 13th of this year. He alleges trees, brush and other material impede the flow

from his ground through a drain to Allen's Lane. I met with Allan Rellecke, a contractor who accomplishes work that will be necessary if the board should order the removal of the material. The proposed work site is extremely restricted, we can't get trucks in, there's overhanging power lines, fences, what have you. So, Mr. Rellecke's estimate of \$2,000 reflects that he will simply go in there with a mini excavator, take out the minimum amount of obstructing material, lay it up on the banks of the ditch, on the people's property from which it was removed and let them dispose of it, because, otherwise, it's just a monumental task to get in there with trucks and heavy equipment. The County Surveyor is asking the Board at this time to set a hearing date of July 1, 2008, so Mr. Arnett and his neighbors can potentially, or, excuse me, they'll have the opportunity to express their opinions and give additional information in this matter.

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered.

(Insertion of County Surveyor's written comments to be made part of the meeting minutes.)

The Board will recall that on May 13, 2008, we received a petition from Mr. Jerry Arnett, 3221 North 12th Avenue, Evansville, Indiana, 47712, asking the Board to order the removal of overgrown brush, trees and other materials impeding the flow of storm water from his property, thence through a drain on other properties to the south of his and into a culvert at Allen's Lane.

Subsequently, the County Surveyor visited the site with Allen Relleke, a contractor who accomplishes work as will be required should the Board order the removal of the material Mr. Arnett alleges obstructs the drain. The proposed work site is extremely restricted as to access for equipment to fully remove all the trees and brush growing within the public utility easement. And there are low hanging power lines, fences, and other restrictions both within and close to the easement that prevent access with trucks to haul off the cuttings and debris generated by even minimal work required to remove the obstructions.

Mr. Relleke shot grade and closely examined the site and responded with an estimate of the work he believes he can accomplish to simply remove the minimal amount of material that currently obstructs the drain and place the removed materials, whether that may be cut trees, brush, concrete waste, accumulate sediment, or whatever, up onto the banks of the ditch immediately adjacent to wherever he removes it from the drain. That means he will not be hauling the debris away, rather he proposes leaving it for disposal by the individual property owners onto whose property he lays the spoil of the work.

Mr. Relleke's estimate for removing the minimal obstructions and restoring the grade of the ditch and leaving the spoil for disposal by the property owners all for a distance of no more than eight hundred (800.0) feet north of the culvert at Allen Lane is two thousand dollars (\$2,000.00).

The County Surveyor is asking the Board to set a hearing date for July 1, 2008, so Mr. Arnett and the other property owners potentially affected by this proposal have a chance to express their opinions and give additional information.

(End of County Surveyor's written comments insertion.)

Receive Roger Huff's Petition to Remove Obstruction

Bill Jeffers: Again, on item three I'm simply going to give you the highlights and ask that you put my comments, the written comments in the record. Mr. Roger Huff, 2123 Volkman Road, northern Vanderburgh County has petitioned the board to order the removal of an alleged obstruction to a watercourse, thereby better draining the property owned by Mr. Huff. I'm simply asking at this time for you to accept the petition that's in the possession of your Recording Secretary so that the County Surveyor can initiate the investigation and come back to you with a proposed hearing date.

Commissioner Nix: Move approval.

Commissioner Korb: Second.

President Tornatta: So ordered.

(Insertion of County Surveyor's written comments to be made part of the meeting minutes.)

Now comes Mr. Roger Huff, 2123 Volkman Road, northern Vanderburgh County, petitioning the Board to order the removal of alleged obstructions to a drain or watercourse which removal would better drain property owned by Mr. Huff.

This case is not going to be one of the more pleasant duties that may fall to you and I since there already have been repeated responses by the County Sheriff's deputies to site due to alleged threats of violence, etc.

At this time, I'm simply asking the Board to accept the petition so that I may initiate an investigation and report back to you maybe in July with a proposed hearing date for say August or September.

(End of County Surveyor's written comments insertion.)

Report on Esche Complaint in Clear Creek Village

Bill Jeffers: Item four, I have a report that I gave you in writing, it's a page and a half, two pages long, whatever. Again, I ask you to enter that report into your record, and I will simply say that Paul Esche came to you, his address is 9224 Arbor Grove Drive, came to you, you know the date, oh, May 20th, and complained that Linda Phillips of 9223 Big Hill Drive had placed a substantial amount of dirt fill in the easement and on to his property without his consent and without a plan approved by the Board for encroaching and modifying a ditch. I go on to tell you that Ms. Phillips called me last Friday, June 6th and said she'd received our notice that you had directed me to send her, asking her to appear today, or within ten days of the receipt of the notice with a plan, and within 30 days to initiate the plan, to repair the damage and rectify the situation. She hand delivered this note to me yesterday saying that she received the letter, reiterating that our conversation on the telephone last Friday, June 6th, included that she would not be able to attend the meeting today. States that the straw has been removed from the ditch, which I confirm is true, that she would like me to contact her and let her know when our next meeting

of the board will be so that she can be in attendance. She also in her conversation with me, and in more detail I explain it here, said that she thought someone else should prepare the plan, that she was not wanting to prepare the plan, and other comments as made in here, and you can read those at your leisure. I'm simply bringing you that information, and you can proceed as you wish.

Commissioner Nix: I guess, we had some deadlines that you addressed here just a minute ago. Basically, what she's saying is that she would like to wait and come to us at the next meeting?

Bill Jeffers: Yes, sir.

Commissioner Nix: And all these other things that we talked about will just have to wait until that happens, other than the fact that she did take the straw out of the—

Bill Jeffers: Someone took the straw out of the ditch.

Commissioner Nix: Someone took it out.

Bill Jeffers: Yes, sir.

Commissioner Nix: Yeah.

Bill Jeffers: Today is the tenth day since she received the notice. There is no plan to bring to you at this time. She's asking that she be notified of your next meeting, which is July 1st.

Commissioner Korb: In the event that she doesn't show up on July 1st, Mr. Jeffers, what happens?

Bill Jeffers: It will be 21 days since she received your notice, with no action taken.

Commissioner Korb: And our recourse is?

Bill Jeffers: You may, if you wish, enforce the drainage ordinance which may levy a fine of up to \$100 per day per violation for any violation that you determine exists.

Commissioner Korb: Okay.

Commissioner Nix: You know, we looked at this a couple of weeks ago. It's obvious that something needs to take place. I mean, it's obvious what she was trying to accomplish. So, I'm okay with letting her, if she would like to come to the next meeting, and then, I guess, we'll address it at that time.

President Tornatta: Would you notify her, and just let her know that that's the deal?

Bill Jeffers: Yes, sir.

President Tornatta: Do we have a motion?

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered. Okay, Mr. Jeffers, yeah, just have somebody call and just give her a reminder of that meeting, if you would.

Bill Jeffers: I'll be happy to send—

President Tornatta: And, then record that.

Bill Jeffers: I'll send that registered, certified mail, as well as a phone call. Yes, sir.

President Tornatta: That's fine.

(Insertion of County Surveyor's written comments to be made part of the meeting minutes.)

The Board will recall May 20th, Paul Esche addressed his concerns to you regarding his backyard at 9224 Arbor Grove Drive where his neighbor, Linda Phillips, 9223 Big Hill Drive, placed a substantial amount of dirt fill into the easement and onto Mr. and Mrs. Esche's property without the Esche's consent and without a plan approved by the Board for encroaching and modifying the ditch in the drainage easement. The Board directed the County Surveyor to notify Ms. Phillips that she had ten (10) days to come up with a plan, and 30 days to initiate the plan. We mailed that letter to Linda Phillips the first week of June, 2008.

Ms. Linda Phillips called me on Friday, June 6, 2008, and said she had received our notice, and engaged me in a rather lengthy conversation enumerating her reasons for not being able to comply with our timeline for repairing the waterway to its original plan or submitting a new plan for modifying the waterway to a design favorable to her and compatible with our drainage code. Basically, Ms. Phillips expressed her feelings that someone else should delineate her property line, the markers for which I believe have been buried by several feet of fill caused to be placed by Ms. Phillips along and across her property line, into the drainage easement, and onto the Esche's property. Ms. Phillips also expressed her feeling that someone besides an engineer hired by her should prepare the set of plans the Board is asking for to detail the work required to repair the ditch a condition comporting with our drainage code and rectify her unauthorized encroachment into the easement.

During our phone conversation, I reminded Ms. Phillips that I had explicitly explained to her sister, who had visited our office last September on Ms. Phillips' behalf prior to ask us what Ms. Phillips could or couldn't do to modify the waterway and the easement behind her house. In spite of spoken and written explanations including drawn details and copies of the original drainage plan provided by the County Surveyor, all of which gave reasonable cautions as to what could or could not happen within the drainage easement, Ms. Phillips proceeded to encroach or cause the encroachment of the drainage easement with earth fill, rip rap and other materials within the drainage easement without permission of this Board, and onto the Esche's property without their consent, as I understand it.

Now, in response to my expressions both in the written and mailed notice, and during the telephone conversation Friday, June 6, 2008, upon her receipt of the notice that the County Drainage board fully expected a detailed plan of action from Ms. Phillips at this drainage board meeting, today, June 17, 2008, and that Ms. Phillips thereafter would have thirty (30) days to show measurable efforts to repair the encroachment, she repeatedly expressed that she would not be able to provide

us with either a general plan of action or a detailed engineering plan to guide the completion of the necessary work.

On Monday, June 16, 2008, ten (10) days from her receipt of notice, Ms. Phillips or an agent of Ms. Phillips hand-delivered a note to the County Surveyor reinforcing her refusal to attend today's meeting, along with a doctor's excuse and a request to be notified of the next regular meeting of the board so she may plan to attend.

On two visits to the site since May 20, 2008, I noticed that the straw has been removed from the channel, but saw evidence that storm water run-off continues to back up to an extent that may indicate some degree of obstruction exists within the concrete pipe that takes the drainage into the street system. The excess earth fill, the rip rap, other materials placed into the easement and the general condition of the waterway remains the same as when Paul Esche brought his complaint to you on May 20th.

(End of County Surveyor's written comments insertion.)

Request to Develop Construction Plans for Hirsch Ditch/Stockfleth Ditch

Bill Jeffers: My next item is the request to develop construction plans for Hirsch Ditch and Stockfleth Ditch. Anyone that travels along Green River Road has noticed that INDOT has closed the road at Green River and Morgan to accomplish the intersection improvement. You'll remember that INDOT determined that the culvert replacement could not be included in that improvement project without a minimum two year delay to move utilities, and possibly a 2012 bid letting date, due to state budgeting schedules. So, their alternative is to improve the culvert installation that exists there. We agreed on that. We hope that will lower the 100 year flood plain. However, it will not reduce it as far as a new culvert would have. So, now I'm asking the board to approve my proposal to move forward with the development of construction plans, based on the study and evaluation of East Side Urban drain recently completed by American Structure Point engineers, and develop a set of construction plans that I feel are needed to improve Hirsch Ditch where it joins with Stockfleth, along Norfolk Southern Railroad, parallel and south of Morgan Avenue, and midway between Green River and Burkhardt Road. The project would include the improvement of the ditch channel, the stabilization of the embankments, and the repair or replacement of a weir that supposedly built in 1981, regulates the amount of flow either to Hirsch Ditch west, or to Crawford-Brandeis extension north. I've talked with engineers about this, we visited the site together a couple of weeks ago, the engineers feel there is a potential for improving storm water conveyance and delivery in either direction, and thereby possibly reducing the flood hazard to your TIF district. We also noted some serious defects in certain railroad structures, the tressle and two culverts. We feel we should notify Norfolk Southern immediately to repair or remove those structures. So, right now, I'm simply asking you to approve the County Surveyor's recommendation to move forward with our existing contract with American Structure Point to produce construction drawings for this project.

Commissioner Nix: Move approval.

Commissioner Korb: Second.

President Tornatta: So ordered.

Bill Jeffers: Thank you, sirs.

Commissioner Nix: Just real quick, Bill. I hate, we've been on for a while here, but is this going to, all these things combined, are we going to get what we need for the TIF out there, as far as elevations? Or do we still have some concerns? I know you had talked at one time, if we couldn't do this that we were maybe going to go perpendicular to Morgan underneath and going another direction. Is that still a possibility?

Bill Jeffers: That's what I'm looking at with what you just approved.

Commissioner Nix: As part of this—

Bill Jeffers: Yes, sir.

Commissioner Nix: —whole process? Okay.

Bill Jeffers: I'm looking at notifying the railroad that their tressle has some serious issues, and, hopefully, we can open that up. We can modify the weir there to send more water north. The flood plain on the north side of Morgan Avenue is two feet lower than it is in your TIF district. So, if we can find a way to open that up with these plans, hopefully, we can reduce that TIF district flood plain, I'm hoping another foot.

Commissioner Nix: Thank you.

Ditch Maintenance Claims

Bill Jeffers: My last item is some claims to be paid. I must have put them in front of the Auditor's seat. They are in a folder. It's five claims for mowing ditches, and one claim for the emergency removal of a tree that fell into Pond Flat Lateral D just downstream of Ameriqua. I felt it was necessary to get that out before we backed water up into that plant. So, I just ordered the emergency removal of a tree for \$200. The farmer went out there and sawed it up, hauled it off. I hope you'll approve that as well.

Commissioner Nix: Move approval.

Commissioner Korb: Second.

President Tornatta: So ordered.

Bill Jeffers: Thank you for your indulgence, and I'm finished, unless you have any comments?

President Tornatta: Thank you for your time and information. Motion to adjourn?

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered.

(The meeting was adjourned at 6:41 p.m.)

Those in Attendance:

Troy Tornatta

Bill Jeffers

Others Unidentified

Bill Nix

Ted C. Ziemer, Jr.

Members of Media

Jeff Korb

Madelyn Grayson

**VANDERBURGH COUNTY
DRAINAGE BOARD**

Troy Tornatta, President

Bill Nix, Vice President

Jeff Korb, Member

(Recorded and transcribed by Madelyn Grayson.)

**VANDEBURGH COUNTY
DRAINAGE BOARD
JULY 1, 2008**

The Vanderburgh County Drainage Board met in session this 1st day of July, 2008 at 5:55 p.m. in room 301 of the Civic Center Complex with President Troy Tornatta presiding.

Call to Order

President Tornatta: Good afternoon. It's about 5:30 ¹, Tuesday, July 1, 2008. We're going to commence our Vanderburgh County Drainage Board meeting.

Approval of the June 17, 2008 Drainage Board Meeting Minutes

President Tornatta: Can I have approval of the previous minutes? Bill?

Commissioner Nix: So moved.

President Tornatta: Second and so ordered.

Cambridge Hills: Section II: Preliminary Drainage Plan

President Tornatta: Mr. Jeffers, good afternoon.

Bill Jeffers: Good afternoon, President Tornatta, Commissioner Nix. Commissioner Korb is soon to come back. I'll say hello to him when he does. Our first set of drainage plans is Cambridge Hills, Section II. It's a preliminary plan. As I indicated in my e-mail to you earlier this week, it's basically a reworking of a previously approved plan. They reconfigured some lots to better suit the market today. It will be going to Area Plan Commission next Thursday, July 10, and requires your approval before it can move forward to APC. The plan comports with the drainage code for Vanderburgh County. The County Surveyor recommends approval.

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered.

Cambridge Section II: Preliminary Drainage Plan

Bill Jeffers: The second drainage plan is Cambridge Section II. A preliminary drainage plan. The same comments apply. It's a minor reworking of a previous plan. It requires your approval to move forward to Area Plan Commission for the plat approval. It comports with the county drainage code for a preliminary plan, and the County Surveyor recommends approval.

Commissioner Nix: So moved.

Commissioner Korb: Second.

¹The correct start time of the meeting was actually 5:55 p.m.

President Tornatta: So ordered.

**Texas Gas Transmission: Permission to Cross Cypress Dale Maddox
and Helfrich Happe Regulated Drains**

Bill Jeffers: On your desk is an 8 ½ " by 11" sketch that looks like this, from Texas Gas Transmission, stamped by William R. Long, Professional Engineer, and signed by Mr. Long. It's, because Drainage Board permission is required to cross regulated drains, Texas Gas Transmission is asking for your permission to cross Helfrich Happe Ditch, just south of Duesner Road on your overhead, at that location. Also, to cross Cypress Dale Maddox Ditch at a location closer to Cypress Dale Road. Both of these locations are several hundred feet, or, well, a fairly close proximity to Seminary Road, to the east of Seminary Road. Then, the gas line will pass under Cypress Dale Road, immediately east of Seminary Road, and there will be a pump station at that location. The pump station has been approved by site review. The notes on here are in compliance with my requests that backfill be compacted to 90 percent of maximum density by the Proctor method, that any subsidence subsequent to the filling of the trench will, is subject to additional repairs, and that all disturbed areas on either side of the legal drain will be re-seeded and re-vegetated to a minimum specified by those notes. There will be a five foot minimum cover over top of the gas line pipe under the flow line of the ditch. There will be a three foot minimum cover out where it rises back up to existing ground. All this is in compliance with the specifications that we require for any pipeline crossing. I recommend that you grant permission to Texas Gas Transmission for crossing Helfrich Happe and Cypress Dale Maddox ditch in conformance with this drawing.

Commissioner Nix: Move approval.

Commissioner Korb: Second.

President Tornatta: So ordered.

Jerry Arnett Public Hearing on Obstruction Petition

Bill Jeffers: We're now at the point of hearing the Jerry Arnett petition, requesting the Drainage Board to order the removal of certain obstructions that he identified in his petition. The petition is in order. The County Surveyor did investigate the location of the alleged obstructions, and found that an obstruction did exist in the form of grown up vegetation, brush, trees and general debris consisting mainly of concrete blocks, concrete chunks and other minor debris. I'm very happy to report today, if we'll look at the slides now, that when I went back out there last week to take some pictures of all this obstructing material, that a substantial amount of clearing had been done by individual residents, whether they were working together or working individually. This is Mr. Arnett's property, and it's looked like this for some time. Mr. Arnett mows his grass. We're standing at the north line of Mr. Arnett's property, and that telephone pole, or power pole there is approximately his south line. You can see the change in vegetation from what normally grows on a dry lawn, to what grows in a chronically wet area. Next slide, will show you, let me get my bearings here, I may make some mistakes along the way, and several of the residents and property owners are here in the audience, and I'm sure they'll draw your attention to any mistake I make. I welcome them to do so, but I was working out in the woods, and I might not have gotten all of these properties exactly correctly identified. However, this piece of property that you're looking at now, I believe to be Rodney and Norma

Jarvis of 3217, immediately south of the petitioner. Again, you can see that they keep theirs mowed nice and clear. Again, you can see the vegetation growing on dry ground, as opposed to the type of vegetation that grows in a chronically wet condition. Now we can look at the next slide, which I believe to be Connie Brassard, 3213 N. 12th Avenue. Again, she keeps hers cleared. There may be a slight obstruction right here where you can see dry ground and wet vegetation on either side of it. I don't assign that blame to anyone other than the fact that water sits there so chronically that sediment dropped out and caused a slight high spot there that might represent a very minor obstruction. The next slide shows the ditch entering the property of Joseph Schutte. As you can clearly see, the property, well, you can actually see the channel wandering through this area, somewhat open, probably has been cleared at some time in the past, but has since grown back up.

Unidentified: It was cleared the last few days.

Bill Jeffers: Mr. Schutte is here in the audience, and I think he, I believe he just said it's been cleared in the last two days. I wouldn't have a picture of that. These pictures, I believe, are from last Wednesday. The next slide, now we're at the far end of the project at 3105 N. 12th Avenue, where the drain enters into a pipe that connects to a pipe system out at Allen's Lane.

Commissioner Nix: Before you go any further, that's basically turned around looking the other way then?

Bill Jeffers: Yes, sir. We're now at the very south end of the drain looking north. Rather than walk through the woods at the point we just left, I got in my car and drove around to the south side and thought that I would work north. Not being the young whippersnapper squirrel hunter that I used to be. Okay, so, we're looking at property I believe to be owned by Carol Sue Helmerich, 3105. You can see it needs some clearing. Next slide please. Now, at the north end of Ms. Helmerich's property, I believe this to be right at the property line with Martin, excuse me, Ronald and Joella Martin of 3109. I might not have my property line exactly right, but this is where a fence is. This area still needs to be cleaned. I believe this is still owned by Helmerich, but I'm not positive. Now, we have to get down in the ditch and start walking. I was so pleasantly surprised, and I really want to thank everyone who took an enormous amount of effort, after receiving their notices, to do this kind of work. It did not look like this the first time we were out there. When our contractor went out there to examine it, and came back with a \$2,000 bid to remove all of this, which I thought was very reasonable, very low, it did not look like this. Now it does. So, these folks are to be credited very much with their hard efforts. I believe this to be 3113 N. 12th Avenue, Arthur Gibbs. And, looking north, the next slide, I guess, would be, I'm thinking it's 3117 N. 12th, Ligia Shrewberry. Then, the next slide, we're back out in the clear. This, apparently, has been maintained for some time.

Unidentified: (Inaudible. Comments made away from the microphone.)

Bill Jeffers: Is that Mr. Brown?

Unidentified: (Inaudible. Comments made away from the microphone.)

Bill Jeffers: Okay, so that would be Thomas and Daisy Brown at 3121. You can clearly see it's very similar to Mr. Arnett's property in that what's in the ditch, what's in the drain is slightly different vegetation than what's up in the yard. So, but it has been cleared long enough for that to have grown up nice and green. Then, the next

slide will show you who I believe to be Brian and Amanda Sartore, 3201 N. 12th. I apologize if I'm mispronouncing anyone's name.

Commissioner Nix: Back up, there are two of them together.

Bill Jeffers: Oh, two together? I'm sorry. That's Brown and Sartore together, I think. I may have missed a property in there, a lot of them are fairly narrow. I might have walked right past one.

Unidentified: (Inaudible. Comments made away from the microphone.)

Bill Jeffers: To the north of you? Okay. Then, the next slide we are past Sartore to Jewell Drake. It looks like it was recently cleared. You can see the cutting over here, 3205 N. 12th.

Unidentified: That's my property line right there.

Bill Jeffers: Okay. So, this is where Mr. Sartore stops—

Unidentified: (Inaudible).

Bill Jeffers: Okay, and then the next slide, we're back getting a little bit into the rough, and I believe this densest part, again, is Mr. Schutte, where we first went into the woods from the north. Like I say, I may not, I did not go out and uncover any property corners, so, I may have not made exact identifications, but there are several folks here today, who I'm sure can clear up any mistakes I made. Basically, what I want to say, if anyone needs the entire statute I have copies of that. I think I put one of these on each person's desk. It's just a one sheet, it starts off IC36-9-27.4-19. Is that on your desk?

Ted C. Ziemer, Jr.: I don't have one.

Commissioner Nix: I don't either.

Madelyn Grayson: I don't either.

Bill Jeffers: Okay, oh, we haven't finished the slides. Here's some recent cut, just showing you that this area has been recently cut. Lots of hard work going on there.

Unidentified: (Inaudible. Comments made away from the microphone.)

Bill Jeffers: Okay, and then the next, but that, there's still some minor debris left in the form of concrete blocks—

Unidentified: (Inaudible. Comments made away from the microphone.)

Bill Jeffers: —and concrete chunks and stones and what have you that is still a minor obstruction. Then there's some areas that really do need to be cleaned up. Here's some concrete chunks and some brush and so forth. Then, I'll show you, I believe, the fella, oh, this is where the pipe, I'm looking south again where the pipe picks up the ditch, and, that's Ms. Helmerich's property, and showing you that that area needs to be cleaned up for the water to efficiently get into the pipe. Then I believe there's one last picture, I believe the fella who has been helping me direct your attention to the proper properties, this shows you the work that he and some of his neighbors

have accomplished. That's just a small portion of what was removed from the ditch. So, they have—

Unidentified: (Inaudible. Comments made away from the microphone.)

Bill Jeffers: —so, that's two, maybe three lots, something like that. It shows you what kind of work they did in the last month or so, or less than a month, and, again, I would like to sincerely thank them for their effort. It shows a sincere effort on the part of these neighbors to comply with Mr. Arnett's request to clear the ditch. So, that brings us to this piece of paper I put on your desk. I'm not asking you for any action at this time, but should the board wish to take an action after hearing the rest of the evidence, and the testimony of others, that if you find under this chapter on behalf of the petitioner, and a determination is made that this grew up naturally or was unintentional, but that you still want to find on behalf of the petitioner that the drain needs to be cleared, you could authorize the petitioner to remove the obstructions that remain, you could authorize the respondents on who's property there still is stuff to be removed, you could direct the County Surveyor to remove the remaining obstructions, or you could direct that the obstructions be removed by joint efforts of at least two of those three entities. If you choose to do that we need to more positively identify all of the tracts that are benefitted by the repair of the drain. That may include all, or it may include more of the tracts you have viewed tonight. You have to identify the owners of all the land that benefits by this improvement to the drain, because the cost of clearing it, should there be any cost, will be a portion to all of those benefitted by the clearing of the drain. It's my hope that we can continue in the direction that these neighbors have so far moved, and, hopefully, not incur any cost that would be spread out amongst anyone, because what's fair for one is fair for the rest. They have taken a great effort so far, and I think the rest of them should take the same effort. But, those are your choices, and then I've included the definition of a drain, this ditch meets the definition of drain, and I've included the definition of an obstruction, what remains in that ditch meets that definition, in my opinion. So, there you have it, and, like I said, I noticed on the sign in sheet that several of the neighbors are here in the audience tonight.

President Tornatta: I would like to call right now for the, do we have anything from the petitioner at this time?

Bill Jeffers: The file contains his petition, and the petitioner is here tonight.

President Tornatta: Okay.

Bill Jeffers: If anyone comes up, you can use the bottom right hand button as a laser pointer on this screen here. You may ask Brenda to call up any one of those slides that you would want to view.

President Tornatta: Alright, would the petitioner please come forward? State your name.

Jerry Arnett: Ladies and gentlemen of the Council, my name is Jerry Arnett.

President Tornatta: Okay.

Jerry Arnett: When I had filed this petition, at the time, there was no clean up effort, and I had started this petition, actually four years ago. I wrote letters to everybody on the block, and even on the 11th Avenue block, so we could get this cleared up.

Standing water is what I was concerned with. Standing water in the back of my yard, and the back of Ron's, you know, Mr. Jarvis' yard, and also to the north of my property was fairly deep, plus, it also elicited a lot of mosquitos. It was really bad. You couldn't even go out there and enjoy your area, your own yard. However, seeing these slides, and seeing that these neighbors have already done their clean ups, I haven't walked back there, and I'll be honest about that. When I filed this petition, I thought everybody had already known about this, because I started it four years ago. Bill Jeffers, he had, I've been in contact with him constantly, and I'm greatly, I'm pleased to see what everybody has done. With my filing of the petition, if everybody can get together and clean it and stuff like that, like they've been doing, I've got no objections. I really don't want nobody to incur a cost. \$2,000 is a bit of money, you know, for all of us, and I understand that, and me being the petitioner, I don't even have any obstruction in my particular area, it was just the settling of the water. Whenever it rains, it just wouldn't drain. I don't want to put anybody in money harm, if you understand what I mean. You know, I would like for it to be taken care of by the neighbors themselves, because that's what I asked for four years ago. I didn't just, I just filed this petition maybe three months ago with Madelyn. So, I really have nothing else to add, except I just now see that people are cleaning up and stuff, and I'm very happy for that. I, again, I don't wish no hardship on nobody, just that it is a problem and it needs to be addressed. I don't want anybody to have to come out of their pockets, to be honest.

Commissioner Korb: Have we had a hard rain, Jerry, or, Bill since this—

Jerry Arnett: This year so far hasn't been so bad, but—

Commissioner Korb: I mean, we've had some hard rains.

Jerry Arnett: We've had some hard rains. I have planted a weeping willow in my yard, and it subsequently sucks up a lot of the water out of my area, because weeping willows need a lot of water. It gets plenty of it.

Commissioner Korb: So, you've not noticed the standing water like you have in the past?

Jerry Arnett: Like I have in the past, that's correct.

Commissioner Korb: Okay.

Jerry Arnett: It hasn't been that bad lately, especially this year. Last year, however, it was a different story.

Commissioner Korb: Sure.

Jerry Arnett: You know, and it was just kind of hard to even let my kids go out, you know. So, Connie Brassard, she's done her best. I've seen her do her best on cleaning up her property. Her property is two blocks to the south of me, right next to Ron Jarvis' house, and she's cleaned up her area. She's single, she's, you know, she's a widow, and she's done her best in her area, but just for some odd reason, we just can't get none of that water to drain. I don't know what it takes, and I was just trying to be a good neighbor, and, you know, plus I also have to watch out for my children, you know. So, I apologize to all of them, I didn't really mean for anything bad to come of this, I just wanted something to be done. That's my main goal. It's not to cost the county any money, or cost the neighbors any money.

President Tornatta: We appreciate that, Mr. Arnett, and the point's well taken. We understand that at times you have to do this to get the ball in motion.

Jerry Arnett: I had written letters four years ago to everybody.

President Tornatta: That's fine.

Jerry Arnett: Everybody, individually, you know.

President Tornatta: Any other questions of—

Jerry Arnett: I paid for it all out of my pocket.

President Tornatta: Any other questions of this Board? Okay. Mr. Arnett, if it's okay with you, we would like to hear from the remonstrators, so we can kind of move this thing on.

Jerry Arnett: Yes, thank you very much.

President Tornatta: If you are a remonstrator and would like to come up, state your name and anything you have to say. We would enjoy hearing from you. If not, we'll move on.

Jana Kirk: Hello.

President Tornatta: Hi.

Jana Kirk: My name is Jana Kirk, aka Jana Salsman, which is on the property. I actually live on Allen Lane and 12th Avenue, so, my yard is fenced in and I'm over the drainage ditch, or the—

President Tornatta: Culvert.

Jana Kirk: —drain itself.

President Tornatta: Okay.

Jana Kirk: It's filled with dirt. So, I wanted to clarify a few things for myself, whether or not there's going to be any damage to that itself. The other thing that I wanted to clarify is that it says in the letter here that I got, that the culvert is on 3101, which is my address, but it's actually on 3105. So, I wanted to just clarify that in the notes, that it's not my property that the drainage ditch, or that's coming in to the culvert. I wanted to clarify a few other things, there used to be a guy that lived on Allen Lane east from me that cleaned that ditch out. He died a few years ago, I kind of took it over, I didn't know that it needed to be cleaned or anything, but a few years ago somebody stuck a five gallon jug in the drainage thing, and then there was back up. So, I got damage into my yard, and that's sort of when I found out about it and took it over. But, there is trash in there all the time. So, it's not just, I think, the hard rains, and it's not draining, but trash gets in there, kids play in there and they put things in there to plug up, I found a fire extinguisher in there, all kinds of things. I try to clean it out, it's not my property, but I'll go weed eat it and clean it out. So, anyway, the opening is fairly open, but on down you can see the stuff. I just wanted to make sure, for my property, that it's not actually on my property, because I don't want to incur any of the cost. I don't think that would be my part, and whether or not there's

going to be damage to any of the fence or my property when they clean that. It sounds like it's just going to be cleaning further on down. But, again, I think a lot of it, if people want to help out is just cleaning actually, or keeping the trash out of the opening into the ditch, because people just, I mean, I find the strangest things in there.

President Tornatta: Right.

Jana Kirk: And, it's not all stuff that can wash down there. It's stuff that's stuck in there, like the fire extinguisher. It was an old metal one which is very heavy, and it probably included at least a fourth of the drainage ditch. Then other stuff will catch on there. So, that's a big issue. I don't know if there can be anything put in front of that to stop the trash, because I do go down and clean it out on a regular basis and try to weed eat. But, when that gets plugged up, you can see it, it just fills up like a bathtub. That's when I got damage, and it actually eroded the ground on both sides of the opening, because the water stayed there. That's when I noticed it actually backed up into my yard and caused damage to, around my concrete thing. So, I'm trying to keep that open, but it's not just, I think, the trash and the overgrowth down, it's what gets into that area, which is not always put there, because of the rain, I think, sometimes it's just stuff that gets stuck in there.

President Tornatta: Okay.

Jana Kirk: I think also the gradient to the ditch has lost, you can look down from where it's at, and it's a lot, it's lower there, but then the other it's kind of not draining the right way.

President Tornatta: Okay.

Jana Kirk: So, I don't know if they're going to actually have to dig stuff out. But, they talked in the letter about the soil, they're not going to put the soil back, so, again, I just want to make sure, I was trying to clarify if any of this was going to be left on my property.

President Tornatta: Well, one of the options that is out here is that everyone would just take care of their property behind their house, take care of their portion of the ditch, and if it's all done properly, it should flow smoothly, and this all would go away.

Jana Kirk: Yeah, and like I said, I could take care of the opening, which is not on my property, but I just wanted to make sure that it was noted somewhere that the culvert is actually not on 3101, it's on the property north of there. Mine is just the ditch which is actually covered with grass and (Inaudible).

President Tornatta: So, you don't, at this time, have any overgrowth in your ditch?

Jana Kirk: No, it's flat grass, mine is grass.

President Tornatta: Okay.

Jana Kirk: I was from, when you looked down into and saw the opening to the ditch—

President Tornatta: Right.

Jana Kirk: –the telephone part, there you would see, if you went further you would see a fenced in yard–

President Tornatta: Okay.

Jana Kirk: –it's kept cut, you know, a couple times a week.

President Tornatta: Any questions?

Jana Kirk: I just want to make sure that it was noted somewhere that it's not on my property, because I don't want to incur costs for something–

President Tornatta: Absolutely.

Jana Kirk: –that I don't think is my problem. Like I said, I think just cleaning it out–

President Tornatta: Stay right there.

Jana Kirk: Okay.

President Tornatta: Any questions of the Board? No questions? Thank you very much, Jana.

Jana Kirk: Thank you.

President Tornatta: Okay. Anybody else?

Bill Jeffers: What Ms. Salsman is talking about is, right there at the entrance to the pipe, and everything beyond that, which I didn't take a picture of, south of that Allen's Lane is flat lawn and it's fenced in. I included her address and 3101 because, at the time, we didn't know exactly how far, we were going to have to identify obstructions. Was the pipe so small that itself was an obstruction, and would have to be removed?

Commissioner Nix: Can we, do you know which ones, which property owners have the obstructions now? Because it looks like a lot of this has been taken care of.

Bill Jeffers: There's probably two, there's two that I believe need to be cleared of vegetation, and major stuff.

Commissioner Nix: Can we address those? Because, I mean, I'm hearing a whole lot of good things have happened--

Bill Jeffers: Right.

Commissioner Nix: –but, it seems to me like we need to get to the point.

Unidentified: (Inaudible. Comments made away from the microphone.)

Commissioner Nix: Okay.

Unidentified: (Inaudible. Comments made away from the microphone.)

Bill Jeffers: While I was out there taking pictures, a lady who represented herself as owning 3105 N. 12th Avenue, but did not introduce herself as Carol Sue Helmerich,

she was very nice, but, I mean, she just came up and asked me what I was doing on her property, etcetera. You know, I identified myself, and told her, and she proceeded over to her neighbors house to talk to her neighbor, who appeared to be a friend, who has a garden on the other side of the ditch. Okay, I said, I'll see you down at the hearing, and I hope by then that this part of the ditch is cleared too. It would be great if it were. She said something about poison ivy, etcetera. This part of the ditch needs to be cleared. I believe it to be behind and on 3105 N. 12th Avenue. The other that I believe needs to still be cleared is owned by Joseph E. Schutte, 3209 N. 12th Avenue. I believe that needs to be cleared of vegetation and brush. All the rest of them, I believe, only need minor debris to be raked up, so it doesn't float down to where Ms. Salsman says it gathers up against the pipe. That's just a routine monthly, or bi-annually thing. Just rake up that loose stuff, that forest litter, whatever falls on the ground so it doesn't float down there.

Commissioner Nix: Mr. President, I wonder if I could ask if either one of the property owners of those two properties was here?

President Tornatta: Absolutely.

Joe Schutte: Schutte.

President Tornatta: Schutte? Then, Mr. Jeffers, if these two are given a certain amount of time to comply or comport with the drainage function, and they do not, could the petition be amended to include those who have done that, as not to make them incur the cost?

Bill Jeffers: I believe what you could do is after you hear all your testimony here tonight, if you want to continue the hearing to another date, you are able to do that under the statute, the way I read it. Then you could direct the Surveyor to do a follow up investigation to determine whether everything is copasetic. If it's not, to report back to you on a certain date, because you have to say what that date is going to be tonight. Then I would report back to you whether I think any obstructions remain. Obstructions being materials that significantly impede the flow of water to the ditch.

President Tornatta: Okay.

Bill Jeffers: Not insignificant.

President Tornatta: Right.

Bill Jeffers: Okay.

Ted C. Ziemer, Jr.: Just to ask you one question, do you have a recommendation for the Board, which isn't going to impact anything now the way we're going, but, maybe later, whether the obstruction is intentional or unintentional?

Bill Jeffers: I can't determine the intent of the concrete blocks and that type of thing. Those could have been vandalism, someone threw them in the ditch that didn't own the property. I can't determine those to be intentional. The rest of it is natural overgrowth or natural sedimentation.

Commissioner Nix: Which could be interpreted either way.

Bill Jeffers: Which is up to the Board, in other words, no one intentionally planted those trees there. Those are all native species that grow in a ditch, but they were allowed to grow up.

Ted C. Ziemer, Jr.: But, someone could intentionally not cut them or trim them.

Bill Jeffers: That would be the, that could be the Board's interpretation.

Commissioner Nix: Thank you.

President Tornatta: Alright. Mr. Schutte?

Joe Schutte: Yes, my name is Joe Schutte, I live at 3209. Now, I've cleared out about a five to six foot section back there behind my property. The water flows perfect back there. Now, there is some vegetation that I don't know if it needs to be cut, I mean, I'm talking about trees—

President Tornatta: Could you bring that up, please? The Schutte.

Bill Jeffers: That would be the south end where you can clearly see some of the channel that he has cleared coming out of there. But, then there's this one at the north end that's a lot more wooly.

Joe Schutte: Yeah, show the north one. There you go.

Bill Jeffers: That's the north end looking into—

Joe Schutte: Right, right. Now, I have trimmed out some of the vegetation that's growing up on either side, but, at the same time, I do have like, not really a trench, but there is a clearing to where water can flow through there. I took the vegetation, probably three or four foot wide, to where it actually flows through there, and took it all out.

Commissioner Nix: When did this take place?

Joe Schutte: This was over the last, past weekend. I was out there Sunday morning doing some more of it.

Commissioner Korb: This was after Bill—

Commissioner Nix: After you had taken pictures?

Joe Schutte: Yes. Okay, what I would like, maybe some of the landowners could help me out, where's the actual property line back here? I have no idea. I don't know if it's the telephone poles.

Unidentified: The whole property is actually—

President Tornatta: You'll have to come up, I'm sorry.

Jerry Arnett: Under, when I first started investigating all of this, everything from there to the back of the fence, where the fence is, for the next houses over, it's supposed to be our property, and we are supposed to be, the homeowners, be in charge of clearing it. You know, keeping it clear, and keeping it well maintained. That's as far

as what I know. I know I own all the way back to the fence of that property, to the 11th Avenue, the back of 11th Avenue. Mr. Schutte has the same thing. That is, I mean, it's in your deeds and so forth. It's all, it says it's all your property. The property lines are pretty wide.

Joe Schutte: Okay, that was another concern of mine, because at the very end of mine we have the 11th Avenue fence going there, and there's a lot of vegetation growing up. Now, there is like a little hump going from the end of my property to the 11th Avenue fence, there is a hump going, probably from my property all the way down to two or three lots, and it's full of trees and everything else. I never did clear that at all, because I thought that was part of the 11th Avenue.

Commissioner Nix: Is that in the flow line of this? Is that what you're talking about?

Joe Schutte: It's on the other side of the flow line.

Bill Jeffers: I would not intend, and I didn't intend for everything to be cleared from ten feet outside each side of the bank. That would be unnatural, that would be destroying habitat, basically. All I'm looking for is the waterway itself. Just the waterway. It may be ten feet wide.

Commissioner Nix: It sounds like that you may have taken care of that? Is that—

Bill Jeffers: Anything over that, anything over and above that would be their choice. It's their property if they wish to clear it.

Commissioner Nix: Right, right, if you want to let stuff grow beyond that.

Bill Jeffers: The only problem would be if it's overhanging and something falls out of those trees, you know, leaves or branches, then they need to pick it up. But, I'm not asking for it all to be cleared out.

Commissioner Korb: Joe, I'm sorry, go ahead. What I would like to suggest is that, Bill, if you would, please, I mean, obviously, Mr. Schutte is here tonight, the other property owner is not, give them notification they have until the 15th of next month to get, or this month to get this done. Then, we'll seek some sort of remedies.

President Tornatta: You want to continue the meeting then?

Bill Jeffers: That would be two weeks from today.

Commissioner Korb: Today, right.

Unidentified: (Inaudible. Comments made away from the microphone.)

President Tornatta: Sure.

Commissioner Korb: Then, Bill, if you would put it on your schedule to go out to inspect it on the Monday, the 14th, get your pictures.

Bill Jeffers: Right.

Commissioner Nix: Then, at that time—

Bill Jeffers: I'll be out of town from July 4th to July 11th. I can go out some time the weekend following the 11th.

Commissioner Korb: Yeah.

Bill Jeffers: Saturday, Sunday, or Monday.

Commissioner Korb: Yeah, Monday is the 14th, and our meeting is on the 15th. So, I mean, enjoy your weekend, I don't mean to screw that up, but, go out on the 14th.

Bill Jeffers: Hey, I go down to Rural King all the time.

Commissioner Korb: There you go.

Bill Jeffers: It's right there.

Commissioner Korb: Okay.

James Drake: Okay, my name is James Drake. I'm representing the property of 3205. I just found out about all this yesterday, so, I cleared that property as best I could.

Commissioner Korb: Okay.

James Drake: But, I have an abstract of my mother's property here that shows that that's an alley back there, 12 foot of that, and I believe that's where that ditch lays there. I just don't see how the property owners are responsible for that part. Just like the drainage pipe at the other end that you're talking about. I would imagine that's in that alley.

President Tornatta: Well, there would be a natural flow of water, and that just needs to be maintained.

James Drake: Yeah, I see that, but wouldn't that be the county's portion of that? I mean, there's a four foot easement of ours at the back of that, but then there's an alley, and that's the county's.

Bill Jeffers: I believe, and your legal counsel can correct me if I'm wrong, but until an alley is created, rocked and becomes a traveled way, the alley right-of-way itself remains property of the owner upon, in other words, it's subject to that easement, but until there's a traveled way there, it remains the property owners responsibility.

Ted C. Ziemer, Jr.: That's correct.

Bill Jeffers: Over and above that, this does meet the statutory definition of a mutual drain, in that it was created with the original owners knowledge and consent to be used as a drain. So, this statute still covers that, and it must be kept free flowing.

Commissioner Nix: Sir, did you say 3205?

James Drake: 3205.

Commissioner Nix: Okay, are there obstructions on 3205 right now?

James Drake: As soon as I found out about this, I picked up the certified letter yesterday after work—

Commissioner Nix: Okay, so, in your opinion, it's open?

James Drakes: I'm fine. (Inaudible.)

Commissioner Nix: Okay. So, really, the culprit looks like, I guess, an inspection of 3105 and 30, Mr. Jeffers?

Bill Jeffers: That's 3205, and you can see that it was, the clearing was initiated—

James Drake: That clearing would have been yesterday. I don't know when that was taken.

Bill Jeffers: Oh, okay, wait, that's where I made my mistake right there. Drake is up at, see the sunny spot? Well, then beyond him is—

Commissioner Nix: Is where it stops?

Bill Jeffers: —beyond the sunny spot is actually 3205.

Commissioner Nix: So, I guess, we're down to just looking at 3105 and then whether or not something has happened at 3205? Is that where we're at?

Bill Jeffers: Is that Mr. Schutte? What's Mr. Schutte's address?

President Tornatta: Mr. Schutte and Mrs.--

Bill Jeffers: Helmerich.

President Tornatta: —Helmerich.

Bill Jeffers: I think we're down to Schutte and Helmerich.

President Tornatta: Schutte and Helmerich.

Bill Jeffers: Then, I'll double check Drake, because, like I said, I wasn't able to find all the—

Commissioner Nix: Yeah, Mr. Schutte just spoke—

President Tornatta: Right, right.

Commissioner Nix: —so, if you can look at that, and then 3209.

President Tornatta: And, probably what Mr. Schutte could do is call Mr. Jeffers, or just find out if you have a clarification on how much you have to clear just to make sure that is fine. Then, when he comes out, if he doesn't see fit, then just get it done before Tuesday kind of thing, and we should be in great shape.

Bill Jeffers: I'll definitely follow Mr. Korb's direction to make my final inspection on Monday. I may go out there Friday, Saturday and talk to Mr. Schutte so that he has a clear understanding of, and I'm talking about the 12th, 13th, something like that.

President Tornatta: Okay.

Bill Jeffers: Make sure he has a clear understanding.

President Tornatta: Any other remonstrators that would like to speak? You've got to come up. Was that in the form of a motion?

Commissioner Korb: Indeed it was.

President Tornatta: We'll have discussion.

Commissioner Nix: Second.

President Tornatta: Alright.

Jana Kirk: Jana Kirk again. My question is, a few years ago, 3105 was cleared out by Vectren. They came in and chopped down all the trees because of the lines, and they just went ahead and cleared the whole ditch, but it grows up again. So, when in fact this does get cleared, for the residents, if it starts growing up, how is that handled? I mean, because I'm not sure that 3105 will regularly keep that up. Is it similar to the city where, you know, if you let your grass grow up they can call somewhere and have it tagged? To keep it from becoming a problem, if it does get cleaned out, is there any legal thing that you can do? Or is it just going to be again another fight? Because I'm not sure once it gets cleaned out if it will be maintained.

President Tornatta: Well, one can have a petition against that particular individual, if that's the case. It can come to this hearing. At that point we can assess if there's a fault. If there is a fault, then, at that point we can address one of several ways to remedy the problem. One of which could be that we would go out there and clean it at their expense, and that would be put on their property taxes.

Jana Kirk: So, we would just be filing a petition with neighbors, like before and just not taken care of. So, it's gonna probably be the same problem—

President Tornatta: Right.

Jana Kirk: —down the road. Okay.

President Tornatta: Okay.

Jana Kirk: Thank you.

President Tornatta: I only play an attorney on t.v. So, we have a motion and a second—

Commissioner Korb: Yes.

President Tornatta: —and, so ordered.

Bill Jeffers: Again, you know, in closing, I would just like to thank everyone that did take that effort, because, hey, listen, that particular week they were out there working, it was hot. It wasn't cool like it's been this week.

President Tornatta: Alright.

Unidentified: (Inaudible.)

President Tornatta: Yes. Yep, we're done.

Commissioner Korb: But, we didn't vote.

President Tornatta: It's been ordered.

Bill Jeffers: Did you all, I'm sorry, did I interrupt your vote?

President Tornatta: No.

Commissioner Korb: You did, but that's okay.

Bill Jeffers: Typical.

Commissioner Korb: Can we do it again?

Commissioner Nix: I second it.

Commissioner Korb: A motion has been made and seconded.

President Tornatta: And I so ordered. Move on to the next item.

**Report and Response on Esche Complaint:
Encroachment in Drainage Easement:
Linda Phillips: 9223 Big Hill Drive (Clear Creek Subdivision)**

Bill Jeffers: Okay, our last item for tonight, because I don't have any claims for ditch contractors, our last item is Linda Phillips report, and a possible response. Basically, I went out there, this is where Paul Esche is asking for the removal of some material that was placed behind his house. Ms. Phillips had, on occasion, asked me to, where her property corners were, so, I went ahead and found them. Here's a stake we placed at her northeast property corner.

Linda Phillips: Can I just say something, when he just said that? When did this all start? When did you and I have our first contact?

Bill Jeffers: I'll get to that in a moment. This is her southeast corner. So, it shows you the property line, that I believe exists between her, on the right hand side of your screen, and Paul Esche and his wife, on the left hand side of your screen. Then, the next slide, you can see materials that were placed on Ms. Phillips property, by a contractor hired by Ms. Phillips, to supposedly improve the ditch bank. This area, and then you can see an area that I outlined with paint that shows that the weight of the fill that was placed on that ditch bank, unconsolidated, uncompacted fill, along with the weight of the rip rap that was placed on the bank, has caused this entire section of embankment to move into and across the property line. So, I mean, you can see the bow out in the, and, so, that's my visual representation to you of the material that needs to be removed. As to Ms. Phillips question of when our first contact was, it was last September, in September of 2007 when her-

Linda Phillips: When did you mark the property, Mr. Jeffers?

Bill Jeffers: Uh.

Linda Phillips: Last week?

Bill Jeffers: This is not going to turn, I'm not going to let this turn into an interrogation of the County Surveyor.

Linda Phillips: I have a right to let them know.

President Tornatta: Ma'am, ma'am, if you'll please let the Surveyor speak, and then we'll have any comments you have.

Bill Jeffers: Mrs. Phillips' sister came to our office and asked what could be done in this ditch to improve it, and I gave her a copy of the original drainage plan that was approved by the Drainage Board for Clear Creek Village, and said that if the ditch did not match the drainage plan that they could restore it to the condition...they could, number one, restore it to the condition as left by the developer and checked off by the County Engineer, or they could improve it to a standard that met the approved plan. In other words, a three to one side slope in dirt, with a grass cover. Anything beyond that would require a new plan to be brought to the Drainage Board, in accordance with the drainage code, and in accordance with the restrictions clearly printed on the plat for Clear Creek Village. On the, also, according to the covenants and restrictions on which the Phillips signed off on when they took title to the property, and those are all recorded in the Recorder's office, that any modification to the ditch channel beyond the approved drainage plan originally approved for this subdivision, requires written permission from the Drainage Board, following the approval of a modified plan. So, I now say that this modification that took place was unauthorized. If they wish to place rip rap, or if they wish to create a slope that is steeper than three to one, and covered by anything other than grass, that requires a modified plan. So, then, I informed Ms. Phillips in telephone conversations and in two written letters to that effect. You have copies of those letters to that effect. You have copies of those letters, and you have confirmation of my telephone calls. I did receive a call from Bill Bivins yesterday afternoon. He's a registered engineer and land surveyor, who said he was working with Ms. Phillips to bring a modified plan today. I don't know if Mr. Bivins is here with that plan, but Ms. Phillips has responded positively to our notification and our request to appear before you. I will turn the podium over to her at this time.

President Tornatta: Thank you.

Linda Phillips: Hi, my name is Linda Phillips, and I own this property on Big Hill Drive. When I purchased this lot, the builder told me, he said, "I have to build it up some, because of the way the street is, Big Hill, for a reason, and the way that the land is shaped, I have to build it up." Now, he didn't tell me that until after I had already selected the property and we're making all of the selections to build this home. When the house was finished, I asked him, I said, "Aren't you going to do something about this backyard? I mean, it looks like a ski slope back there." He said, "That's your problem now. You bought the house, I don't do anymore. This is the homeowners right." I said, "Okay." When I purchased the house, at the signing, they told me from the builder, this is what she said. I know I should have done differently, or looked at it differently, but, you know what, this is the first house I've ever built, and I took the people for their word. That's what the man does, the whole subdivision. She told me, at the signing, that the ditch, halfway into it was mine. The other half was the people behind me. It was that way for the whole subdivision. I

have two other family members that live out there, and they have said the same thing. So, I had no reason to doubt it. That was my understanding, halfway into the ditch was my property, the other half was the people behind me and we were all responsible for taking care of it. I moved in in November. The next summer, I went over and I knocked on Mr., I didn't know his name, didn't until Mr. Jeffers sent me the letters, went to Mr. Esche's door, I introduced myself, told him I had bought the property behind you, I would love to do something with this ditch. It is so ugly. They told me at that time, we will not give you any money on it. I said, "I do not expect you to. I want this ditch fixed. It looks nasty." They told me, they said, "Whatever you want to do, just don't expect any money." So, I said, "Okay". It did take me a little bit, I had other things that I needed to do. So, in September, I hired a gentleman to come out and he was to put some dirt, I didn't ask for that rock. When I questioned him about it, because he came and knocked on my door, because as soon as they started, Mr. Jeffers came out and put a stop note on his bobcat. Mr. Jeffers knocked on my door, that's the first I knew of it. I hadn't received a letter then, I just had Mr. Jeffers on my door telling me that I put a stop note on the bobcat and we need to check, you're working on Mr. Esche's property. I explained to him what I was told that half of that was mine, I'm just trying to clean it up, because, they like it that way, they said. So, anyway, I went ahead and they sent, Mr. Jeffers told me, you have to stop work. He told the contractor, you have to stop what you're doing. I said, "Okay". He said I'm on their property. I stopped. I did not let the man go any further. This is my brother.

Steve Hadley: My name is Steve Hadley. I'm her brother. As far as what he was saying, where it's eroded and it's low there, that's because the job was stopped. The same reason the pile of bricks back there—

Linda Phillips: That's where the man dumped them.

Steve Hadley: —that's where they came out and they tagged his truck that day—

Linda Phillips: See, where do you do it at?

Steve Hadley: —to stop work.

Linda Phillips: I don't know where you hit it at to show it. But, he dumped the dirt and the rock at the top, by the white truck. I don't know who's white truck that is. I don't know who that man is. But, he dumped it there, and whenever they told him to stop the work, that's how, the man took my money, his bobcat, and this is what I was left with.

Commissioner Nix: So, what you're saying is, what's there right now is exactly when the project was stopped?

Linda Phillips: Well, then, yes. Now, I've taken pictures because I talked to, and I don't have anyway of getting them up there, but I talked to Mr. Jeffers on countless occasions, and the last time I talked to him, he finally told me, "Don't call me again. You call one of the boards if you have anything else to say. I'm done with you." Okay, that's why, I was shocked when he told me. You did.

President Tornatta: Hold on, hold on, hold on.

Linda Phillips: You did not tell me not to call you back?

President Tornatta: Hold on, Ma'am. Ma'am? Linda, we're not getting into that here.

Linda Phillips: Well, but—

President Tornatta: No one's saying that you did anything. We're listening to both sides, but we won't have banter back and forth.

Linda Phillips: I just, I'm shocked at what he said.

President Tornatta: Can we see the pictures?

Linda Phillips: Sure. This is the back of the house. This is what they, if he got a hold of me last year, why did he just come up this past week and sign and put those out? I asked him, he told me I had to call a legal surveyor. He never one time offered to mark that property for me. It cost me \$600 to have a surveyor come out and show my property. This is what we did. This is the property line, this is the easement line. We got out and pulled all that out. The man, the contractor laid five bundles of straw there. We took them away. Yeah, there's extra straw laying there, but whenever I got out there to work on it, they called Mr. Jeffers again, and I found out today they've been calling him everyday for I don't know how long—

Unidentified: That's what the problem is.

Linda Phillips: —driving him crazy. He says I'm getting rid of this problem one time or the other. That's not, shouldn't be my fault because they are hard to get along with. That's the land. That is the easement right there.

Commissioner Nix: I've been down there.

Linda Phillips: Okay. Good. Do you live out there?

Commissioner Nix: No, I don't live there.

Linda Phillips: It's nasty, isn't it?

Commissioner Nix: I got a call to go look at it.

Linda Phillips: That's his grass. That's his grass. He got out there with me last week and helped me clean it up. I know it, it's just, this is how it lays. This is what lays on their property. I just found out—

President Tornatta: Hold on, hold on.

Linda Phillips: Mr. Jeffers came out and—

President Tornatta: Hold on, if you would go to the microphone and we'll catch all this.

Linda Phillips: Mr. Jeffers came out, the very first time, and knocked on my door, and he told me, he said, "That looks like it's Mr. Esche's property."

Commissioner Nix: Can we go back to the first slide, where the property lines, the strings and stakes there? You can see it.

Linda Phillips: But, see, that was, we got out there and moved that rock. The thing of it is, whenever the contractor came out, he was moving the dirt and he put some of the rock down there. He left it that way because Mr. Jeffers put a stop work sign on that bobcat. This was all supposed to be smoothed out where I could mow the grass. I tipped my rider lawn mower over three times. It a wonder I haven't broke a leg. That's all I wanted to do. They like it that way? That's a crock. I've got green water sitting in that ditch, which is on their property, but he's saying that all that's his property. It's not, it's mine, but I don't understand why the County Surveyor can wait a year to come out and tag properties.

Commissioner Nix: In looking at this, and I was out there about, probably about a month ago, what's happened there, and the reason why you're getting that is because you've changed the flow line, because all of that dirt is sloughing off into the ditch.

Linda Phillips: No, it's the way the—

Commissioner Nix: Yes, it is.

Linda Phillips: —man left it. Whenever—

Commissioner Nix: No, no. Well, if it's—

Linda Phillips: —now it's like that, the day the man brought the dirt in.

Commissioner Nix: —the way the man left it, I'm just saying that, I don't know how many, you had probably 50 or 60 loads of dirt hauled in there?

Linda Phillips: Oh, no we did not.

Commissioner Nix: Now—

Linda Phillips: I wished I could afford 50 loads.

Commissioner Nix: —you said it sloped like a ski slope, and your backyard goes up, it's fairly flat to the fence, and then it takes off from that point down.

Linda Phillips: No, it slopes from the back of my house. There is a constant slope from the back of my house down.

Commissioner Nix: But, I guess, the point I'm trying to make is, part of the reason why you're getting that against the inlet there is because that whole hillside is sloughing off into the drainage ditch. That's exactly what's happening.

Linda Phillips: There is matting, there was thick matting underneath there, and I told him, I said, "I don't want that rip rap in there." He told me he had to do that, and then he would cover it with dirt. The only reason he was doing it was to keep the dirt from washing away.

Commissioner Nix: Yeah, if that would have been put in properly, you wouldn't have needed to use that rip rap.

Linda Phillips: But, it looked like that the day they put the stop order in. They didn't let the man even finish the job. They come out and stopped him right where he was.

It would be like you trying to get halfway dressed to go to work, and then somebody come in and say, stop, and then you've got to work just the halfway dressed you are. Then you're saying, but this isn't how I normally look.

President Tornatta: Ms. Phillips, I think what has happened is there's a process to do that, and it's to get permits to get that to go through. Those permits are done so that it's done right.

Linda Phillips: Nobody ever, ever, I talked to the builder, asked him about it. I've talked to Mr. Jeffers, and he did tell me I had to have a permit, but I had already started on it. I didn't know that.

President Tornatta: Mrs. Phillips, and I understand, but if somebody is doing excess of speed limit on a road, and they can say they didn't know the speed limit, they still get a ticket. What I'm saying is, I understand wholeheartedly that you probably did not understand the rules of the county and the codes of the county. Ignorance of the law is not admissible in court. You cannot claim that you were ignorant of the law and they're okay with that, unfortunately. So, at this time, if you have something against a builder, if you have something against a worker that came in to do something on the property, then that would be a civil legal matter.

Linda Phillips: You know what, I just, I go to work, I'm 60 years old, I work 12 hours a day in a factory. I go to work and I come home, and I stay inside my house, other than to cut my grass and try to keep my yard neat. All I get is harassment. I don't understand why. I tried to deal with Mr. Jeffers, and I tried to explain my side of it. I don't know what the Esche's problem are, I went back over after Mr. Jeffers came the first time, and I asked them, I said, "Can we not do something with it?" I'm not paying any money on it. I like it the way it is. Well, I don't like it the way it is. It looks like trash lives there, and these homes are, to me, halfway decent homes. I don't—

Commissioner Nix: They are nice homes, Ma'am.

President Tornatta: Yes.

Linda Phillips: Well, and the thing I don't understand is, how you can let somebody do this, when I asked them for permission to work on it, and they told me as long as they didn't have to put money on it, they didn't care what I did. Then, when I get out there, now I'm getting all this backflow of you should, you should, you should. I don't understand it, just because they want to call and complain. They won't complain to me. They don't say anything to me. I asked him, I said, "Why did you not come over to me and say I don't like what you're doing with it?" Because, like I said, that was supposed to be covered up. It was never supposed to have any rock on there anyway. The way it was explained to me is it was to keep the dirt from washing away. But, the thing of it is—

President Tornatta: Who contracted that out?

Linda Phillips: What his name?

President Tornatta: No, no. Who contracted it?

Linda Phillips: What do you mean?

President Tornatta: Who paid for it?

Linda Phillips: I did.

President Tornatta: See, that's our problem.

Linda Phillips: Yeah, no, it's my problem, because I'm out of money.

President Tornatta: I understand, I understand, but there's nowhere we can go. I'm just telling you. It's not that we don't want to help. There's not a place to help you, because you contracted that out. And it was done—

Linda Phillips: It had to be fixed.

President Tornatta: —hold on, hold on. It was done without a permit.

Linda Phillips: I didn't know I had to have a permit.

President Tornatta: And, it was done against drainage code.

Linda Phillips: Okay, the guy that I went to yesterday told me that it's three to one everywhere back there, except this pile at the beginning, and that is the only place that is not three to one. He told me that as long as I removed that, then I'm fine.

President Tornatta: Okay, now I'm not saying that we don't have a remedy for this.

Linda Phillips: What are you guys doing Saturday? Everybody want to come over and help me move rock?

President Tornatta: Yeah, well, I can tell you what I'm not doing Saturday.

Linda Phillips: Aw, come on. Where's your neighborly spirit?

Commissioner Nix: We would have to notice the media, Ma'am.

President Tornatta: Yeah, that's right. We'd all be at a meeting.

Commissioner Nix: What would that look like?

Linda Phillips: It would look like—

Commissioner Korb: It would look like a campaign thing to me. I think that would work out great. Let's go.

Linda Phillips: It would look neighborly.

President Tornatta: Okay, Mr. Jeffers?

Commissioner Nix: Bill, let me ask you a question.

President Tornatta: Yes, can we have Mr. Jeffers up here please? If that's okay.

Commissioner Nix: You and I looked at this some time back....very good. You and I looked at this some time back, is there a way that this rip rap could be pulled back away and we would re-contour that, or they would re-contour the side and get some grass mat down, and reshape that, and maybe put some straw under to get it

planted? I mean, it would be a, is there enough room to do that between there and the fence at the top of the slope?

Bill Jeffers: Yes.

Commissioner Nix: So, Ma'am, that would be a real, and I know, I know we're talking about a little bit of money, but that would remedy this problem. That's what I saw when I was there that day.

Linda Phillips: Alright, let me ask you, I have got, I'm telling you, this has drove me out of my mind.

Commissioner Nix: I understand. I understand.

Commissioner Korb: You don't look crazy.

Linda Phillips: Huh?

Commissioner Korb: You don't look crazy.

Linda Phillips: Well, let me tell you what, you have no idea—

President Tornatta: Could you please step up to the mic?

Commissioner Nix: Step up to the mic please.

Linda Phillips: I asked, he knocks on my door, I'm in the shower, I put my housecoat on, and I go to the back of the yard—

Commissioner Korb: That's too much information.

Linda Phillips: —to look at this. I don't even, nah, okay, and this is when this starts, in September. So, we're almost to September again. I have told him, and I've told him, I cannot afford to pay \$600 to have my land surveyed. He comes out last week and marks it, and I didn't even know it. Didn't send me a, where's he been all year? I had already, and I hired a man—

President Tornatta: Hold on. I understand. You said that once before, but it's not his position to do private surveying.

Bill Jeffers: I had a change of heart, period.

Linda Phillips: I didn't even know you had one. I thought that was a —

Commissioner Nix: I knew that was coming.

Linda Phillips: I'm sorry. You did, didn't you?

Bill Jeffers: I'm the straight man.

Commissioner Korb: Can we just go ahead, is it possible for us to do what Commissioner Nix is asking to do? We can fix this thing and then you don't have to worry about it anymore?

Linda Phillips: Okay, they have to get that mess cleaned up though, right? They can't leave that like that, can they?

Commissioner Korb: They who? Being the Esche's?

Linda Phillips: The Esche's.

President Tornatta: Well—

Linda Phillips: Did you see the water in those pictures? It's green.

Bill Jeffers: I would recommend asking Paul Esche if he would mind if some of the rip rap, not all of it, some small amount of the rip rap were moved onto his property, from the entrance of the pipe, back up, to fill in the scoured out flow line of that ditch. Then, the rest of the rip rap be removed from the bank, because all it's done is add weight to the unconsolidated fill.

Commissioner Nix: Can we do, can we do this?

Bill Jeffers: That was in the e-mail I sent today.

Linda Phillips: (Inaudible). This is where we did it. There is the land, the easement, we went in. Can you see where we've moved? Now, we didn't move it up here, because we just didn't have time.

Commissioner Nix: There's a picture—

Linda Phillips: But, this has been moved.

Commissioner Nix: There's a picture that shows—

Linda Phillips: See it? Look.

Commissioner Nix: —the upstream.

Linda Phillips: The pile at the top is what that Mr. Bivins told me today—

Commissioner Nix: Oh, you just got—

Brenda Jeffers: Is that it?

Commissioner Nix: No, that's downstream. Upstream.

Brenda Jeffers: Right there?

Commissioner Nix: No.

Bill Jeffers: No, the last one, or the first one, I guess.

Brenda Jeffers: Oh, well, that's the wrong one.

Commissioner Nix: Is there just two pictures here?

Brenda Jeffers: There's three.

Commissioner Nix: Okay.

Brenda Jeffers: This one?

Commissioner Nix: You can't see it, but just beyond your property line, up the way, that was the original intent and original design.

Bill Jeffers: Right, I apologize. I do have some pictures in the folder.

Commissioner Nix: If you'll look—

Bill Jeffers: But, I didn't include it in the slide show, but if you look uphill, as Mr. Nix is indicating, uphill of Mrs. Phillips' property, on the adjoining properties on up the hill, the swale is very slight, very, I mean, you can mow right across it, and everyone does mow right across it. Here's a picture of it here.

Commissioner Nix: There we go. That's it.

Bill Jeffers: And, what Mr.--

Linda Phillips: (Inaudible).

Commissioner Nix: Well, you can't now, because the grade is too steep.

Bill Jeffers: And the reason she cannot do that, is because—

Linda Phillips: I couldn't do that to begin with.

Bill Jeffers: —she brought in somewhere between 15 and 25 loads of dirt and put it in her backyard, and she told me that she brought that much dirt in here. Not 50 loads, but about —

Linda Phillips: Neighbor at southeast corner of Big Hill and Gish has brought in two truckloads of dirt and filled in drainage ditch and culvert at the road.

Bill Jeffers: That was the most recent complaint that this last....just what you see there is the two truckloads.

Linda Phillips: Don't those people work? It looks like they would go out (Inaudible).

Bill Jeffers: It was brought in according to Mrs. Phillips statement—

President Tornatta: Hold on.

Bill Jeffers: —to smooth out and finish off the work.

President Tornatta: Recommendation?

Linda Phillips: All I wanted to do—

Bill Jeffers: But, uh, there's been a lot of things said—

Linda Phillips: —was cut my grass.

Bill Jeffers: –here tonight. I don't want to go into it, but one thing that was told me by Mrs. Phillips, she brought in between 15 and 20 loads of dirt.

Linda Phillips: I brought in loads–

Commissioner Korb: Don't care. Let's just fix it.

President Tornatta: Okay.

Linda Phillips: I put–

Commissioner Nix: Mrs. Phillips, would you be agreeable to pull the rip rap back, and re-contour that to an acceptable grade? And then, we just need to get some matting–

Linda Phillips: I pulled it back from there.

Commissioner Nix: –or something down?

Linda Phillips: It's not like that. The picture that I showed you was taken two days ago. We went and had them super–

Commissioner Nix: My concern is, this is going to keep sloughing off.

Linda Phillips: If you had let the man finish the job, it wouldn't have.

President Tornatta: I know, right, but we talked about that.

Linda Phillips: I'm serious.

President Tornatta: We talked about that. You have to have a permit to do that.

Linda Phillips: Okay, that's fine. I know that now.

President Tornatta: That's part of it.

Linda Phillips: By golly, I'll make sure I do.

President Tornatta: Right.

Commissioner Nix: But, if this is re-graded, and this rip rap is actually hindering the problem, it's not helping it.

Linda Phillips: It's what?

Commissioner Nix: The rip rap is actually hurting this and not helping it. It's adding weight to the dirt, and the dirt's sloughing off. It's not, correct me if I'm wrong, Mr. Jeffers. If it was placed properly.

Steve Hadley: I've got a question here.

Commissioner Nix: Yes, sir.

Steve Hadley: She's at the bottom of the hill, correct?

Commissioner Nix: Yes.

Steve Hadley: And there's probably 20 houses all the way up this hill, and water, whenever it rains, it rains hard, everybody, all the rain does not go to the ditch.

Linda Phillips: No.

Steve Hadley: It runs down their yards, I've been standing at her house and her neighbor has a privacy fence and I can watch water come down under that privacy fence to her backyard and runs down her yard. So, she's getting water from every direction.

Linda Phillips: There would be big (Inaudible) of dirt—

Commissioner Nix: The problem with living at the end of a hill.

Steve Hadley: Here, this is what got started, where the rock were, there was two and three feet ruts back there deep, where all that water was washing it down towards the ditch.

Linda Phillips: And, I was trying to mow it, and I kept turning the lawnmower over, and the Esche's neighbor kept coming over and pulling me out, and I thought I've got to do something. So, like I said, God knows I know it now, but I didn't then, that I had to have a permit to do something with my own backyard. Like I said, that is not the condition of the yard now. The condition is what you saw in the pictures, and it's been moved. There's the easement, and there's my property line. They're marked, and they will stay marked forever.

Steve Hadley: The whole problem here is that her neighbors behind her do not like the rip rap, the rock back there.

Linda Phillips: That's what they said.

Steve Hadley: It's an eyesore. That's why they keep calling in everyday. They want the rock moved.

Linda Phillips: That's it. They said it. We want the rock moved.

President Tornatta: Mr. Jeffers? I would like just a quick idea from you, if we haven't seen it, and, you know, if this picture doesn't comport to what you're talking about, to possibly give her a remedy. Then, if we can check with the Esche's to see, make sure their complaint is being addressed, and, at that time we can come back and, or we can give her a remedy.

Linda Phillips: I want to tell you something, I had to take off work—

President Tornatta: It's up to this board.

Linda Phillips: —at time and a half to come here tonight. I have lost money to the contractor, I have lost \$600 to pay a man to do a job that he could have done and didn't do until the day before I had already called the man and paid him to do the other job. Do you see what I'm going through? This isn't fair to me at all.

President Tornatta: I see what you're saying, but you didn't go by the rules of the county, and that Surveyor, that Surveyor is not, he's not, that's not his job to come out and do what a surveyor's work would be on a private sector.

Linda Phillips: But he dit it. So, it shows he could have done it. All that (Inaudible. Talking over each other.)

President Tornatta: That's not his place.

Linda Phillips: (Inaudible. Talking over each other.)

President Tornatta: No, it's not. That's not his place.

Bill Jeffers: I will try to answer your question briefly, but I want to call your attention to my first statement that a representative of Ms. Phillips, Mrs. Phillips, her sister who lives in the same house, came to our office and asked what could be done with the ditch before they initiated it. I told them exactly what could be done with the ditch without a permit, without a new plan. They could have restored the original, you know, configuration, or they could have improved it to exactly what the plan, approved plan, showed. Anything other than that requires a new plan.

Linda Phillips: (Inaudible. Comments made away from the microphone.)

President Tornatta: Hold on.

Bill Jeffers: She knows it, because I gave the plans to her sister to take home to her. If they want to leave the rip rap, which Mrs. Phillips says her intent for the rip rap was so that she would not have to mow the embankment. That's what she told me. If she wants rip rap there—

Linda Phillips: I don't want rip rap.

Bill Jeffers: —she must submit—

President Tornatta: Ms. Phillips? Please.

Bill Jeffers: —if she doesn't, now, if she doesn't want the rip rap, then it must be removed.

Linda Phillips: I never wanted it.

Bill Jeffers: If she wants the rip rap, which she told me she did to cover up the grass so she wouldn't have to mow it—

Linda Phillips: I did not. That's not true.

President Tornatta: Hold on. Ms. Phillips?

Bill Jeffers: —that requires a new plan. If she doesn't want the rip rap, lay the dirt back to three to one slopes, establish grass, we're done.

Linda Phillips: It's three to one slope now, except for the top up there where the man dropped the (Inaudible).

Bill Jeffers: Remove the rip rap, restore the—

Linda Phillips: Why? Because the Esche's don't like it?

President Tornatta: I'm going to call this—

Bill Jeffers: Because the rip rap requires a new plan.

Linda Phillips: It's not fair. Why, just because the Esche's don't like it?

President Tornatta: Ms. Phillips, we have asked you time and time again to let the Surveyor speak. If you're going to speak while he's speaking, we are done here.

Linda Phillips: Okay, let me ask you this, I have tried to talk to him since last September. He has been nothing but evasive with me. He has told me don't call me again. What type of, how does that, what would you feel like if they call, if he told you that on the phone when you're trying to figure out what you can do? I do not have the money to keep doing this, just because the Esche's don't like rip rap. I didn't order that. I didn't ask for it. I didn't even know it was there until it was done in my yard. I don't know what everybody wants me to do.

President Tornatta: Understand, and that is a civil matter that you take up with the guy that you contracted. That does not have anything to do with what we're doing here. So, I'm going to ask--

Linda Phillips: They told me—

President Tornatta: —excuse me, excuse me. I'm going to ask this Board to come up with a conclusion, and we're moving on.

Linda Phillips: We can move on, and I'm not done, but you can do that.

President Tornatta: We've heard enough.

Commissioner Nix: I guess, just from a legal standpoint—

Linda Phillips: You haven't heard it all.

Commissioner Nix: —we make a recommendation, is that binding? As far as what this Board, a recommendation like this?

Ted C. Ziemer, Jr.: Are we treating this as an obstruction?

Linda Phillips: It's not.

Bill Jeffers: This is a violation of the drainage code in that work was done that does not conform to the approved plan, and without an approved modified plan to modify a drainage ditch that exists in an easement, a platted easement. In other words, the code says you must have a plan.

Linda Phillips: I had a plan.

Commissioner Nix: Ma'am?

Linda Phillips: I have a plan.

Commissioner Nix: Ma'am?

Bill Jeffers: You must have written permission from the Drainage Board.

Ted C. Ziemer, Jr.: I'm going to have to look, Bill, I don't know what the remedy is for—

Bill Jeffers: Okay.

Ted C. Ziemer, Jr.: —a violation of that particular ordinance.

President Tornatta: Well, we have on the books, we have on the books that there was supposed to be a plan presented to this Commission.

Ted C. Ziemer, Jr.: Right.

President Tornatta: And, I've yet to see a plan.

Linda Phillips: The gentleman today that I paid \$600 to, oh, I know, go to the microphone. The gentleman told me today, that yard is three to one everywhere except the top, where the dirt and that rock is, and that is where the gentleman initially, the contractor dumped the rock and the dirt. He said everywhere but there is three to one. I'm meeting code.

President Tornatta: Okay. So—

Bill Jeffers: And I disagree.

President Tornatta: Okay.

Linda Phillips: Well—

President Tornatta: It's going to fall on the Surveyor's recommendation for this Board. So, I guess—

Bill Jeffers: And, I'll be happy to make a recommendation at this point.

Commissioner Nix: I would like to hear that recommendation.

Bill Jeffers: I recommend that the rip rap be removed from the embankment, that the embankment be re-established at a constant and smooth three to one, from the bottom, from her property line thence west to her fence line.

Commissioner Nix: And that would make it a whole lot easier to mow too. Excuse me.

Bill Jeffers: That's at a minimum. If she wants it flatter than that, that's fine. That it be re-vegetated with grass, to a lawn condition, and whatever it takes to accomplish that.

President Tornatta: And, the letter was sent out, in summary:

“It’s the County Surveyor’s understanding that the Drainage Board expects you to present a plan on July 1, 2008. Thereafter to demonstrate verifiable actions toward accomplishing the plan within the 30 days in July 2008, immediately following your presentation of the plan to the Board on the 1st day of that month.”

That was sent out.

Linda Phillips: Here’s the gentleman I talked to today.

President Tornatta: I’ll take a recommendation from this Board.

Commissioner Nix: Once again, this is somewhat of a unique situation, to actually move on something without, I guess, I’m looking to legal counsel for–

Ted C. Ziemer, Jr.: I hate to ask her to miss work again. I would like an opportunity to research this and advise the Board at its next meeting. You wouldn’t have to be here.

Linda Phillips: I wouldn’t dare miss it. I’m scared.

Ted C. Ziemer, Jr.: Well, and that’s up to you. I’m going to research what the Board can do in this situation, given that you did not obtain a permit, and that you improperly applied fill and rip rap, contrary to the ordinance.

Linda Phillips: So, I’m going to go through the subdivision and everybody that has brought fill in there to do their lawn, we’re going to come down and go through all of this with everybody in that subdivision? Everybody out there has brought dirt in. So, that’s what I do? I bring action against everybody in that subdivision that has brought dirt in? Is that what you’re telling me I can do?

Ted C. Ziemer, Jr.: I’m not, I don’t know about the other people in the subdivision. I’m saying that we’re going to respond to what the Surveyor has alleged relative to your property and this drain. I don’t know, sitting here today, exactly what the remedy is, but I will know on July the 15th.

Linda Phillips: Well, I have surgery in Nashville, Tennessee on July the 28th, and I can document it, show it to you, whatever, and I am not going to be doing anything for four solid months. So, whatever you need done, please tell me. I don’t know what you, you know, I don’t know what you want.

Ted C. Ziemer, Jr.: Certainly you can do this. The Surveyor has recommended that you–

Linda Phillips: He won’t talk to me.

Ted C. Ziemer, Jr.: He is talking to all of us here today. He has recommended that you remove the rip rap, and using fill replace it to the three to one, is that right?

Linda Phillips: But, if it’s three to one now.

Ted C. Ziemer, Jr.: But, the rip rap is there, and, if you are talking about doing something before your surgery, and I’m sorry that are you are going to have to have surgery, that’s what you could do, and that would solve the problem. What the

Board is asking me to do as the County Attorney, is to advise them what they can compel you to do.

Linda Phillips: Well, this is what I compel you to do, you act like it's your home, and you're 60 years old and you're working 12 hours a day, and somebody that is behind you, for some unknown reason, I don't even know those people. I went twice and I asked him, "Can we do something with that?", and they told me, yes, as long as they were not out money. Then, they come back and they start calling him. Now, because they've chose to call him everyday and harass him, he's wanting to get rid of the situation, I'm going to be on the losing end. I don't understand.

Ted C. Ziemer, Jr.: Yeah, is Mr. Esche here?

Linda Phillips: No, he didn't show up. He'd rather aggravate me and him. He's not going to show up. See, that's how worried he is about it. I don't understand. I do not understand. All I'm trying to do is get the yard to look nice.

President Tornatta: Okay.

Linda Phillips: That's all I want.

President Tornatta: We are going to, we can continue, table this, and continue on the 15th. It's the recommendation of the Surveyor, at this time, that if you remove that rip rap and start to make that slope three to one—

Linda Phillips: How am I supposed to move it? Just pick it up? Where am I gonna take it to?

President Tornatta: I don't know how it got there, but how it got there, I would remove it the same way.

Linda Phillips: Well, I'll call that man back.

President Tornatta: I would recommend that we do this. Do we have a motion?

Commissioner Nix: Motion to table.

Commissioner Korb: Second.

President Tornatta: So ordered. Motion to adjourn?

Commissioner Nix: So moved.

Linda Phillips: That's okay. What goes around comes around.

Commissioner Nix: No, wait, is Mr. Jeffers here? Any other issues?

Bill Jeffers: If I could just have sixty seconds to myself?

President Tornatta: Yes.

Bill Jeffers: Punch that stopwatch. What actually occurred, and I feel that since it's been broadcast on public t.v., I must say—

Linda Phillips: I didn't know we were on t.v. Why are we on t.v.? I didn't (Inaudible. Talking over each other.)

Bill Jeffers: If I could have sixty seconds to myself to at least offer the explanation, that you can imagine how circuitous the conversation got over an hour and a half with Ms. Phillips on the telephone.

Linda Phillips: I have never (Inaudible. Talking over each other.)

Bill Jeffers: On more than one occasion. Being asked all kinds of questions that I explained to her had, that I had absolutely no jurisdiction over, outside of that easement. There's a 15 foot easement that I wanted to concentrate on. I tried to explain, and I wrote two lengthy and very succinct letters, both of which you have copies of, and you can ask your attorney if there's any corrections that need to be made to that. Ten seconds. At the end of one of the very circuitous and long conversations that was just repeated over and over and over, like a broken record, I said, "If you have any more questions about the veracity of what I am telling you, or such things, I advise you to call the Drainage Board, either singularly or come to the meeting and talk to them together to check on the truthfulness of anything I've told you." I never said that I would never speak to her again.

Linda Phillips: You said don't call me again.

Bill Jeffers: Then I had a change of heart and went out and found her survey corners, okay? Because I didn't want her to have to spend \$150 an hour to do so.

Linda Phillips: Okay, I get sixty seconds now. First of all, I didn't know this was being televised. I've not signed anything stating that it's okay with me to be on there. I didn't think you could do that.

Ted C. Ziemer, Jr.: All public meetings of the Vanderburgh County Drainage Board and Commissioners are televised.

Linda Phillips: Well, I did not know that. Nobody told me that. See, I am so left out. Okay, the thing of it is, why did he have such a change of heart after a year? Do you understand what I'm saying?

Commissioner Korb: Because he heard you were having surgery.

Linda Phillips: No, he didn't. I just told you that.

Commissioner Korb: No, I'm sorry.

Linda Phillips: I can be just as cocky as he can. The thing of it is, I'm trying to tell you is, I didn't know, and God cut off my wrists because I didn't. I'm sorry. If, Mr. Nix seems to think that it can be fixed without me having to take it out, that's what I understood awhile ago, you to say that you felt like there was a way around it. Is that not what you said?

Commissioner Nix: I said that, basically, what Mr. Jeffers, I guess, concurred with, is that if you remove the rip rap and get it back to three to one and get some vegetation, good grass growing on it.

Linda Phillips: Who's going to cut that mess?

Commissioner Nix: Ma'am, that's—

Linda Phillips: I wanted to put mulch. I did not want any grass. I don't want anything growing back there. So, if I want to plant a shrub, or anything, ground cover, I can't do anything back there at all?

President Tornatta: Mrs. Phillips, I'm going to call this meeting to adjourn. I would like a motion to adjourn, please.

Linda Phillips: I'm not done. I want to ask you these questions.

President Tornatta: Ms. Phillips, we've went over this for the last 45 minutes.

Linda Phillips: I can't plant (Inaudible)?

President Tornatta: We have told you what the remedy is. If you do not choose to do that remedy, then I don't know what else we can do.

Linda Phillips: Explain to me why it has to be your way? That's my house. Why is everybody here allowed to tell me what I can do with the property that I pay taxes on?

Ted C. Ziemer, Jr.: Mrs. Phillips, the only thing they can tell you is that the legal drain has to be left to drain—

Linda Phillips: The drain is on his house.

Ted C. Ziemer, Jr.: —unimpeded.

Linda Phillips: The drain is on his property, not mine. It's not on my property. That's what I'm telling you. The drain is on that other man's property. It's not on my property. My property has nothing to do with the drain. I'm not blocking it. It sits just like it did when I bought the house. It's on his....even Mr. Jeffers came out, the first time, and showed me. That is on Mr. Esche's property. It is not on yours. That's been common knowledge from the first day I talked to Mr. Jeffers. That's what I'm saying. I'm not blocking it. What difference does it make? Please explain to me. Mr. Esche wants me, they, at his suggestion, for me to put a pipe in, put all that rip rap down over that pipe, why should I do that to that man's property? It's his property, not mine. They're wanting me to fix up his property.

Ted C. Ziemer, Jr.: Well, doesn't, are we not impeding the drainage—

Linda Phillips: No.

Ted C. Ziemer, Jr.: —by what Mrs. Phillips has done?

Bill Jeffers: We still haven't addressed the three or four bales of straw that was left in the ditch from September until last month, and we don't even know....Bill Bivins said he was going to probe out the pipe and see if any of that straw was stuck in the pipe. That's what brought Paul Esche in here in the first place, was that all that straw washed into the face of the pipe and flooded his backyard.

Linda Phillips: (Inaudible).

Bill Jeffers: I asked her back in September to remove the straw.

Linda Phillips: Did you see (Inaudible)?

Bill Jeffers: To remove the straw from the ditch.

Linda Phillips: It was (Inaudible), and I'm 60 years old. I'm in bad health.

President Tornatta: Excuse me, excuse me.

Linda Phillips: I can't (Inaudible).

President Tornatta: Ms. Phillips? That's enough.

Bill Jeffers: But, my point has been from the very beginning that clearly printed on the plat, and in the covenants and restrictions, which every property owner in this subdivision signed on to when they took title to their property, they signed a document at the lending institution saying they agreed to the covenants and restrictions, and one of them is you do not make modifications to the, within the drainage easement, and we're looking at the drainage easement, everything 15 feet on her side of the lot, the first 15 feet up to, almost up to that fence, is in a drainage easement. No modifications without written approval from the Drainage Board. Pure and simple, and these modifications have caused a partial obstruction of the waterway, and the potential for a monumental obstruction should it continue to slump off. As you can clearly see, it's slumping off, off the top of the fabric and down into the ditch.

Ted C. Ziemer, Jr.: Okay, and, Mrs. Phillips, that is what establishes what this Board is looking at relative to the drainage, even though it is on Mr. Esche's property.

Linda Phillips: But, I'm not doing anything to that easement.

Steve Hadley: May I show you one picture, please?

Ted C. Ziemer, Jr.: Sure.

Linda Phillips: Look at that. Go ahead.

Steve Hadley: We're talking about straw that gets down there. That's at the top of the hill. There's straw all the way across up through here. (Inaudible. Comments made away from the microphone.)

Madelyn Grayson: Can you turn your microphone on, Ted, so we can pick up his comments?

Ted C. Ziemer, Jr.: Yeah.

Steve Hadley: So, if there's straw in a ditch, it could be anybody's.

Commissioner Nix: The straw I saw were bales of straw that looked like they were pinned in front of the—

Linda Phillips: We had people that decorated out there for Halloween with big bales of straw and scarecrows and everything else. I don't, I mean, I did take my bales of

straw, and it was bundled up. It was not loose straw. I don't know what the people in the neighborhood have done with all of their straw when they decorated for Halloween. They do that in September, and that's what we're talking about. Do you, I wish you knew the frustration that I feel, because I am stuck just because these people want to aggravate the tar out of him. I don't....so, when are you going to tell me what I have to do, so that I know, so that I can get this taken care of, before I have a stroke?

Ted C. Ziemer, Jr.: It's been suggested, and you indicate you don't want to do this, that if you remove the rip rap, and re-establish the three, and I understand that somebody's told you that it is three to one, but—

Linda Phillips: Well, I paid the man \$600 for it.

Ted C. Ziemer, Jr.: Well, then that may be his problem. Make him come back and do it right. But, if you remove the rip rap, and re-establish the three to one slope, the problem is solved.

Linda Phillips: So, what am I supposed to make it three to one with?

Commissioner Korb: My understanding is though, that it's already three to one.

Linda Phillips: It is three to one. That's what I'm telling you.

Commissioner Nix: But, it's not. You can see how it's humped up, and then it takes off. It's not a gradual, it's not a solid three to one at all.

Linda Phillips: It's because the work was stopped. That's what I'm trying to tell you.

Commissioner Nix: I understand.

Ted C. Ziemer, Jr.: Or, if the workman can come back and establish three to one.

Linda Phillips: He told him to leave and not come back.

Ted C. Ziemer, Jr.: Well, now we're telling you to get it finished. Is that correct?

Linda Phillips: Anybody want to buy a house? I got a good one for ya. Good neighbors. Great neighbors. Wonderful County Council that does everything they can to help out.

Commissioner Korb: I'm assuming moving the rock is an issue for you?

Linda Phillips: I'm 60 years old. I have health problems. No, I'm not looking forward to getting out there one by one and picking that up. I don't have a vehicle to move it. He has heart problems, he has heart problems. They were coming with me tonight just to help me out.

Commissioner Korb: Okay.

Linda Phillips: I don't have anybody. My son lives in California.

Commissioner Korb: That's why I--

Linda Phillips: That stupid husband of mine had the nerve to actually die and leave me in this mess by myself. I just can't believe the nerve. I don't want what you people want out of me. Somebody please tell me what you want.

Commissioner Korb: If we can help move the rock, can you get your contractor out there?

Linda Phillips: I don't know.

President Tornatta: We can't move the rock.

Commissioner Korb: Okay. Then, I move for adjournment.

Linda Phillips: You guys go home with your family and have a good night.

Commissioner Nix: Second.

Linda Phillips: I hope you get a neighbor like mine real soon.

(The meeting was adjourned at 7:25 p.m.)

Those in Attendance:

Troy Tornatta
Bill Jeffers
Jerry Arnett
James Drake
Brenda Jeffers

Bill Nix
Ted C. Ziemer, Jr.
Jana Kirk
Linda Phillips
Others Unidentified

Jeff Korb
Madelyn Grayson
Joe Schutte
Steve Hadley
Members of Media

**VANDEBURGH COUNTY
DRAINAGE BOARD**

Troy Tornatta, President

Bill Nix, Vice President

Jeff Korb, Member

(Recorded and transcribed by Madelyn Grayson.)

**VANDEBURGH COUNTY
DRAINAGE BOARD
JULY 15, 2008**

The Vanderburgh County Drainage Board met in session this 15th day of July, 2008 at 5:54 p.m. in room 301 of the Civic Center Complex with President Troy Tornatta presiding.

Call to Order

President Tornatta: We'll start Drainage Board immediately. Mr. Jeffers?

Bill Jeffers: Good afternoon, President Tornatta.

President Tornatta: Oh, no, okay.

Madelyn Grayson: I don't have the July 1st minutes completed.

President Tornatta: We have an issue on the minutes. Let's open up, Tuesday, July 15, 2008 Vanderburgh County Drainage meeting. We will not have minutes to approve. So, we're on to you Mr. Jeffers. Welcome.

Report on Jerry Arnett Petition

Bill Jeffers: Thank you. We'll move on to a report, my final report on the Jerry Arnett petition. Mr. Arnett could not be here tonight. There may be one or two residents in the audience. I would like to give you a very brief slide show, showing you the vast improvements that have been made in the drain. I visited the site, both on Sunday, after Saturday afternoon and evening's rainfall, and again on Monday. I walked right down the middle of the ditch from one end to the other taking photographs that clearly display that the ditch is free of obstructions, and is capable of handling the flow of water from that rainfall.

President Tornatta: Wow!

Bill Jeffers: Starting at Mrs. Brassard's address, 3213, you can look down and see all the way down this tunnel of vegetation to the other end of the ditch. The next slide, I'm standing right at the Brassard-Schutte property line, and, again, you can see clearly right down the ditch. This is what it looked like two weeks ago. So, you can see there's been a vast improvement between that time of my last report and this week. Walking on down the ditch, we'll just click through them real fast, the Schutte property, clear; Jewell Drake, Mr. Drake, I think Jewell is his mother, and he went out there and did a wonderful job of cleaning this. It looked about the same as the Schutte property the week before. This is the Sartore property, again, has been cleared. The Brown property has always been clear, looks wonderful. Shrewsberry, and I apologize, this lady's name is misspelled in the tax record. This is the correct spelling of her name. I think I may have had an incorrect spelling last time, due to the tax record error. Again, there were rocks and so forth, you can go ahead and show the rocks. This is all the rocks that came out of her property, stacked up on the ditch bank. So, you can see that was a monumental amount of work done by someone. Gibbs property, again, it's been cleared. The Martin property, cleared on the left bank, a little bit of vegetation is still remaining on the right bank. It's mostly weeds, nothing real heavy, water can make it through the ditch. Then, the last property before we enter the pipe, the Helmerich property, you can see the pipe, someone has put a grate up against the face of the pipe, after cleaning the ditch, I suppose to address those things that the lady from 3101 was talking about, a fire

extinguisher and so forth from getting into the pipe. Someone's trying to prevent that. Here's what it looked like two weeks go, you couldn't even see the pipe. So, vast improvement. The County Surveyor recommends, at this time, to declare the condition of the ditch substantially cleared of obstructions, sufficient to convey storm water, but to, when you close this meeting, this hearing, to leave it open on the record, so that, in the future, if some similar condition grows up, or becomes extent in the ditch, that a person who had been a party to this petition and this hearing could come back without filing a new petition.

President Tornatta: So, we would need a motion to continue?

Bill Jeffers: Indefinitely, right. Just so they wouldn't have to put up the \$100 filing fee if something happened three years from now. Is that okay?

President Tornatta: Do we have a motion to continue?

Commissioner Nix: So moved.

President Tornatta: Second. So ordered.

Bill Jeffers: I would really like to say, to anyone who happens to be watching or reading the minutes, that we certainly appreciate this effort that was done on the part of the neighborhood, you know, the neighbors coming together and doing it and saving the county the trouble and the expense to have to go out there and clear it.

President Tornatta: I was going to say, it's, as weird as this sounds, it's exciting to see folks working together for the betterment of their community and their neighborhood to make sure—

Bill Jeffers: Right.

President Tornatta: —that there's not that antagonistic view of one another not pulling their weight. So, what a great job and thanks for following up, because had you not done that, that wouldn't have happened. So, thank you.

Bill Jeffers: I don't know if anybody wanted to say anything from the neighborhood, if they happen to be here.

President Tornatta: Anything on this one? It will be continued indefinitely, hopefully.

Resolution of Paul Esche Complaint/Linda Phillips Project
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Bill Jeffers: Our next item is to resolve the Paul Esche and Linda Phillips project. In that regard, I did go out yesterday, confirmed that what Ms. Phillips said about the removal of the rip rap is a fact, it's gone. At this time, I would make the recommendation to adopt Bill Bivins, the professional engineer that presented, his plan was presented to you two weeks ago at this meeting by Mrs. Phillips, to adopt his plan that was submitted to the Board, with the following modifications; these modifications are as suggested by the County Surveyor only to bring the plan fully into conformance with the drainage code. Because the rip rap has been eliminated and removed, to eliminate the undercutting of the ditch bottom and the placement of the rip rap into the ditch bottom, that was Mr. Bivins suggestion for the disposal of the rip rap, that would eliminate having to cart it off and pay a fuel charge for

carting it off, that's no longer needed, and, so that extra excavation should be modified out of the plan. In its place, because the ditch bottom needs to be widened to two feet, as it previously was, and as it is going on up the hill, as its shown on the plan, it must be two feet wide and flat, in order to convey sufficient water to go into the pipe system. I would like the plan modified to show that. Because of the grade of the ditch coming down the hill and the velocity shown on the original plan of over six feet per second, and up to eight feet per second, the plan should be modified so that the ditch bottom is protected by staked sod, or North American Green SC150 double knit erosion control mat, or its equal, installed per manufacturers recommendation or INDOT standard specifications. This particular installation of erosion control mat should go across the bottom, two foot bottom and up three feet on each side, that's about the width of the mat, seven to eight feet, and that would cover the entire wetted perimeter that's shown, the eight foot wetted perimeter that's shown on the approved plan for that subdivision, and to modify Mr. Bivins plan to show the three to one side slopes should be seeded and fertilized with a mix, according to Natural Resource Conservation Service, or equal recommendations, so that it will be stabilized, and then matted with either a fast deteriorating DS150 mat, or a longer lasting mat such as S150, whichever is most applicable to the season in which the seeding is done. In other words, if they do it in the fall and we've got a lot of rainfall, they can use the fast deteriorating mat, (tape flip) very quickly, if it's a dormant seeding, they should use a little bit longer lasting erosion control mat. That is the, oh, and as a final recommendation, or those are the modifications to the plan, but as a final recommendation, I suggest that you require the employment of Mr. Bivins to stake out, as needed, the three to one side slope, and monitor the project until its completion to ensure that the three to one side slope is accomplished.

President Tornatta: Do you have a recommendation on timing?

Bill Jeffers: I would say the drainage code allows you to speed the project up to 30 days. If that's a little quick, and it might be, considering the dryness of the weather, potential dryness between now and September, I would rely on the contractor, who Ms. Phillips apparently has employed, because his equipment is out on the site, to judge the soil conditions and possibly give him up until mid September to complete it, so that the seeding is placed in such a time that we would anticipate some rainfall, but no, absolutely no later than October 1st, October 15th, let's say. Because then you would have to go to dormant seeding, you know, wintertime seeding if you went past October 15th. You wouldn't anticipate any really vigorous grass growth until the next spring. If it's done by September 15th you could get a pretty good grass cover—

President Tornatta: Okay.

Bill Jeffers: —by November.

President Tornatta: Alright, are those your recommendations at this time?

Bill Jeffers: Yes, sir.

President Tornatta: Okay. I'm going to ask for Mrs. Phillips to come to the podium please.

Linda Phillips: You didn't think you'd ever ask to talk to me again, did you?

President Tornatta: I want you on your best behavior.

Linda Phillips: I am so good, you would just be amazed.

President Tornatta: Okay. Make sure you get that on the record. State your name and your address please.

Linda Phillips: My name is Linda Phillips. I live at 9223 Big Hill Drive.

President Tornatta: Okay.

Linda Phillips: The last time that I was here, July 15th¹, I understood that I could put it back the way it was, take the rip rap out, and just go back to the beginning. So, that's what we did, we took the rip rap out, and I called the gentleman that I had hired initially, and I asked him, I said, "Could you, you know, help me to get this dirt and stuff back out of there? To get it back to the state it was when I hired you?" He told me that because Mr. Jeffers had put a stop work on his equipment, he was not allowed to do it until he had a letter from Mr. Jeffers stating it was okay to be on my property. So, I called Mr. Jeffers and I asked him, I said, "Can I get something from you stating that it's okay to have this contractor back on my property to put this, I call it easement, ditch back the way it was initially?" Mr. Jeffers told me no, that it would have to be the way Mr. Bivins suggested. Let me tell you, first of all, when I talked to Mr. Bivins, the first time I talked to him was that day that I was here at the meeting on July the 15th². On the telephone he told me that he did not see a problem with the ditch, other than the initial area where they had dropped the rock and the dirt, which, as I explained, because the neighbors did not give me a chance to finish what we had planned, nor did they bother to come over and ask me what we were going to do. Please, please let me reiterate the very first thing I did, and I did it on two occasions, I went over and I knocked on the door, I don't know these people, I didn't know their name, and I introduced myself, told them who I was, and I asked them, "We need to do something, it looks nasty, do you mind if I try to do something with this area?"

President Tornatta: Okay.

Linda Phillips: They told me, they did not care—

President Tornatta: Alright, we're not going to go over this—

Linda Phillips: I'm just, okay, I know—

President Tornatta: —this is as fresh in my mind as it was a month ago.

Linda Phillips: I know, it's two weeks now.

President Tornatta: Here's what we need to do. The rip rap is gone at this time, correct?

Linda Phillips: Yes, sir.

¹This date should actually be July 1, 2008.

²This date should actually be July 1, 2008.

President Tornatta: Okay. It's, he's taken it out of the area? I mean, it would not work—

Linda Phillips: It's in Owensboro, Kentucky.

President Tornatta: Okay, okay. So, now we're off to plan B. Plan B was suggested by Mr. Bivins, and the modifications were given of that plan. Now, what my, what I would like to proceed with now is working with you to decide a good timely point when we think we could get these improvements done that's okay for you too.

Linda Phillips: So, the county's paying for this?

President Tornatta: Not a 30 day thing, or a 60 day thing. If we need more time to do this.

Linda Phillips: Who pays for this?

President Tornatta: This would be you correcting the issue.

Linda Phillips: My correcting the issue would be to put it back as it was when I started.

President Tornatta: Okay.

Linda Phillips: And that was what we said last week, that as long as I put it back the way that it started, that was it. That is what I was in the process of doing, but Mr. Jeffers wouldn't give me the letter stating it was okay for the gentleman to take the dirt back out. The rock is out.

President Tornatta: Okay.

Linda Phillips: And all I want to do is take the dirt out, and let them have their ugly backyard back again.

President Tornatta: Right, now the point was it would be a three to one, and we talked about that several times last time.

Linda Phillips: But it wasn't three to one when we started.

President Tornatta: Well—

Linda Phillips: Why can't I put it back the way it was? That's what you told me last time.

President Tornatta: No, no, no, we said three to one maybe 50 times. So, it would be a three to one slope.

Linda Phillips: But, it wasn't three to one to begin with.

President Tornatta: That plan was approved as a three to one slope back when it was approved to do the plat on the drainage permit. So, that was handled way before you took that lot.

Linda Phillips: But, the builder brought dirt in and built that lot up. He's not, that's not the only lot. Can I show you these pictures?

President Tornatta: Yeah.

Linda Phillips: Do you mind?

President Tornatta: No.

Linda Phillips: These are new pictures.

President Tornatta: Okay.

Linda Phillips: These are, okay. This is Mr. Esche's house here. This is the house next door. Can you see how high, you talk about my lot, look how high his, his is the lowest lot in that whole area. Explain to me why I am responsible for all of this. This is two door's down. Can you see how high that is? Everybody out there, now, see, I think the problem is, he had a different builder. He did not have Mr. Sterchi. He had a different builder, and we all had Mr. Sterchi. So, therefore, I don't, do you know what I'm trying to say? Why am I the bad guy in this one, when everybody else out there....look how high, how low his house is with the guy next door. These are the same height houses. So, I don't understand why everybody else out there can bring dirt in and do something with it, but I can't.

Commissioner Nix: This is a good even flow line through here. It starts on the property here.

Linda Phillips: Can you see, that looks like a roller coaster ride going down through there.

Commissioner Nix: Well, but the water flows, and when it gets down here, this is all sloughed off down into the ditch, all this.

Linda Phillips: How can it flow—

Commissioner Nix: Has this been removed?

Linda Phillips: Oh, yeah. Well, all of the rip rap been moved.

Commissioner Nix: Do you have a picture of the way it is right now? So, the dirt hasn't been pulled back then?

Linda Phillips: No, they won't give my man permission to get on the property. Mr. Jeffers told me no. He will not let me get back on the property.

Commissioner Nix: See, this needs to be cut—

Linda Phillips: (Inaudible).

President Tornatta: Hold on one second. Hold on one second. Hold on one second. So, if that were brought back, and the man should know a three to one slope?

Linda Phillips: This looks like a roller coaster up here. How come—

President Tornatta: That's not--

Commissioner Nix: We're not discussing that. We're talking about this right here.

Linda Phillips: But, what I'm trying to say, listen to me, they didn't let me finish. He told me I could do something with this, then he didn't come to me, he just made a complaint with Mr. Jeffers. They didn't let me finish. They didn't let me do it...how can you do something, and stop something in the middle, and then complain about the way it is when I didn't get to finish. I told you, it's like you coming in to work half dressed. If somebody stops you and you can't finish, you can't finish.

President Tornatta: Okay. There's that. Okay.

Commissioner Nix: Let's--

President Tornatta: Okay, Ms. Phillips, we're--

Linda Phillips: Okay, and another thing, the ditch isn't on my property, and I don't understand why I have to be responsible when it's on his property. I can go to, I can see my property line, but like I said, everybody out there, if you go out there and look at it--

Ted C. Ziemer, Jr.: Ms. Phillips? If I, just pardon me, if I could?

President Tornatta: Sure.

Ted C. Ziemer, Jr.: You say you want to put it back the way it was. Now I understand that there were 27 loads of dirt brought in.

Linda Phillips: Not in that ditch, no.

Ted C. Ziemer, Jr.: Well, I don't know. That's what the County Surveyor tells me. Or that it's migrated into the ditch. If you want to take 27 loads of dirt out, don't, no, please don't show me pictures.

Linda Phillips: It's just two truck loads. That's the complaint. The complaint says two truck loads. That's the complaint right there. The citizens concern. Two truck loads.

Ted C. Ziemer, Jr.: I see that. The County Surveyor is the, for the Drainage Board is the expert on drainage.

Linda Phillips: And he's mad at me. He's going to make sure--

Ted C. Ziemer, Jr.: Alright, but Ms. Phillips--

Linda Phillips: --well.

Ted C. Ziemer, Jr.: Ms. Phillips, that's not going to get us anywhere. Let me just try to make my point, if I can. I don't care what the complaint says, you admitted that you brought, I think you did, 27 loads of dirt in and put it on the hillside there. If you take all 27 loads out, it will be flat--

Linda Phillips: No it will not.

Ted C. Ziemer, Jr.: Well–

Linda Phillips: Oh, no.

Ted C. Ziemer, Jr.:– according to the engineer, who is Mr. Jeffers. Here, let me just, you always want to finish, let me try to finish please. If you take 27 loads out, it will be flat–

Linda Phillips: No, it won't.

Ted C. Ziemer, Jr.: Like, alright–

Linda Phillips: Go ahead.

Ted C. Ziemer, Jr.: Mr. Jeffers said it will be like it was when you started. If you want to do that, I think that's a satisfactory plan. He tells me that what he's proposing is that a lot less than that needs to be taken out in order to achieve simply a three to one, is that correct? A three to one ratio. So, he's suggesting you don't have to take out 27 loads of dirt, but you do need your contractor to take out enough to get to the three to one ratio.

Linda Phillips: That's what I asked him.

Ted C. Ziemer, Jr.: Excuse me, but, excuse me, I'm still not quite finished. Alright, then, he also suggested some other things that's going to make the ditch better than it was, and I asked you to suggest to Mr. Esche that there might be some participation in that. Is there?

Bill Jeffers: Excuse me a moment, please.

Linda Phillips: Sure. Go ahead. Good to see ya.

Bill Jeffers: Nice to see you today, Linda. As with anything that I try to accomplish in the County Surveyor's office, I do not play favorites, and I do not get mad. I just try to get the job done, okay? On the aerial photographs that we have from 2000, and the aerial photographs that we have from 2005, three years ago, as the house was not there, or as it was being built, in either case, you could clearly see the land contours of the lot as it was being prepared for the house to be built. While the term flat is relative, if the 27 loads of dirt that was brought in to landscape the backyard to her desired contour, because she did, as she explained, did not want a, what she calls a ski slope from her patio down to the ditch, she brought in enough dirt to level that off so she has a more flat backyard, not flat, but more flattened backyard grade. Then when it comes to the fence line, it goes off at a much steeper grade than it did under the natural contours that were there before the house was built. Yes, the contractor brought in some dirt to place the building pad that the house sits on, but she brought in the other estimated 27 loads of dirt to alter the grade in her backyard to her satisfaction. That's fine with me. If somebody wants to build their yard up, that's fine with me, so long as the portion of that yard that lies within an easement is modified in accordance, either with the original drainage plan that was approved by your Board, or with the drainage code as is required of every other subdivision built since 1994. That is a maximum steepness, using earth as an embankment, of three to one. That's the maximum steepness. Now, if enough dirt were taken out she could get back to the original grade, as it was before, she would have to remove her wrought iron fence and take out maybe 15, maybe 20 loads of dirt. As it is today,

removing it to a three to one slope, just enough dirt to re-achieve a three to one slope will probably only take a couple or three truck loads of dirt.

Commissioner Nix: Which would allow her to keep her fence where it is?

Bill Jeffers: And will allow her to keep her fence as positioned without, and it's a nice, expensive fence.

Commissioner Nix: It's a beautiful fence.

Bill Jeffers: I do not want the fence removed, and I would be willing to achieve as close to a three to one side slope as is practicable and still have a berm at the top to allow her to mow, with a riding lawn mower, so that the embankment doesn't come up and abruptly terminate right at the fence and she'll be mowing on a tilt which would be unsafe. So, even that, we have a little give and take. Now, as to the bottom of the ditch with the netting in it, yes, high velocity erosion control mat is not cheap, but it's not outrageously expensive. It's about the same or less than sod. Now, when you look up the hill, from her lot on up, where the ditch was left pretty much as is, or as was left by the developer and turned over to the residents, you will see well established lawn grass, some wet spots, some very minor erosion, but manageable. It's all cut. I was out there, as I said, Monday, and the ground was wet, and it had been freshly cut. Everyone was able to mow the grass across the ditch from her lot south, even though it was wet, there was some standing water, there were some tire tracks, what have you, it was reasonably capable of being maintained by a homeowner. That's the condition that a ditch must be before John Stoll releases the letter of credit from the developer and turns a ditch over to a homeowner. So, I must assume that the ditch in her backyard was in the same condition at the time that the letter of credit was released. I just now asked Mr. Esche, who is here, and you may ask him any other questions you wish to ask him after I make this statement, would he be willing to participate in the correction of the ditch bottom, which is now rutted with up to one foot deep trench caused, in my estimation, by the excess dirt that has pushed over and pushed the velocity of the water into a smaller channel than the two foot wide channel that was there before, the two foot wide bottom that has to be there to handle those kind of velocities before it enters the pipe, and it concentrated that velocity at a point and scoured out the bottom. He says that was not the case before the dirt was imported and placed on the embankment. So, I'm simply asking that what measures are commonly taken, and what measures the developer originally took to establish a two foot wide bottom with a gentle side slope, covered with grass, capable of being maintained by a property owner with the type of equipment that they keep in their yard barns, lawnmowers, etcetera, that's all I'm asking for. That's all I would ask of any person in the same situation.

Commissioner Nix: I have a question.

Bill Jeffers: Yes, sir?

Commissioner Nix: Ms. Phillips stated that you wouldn't allow the contractor to come back and do the work. Where are we at with that now?

Bill Jeffers: If the Board adopts the plan, or any plan that will restore the ditch to a condition that comports with the drainage code, and the contractor is licensed to do the work that's required to accomplish that, we're good to go. When we say a stop

work order, I simply placed a note on his, the seat of his bobcat in September saying, "Do not proceed any further until you have a plan adopted by the Board."

Commissioner Nix: My question is, do we have to do anything today for him to come back and make this three to one slope and get this behind us?

Bill Jeffers: Yes, sir, adopt the plan.

Commissioner Nix: Okay, so it has to be re-adopted then? Or, because there are changes, is that what you're telling us?

President Tornatta: We're adopting his modifications.

Commissioner Nix: His modifications.

Bill Jeffers: You're adopting Mr. Bivins plan with the modifications that I recommend in order to restore the ditch to a condition that comports with the drainage code to be turned over to a private property owner.

Ted C. Ziemer, Jr.: Then, I just have one question about it. Then, your plan, or Mr. Bivins plan will not make the ditch, in so far as Mr. Esche is concerned or Ms. Phillips is concerned, any better than it was prior to the dirt being brought in, is that correct?

Bill Jeffers: I apologize for the misconception I gave you over here when we were talking off to the side,.

Ted C. Ziemer, Jr.: Because I think, in fairness, the reason I'm saying that, if we're making it better than it was, then Mr. Esche ought to participate, in my opinion.

Bill Jeffers: I agree, and so when I asked Mr. Esche about that, he said, it wouldn't make, well, I'm going to let him answer whether it would make it better. I'm assuming, because I, it was not I who went out and inspected the ditch for the County Engineer. I only review the plans and recommend approval of the plans. The County Engineer sent his inspectors out a few years ago and said look at the ditch, if it comports with the condition that the drainage code requires for a stable ditch, without erosion, without sedimentation, with a grass cover that's capable of being maintained by a homeowner, then we're going to turn it over from the developer to the homeowner and release his letter of credit. I'm assuming that happened, because John Stoll is a professional and that's what happens in every case I've seen that, before he releases a letter of credit, you can mow right across those ditches. I'm assuming that's the way it was. I look uphill, that's the way it is uphill, you know, on the other homes. I may have said something over here to the side to your attorney, but you have Mr. Esche here to attest to the condition of the ditch before all this started.

President Tornatta: Okay. Bill, if you'll stay up here one other second, I would like to ask you, if we adopt the modifications which are on the record today, she comes with a gentleman who would like to do those modifications to Mr. Bivins bidding, can you work with Mr. Bivins and this contractor to make sure that if there are, that those modifications if he has other ways of doing something similar to what you would like to achieve that we can further modify that through your office?

Bill Jeffers: Absolutely. I will go out there tomorrow morning, before I come to the Civic Center and talk to the contractor. If there's any other minor modifications that you indicate, you know, as long as the minor modifications don't represent a dramatic or a major deviation from this plan, yes.

President Tornatta: Okay, which would potentially—

Bill Jeffers: I'm not the strictest person in the world.

President Tornatta: Right, and I know that.

Bill Jeffers: Before coming back to the Board, I would use my judgement to say, yes, a modification falls within reasonable conformity with the code, let's go with it.

President Tornatta: So, that in turn might save her some money.

Bill Jeffers: I would love to.

President Tornatta: It might allow this gentleman to do a project, maybe a way that we're not thinking of right now to achieve the same desired effect.

Bill Jeffers: I'm always open to good ideas.

President Tornatta: Okay.

Bill Jeffers: I would also like to reiterate that Mr. Esche is here to tell you whether or not he's agreeable to the work being accomplished on his property.

President Tornatta: Mr. Esche, if you would come on up? Name and address please.

Paul Esche: Commissioners, Mr. Ziemer, Paul Esche, 9224 Arbor Grove Court. I spoke with Mr. Jeffers last evening, and listened to everything he said, and I think if that's accomplished, then that's fine with me.

President Tornatta: Okay.

Paul Esche: No objections to the plan.

President Tornatta: Okay.

Linda Phillips: I have a question for Mr. Esche, since he doesn't believe—

President Tornatta: Hold on, hold on. No, no, no, we're not going to allow that.

Linda Phillips: I can't ask him a question?

President Tornatta: We're not going to allow that. Thank you. Okay, you may address the Board. You may not address anybody in the audience.

Linda Phillips: I just have a question. A question.

President Tornatta: You may address the Board.

Linda Phillips: Would you please ask Mr. Esche a question for me?

President Tornatta: Okay.

Linda Phillips: Ask him if that ditch looked like that when that house was built, before I ever moved in, if that ditch looked just like it does now? That rough, and that unkept?

President Tornatta: Okay. Alright.

Linda Phillips: That ditch—

President Tornatta: I will take a recommendation from this Board at this point. Thank you.

Linda Phillips: I do not like Mr. Bivins. I do not like his work. He told me one thing on the phone. That letter was handed to me last, two weeks ago when I walked in this building. I had not saw that letter before I walked in here for that meeting. He told me one thing on the phone, and I got the letter, it had something else in it. I didn't even read that letter, because I thought the man was a professional, and that he was going to write what he told me. I was on the phone with Mr. Jeffers, and Mr. Jeffers started telling me, I did get the letter out and read it. I've got a lot of other things going on, not just this, and I took the man at his word. So, he's telling me one thing, he's doing, he's putting another thing in the letter. So, I don't particularly care for his work. I'm really not, I don't think it's fair. You told me that he was supposed to be here tonight. You requested me, him and Mr. Esche to be here. Is he here tonight? I don't know him.

President Tornatta: Mrs. Phillips, what we're trying to do here is trying to save you some money—

Linda Phillips: I've already spent \$1,600.

President Tornatta: —to get it remedied. Then, the next thing we're going to try to do and try and make sure it gets done in an appreciable amount of time so that it works with you as much as possible, but also achieves what needs to be achieved from the county. So, at this time, I would take a motion.

Commissioner Nix: And that's to allow, or to follow the plans as per—

Ted C. Ziemer, Jr.: It would be the modified Bivins plan as presented by Mr. Jeffers.

Commissioner Nix: So moved.

President Tornatta: And, may we have a date on that? It was October 15th. I'm okay with pushing it back.

Commissioner Nix: The 15th is fine with me, of October, that's fine.

Linda Phillips: Why do I—

President Tornatta: The only thing, when summer seems to go longer, we don't have any idea. So, I don't know if there's an issue, Bill, where we would be acceptable of pushing it back to mid November, if that be the case, or the end of October?

Commissioner Nix: You're probably going to get into the vegetation.

Linda Phillips: Please explain to me why I have to pay to fix his ditch? Do I have to come and fix yours too? Yours? That's, it doesn't make sense. It's not on my property. I did not affect his plan.

Ted C. Ziemer, Jr.: Ms. Phillips, I'm going to tell you the reason.

Linda Phillips: Please do.

Ted C. Ziemer, Jr.: The reason is because you put 27 loads of dirt–

Linda Phillips: I did not.

Ted C. Ziemer, Jr.: –which you've asked me to give you a reason, and I'm going to give it to.

Linda Phillips: But, it's not true.

Ted C. Ziemer, Jr.: Which caused the side of the ditch to migrate over into the ditch causing the scouring, which leaves the ditch in the condition it is today. Now, we have to accept the word of somebody, and our professional is the County Surveyor. He has given us this recommendation and the board is going to accept that. All I'm doing is answering your question.

Linda Phillips: Okay, the thing of it is, everybody else has brought in dirt too. Look at the man next door to him. Nothing was said about that. He didn't let me finish. If he would have just been a neighbor, came over and said, "What are you doing? I don't like it." I could have explained that, he just was dumping it. It wasn't, he didn't give me a chance to finish it.

President Tornatta: Ms. Phillips?

Linda Phillips: How can you–

President Tornatta: Ms. Phillips, we continue to interrupt you–

Linda Phillips: Oh, yeah, you do. That's okay I'm used to it being one sided, because it's been that way from the beginning.

President Tornatta: We have a motion on the floor, and the date is October 15th.

Commissioner Korb: Second.³

President Tornatta: We have a second, and so ordered.

Receive Evelyn Utley Petition to Remove an Obstruction

Bill Jeffers: Our next item on the agenda is to receive Evelyn Utley's petition to remove an obstruction alleged to be on her neighbors property and causing poor

³ Commissioner Korb joined the meeting at 6:20 p.m.

drainage on her property. Madelyn Grayson has that petition in hand, and I believe there's a filing fee, a check for the filing fee is with it. All we're doing here tonight is accepting the petition, and then you direct me to go make my investigation report back to you.

Commissioner Nix: Move approval of accepting the petition.

Commissioner Korb: Second.

President Tornatta: So ordered.

Set Hearing Date for Roger Huff Petition

Bill Jeffers: The next item is to set a hearing date for the Roger Huff petition, which is a similar petition alleging an obstruction on the property of the Schmidt's, his neighbor, causing bad drainage to the Huff property. I have been out and viewed the site and will tell you that, technically, an obstruction does exist, as alleged, and I'm asking that you consider August 5th as a hearing date to take testimony from the two parties.

Commissioner Nix: That does coincide with a Commission meeting, is that correct?

Bill Jeffers: Yes, sir.

Commissioner Nix: Thank you.

Bill Jeffers: Lucky for you.

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered.

Other Business

Bill Jeffers: I have no claims for services to bring to you tonight. So, we're at other business, should the Board have any. Let me check, I don't have any other business.

President Tornatta: Okay.

Bill Jeffers: But, if the Board has none, we're at public comment.

Public Comment

President Tornatta: Do we have public comment? I see the Reis party out there. If you would.

Commissioner Korb: That won't be pertaining to drainage.

President Tornatta: We'll, Mr. Reis?

Dave Reis: Dave Reis.

President Tornatta: What's your address?

Dave Reis: 18131 Old Henderson Road.

President Tornatta: Okay.

Dave Reis: We had talked two weeks ago, to take care of some, well, we wanted to see if the road, the alley I think you all called it, that ran behind several lots was actually a county road. I found out from, well, I was told, let's put it this way, that it's not a county road.

Commissioner Korb: What kind of road is it?

Dave Reis: Jeff, you were there, you tell me. It's a road. It's a drive. You know, the county owns part of it, I own part of it, the O'Hara's own part of it, Greg Cook owns part of it. It's all, it's not deeded in, or it's not set aside for any roadway.

President Tornatta: Okay. What did the Sheriff recommend?

Dave Reis: Uh—

Commissioner Korb: I can answer that.

President Tornatta: Okay.

Commissioner Korb: He's not here. We've got issues with encroachment on both parties, Mr. O'Hara and Mr. Reis, on county property. Mr. Reis has cleared some trees from county property as well, and, so, what we've requested Mr. Jeffers to do, because there is county property involved and Mr. Jeffers comment, which was very accurate earlier this evening in our department head meeting was, "Do not go by the lines that we see on the GIS reports, because the pins, some of them are buried as much as six feet deep." So, Mr. Jeffers is sending a crew out to take a look to see what preliminary work they can come up with, and then after that is done, well, if we have to get a professional surveyor out there, the reason for that, Troy, is because the Sheriff's hands are tied. We don't really know who's on who's property.

Dave Reis: Right.

Commissioner Korb: And as soon as we're able to answer those questions, then all of a sudden, the Sheriff is able to say, this is the way it needs to be and do not be getting in each other's space, and certainly do not be trespassing on county property.

President Tornatta: Okay. So, that's the answer?

Dave Reis: Yeah, so, we're just waiting for Mr. Jeffers.

Commissioner Korb: Yep, that's what we're waiting for.

President Tornatta: We're waiting for him, and he'll take care of that and then we'll get back to you.

Dave Reis: Then you'll get back with me?

President Tornatta: Until then—

Commissioner Korb: Act like adults. You guys are killing us out there.

President Tornatta: I'm not saying that, I'm just saying cease and desist from irritating one another. So, with that being said, Mr. Reis and crew thanks for coming out, and we'll address this once we get the Assessor to look at it, or the Assessor/Surveyor, or whoever we have.

Dave Reis: I guess, he'll contact us when he comes down?

President Tornatta: Yes, yes. Okay.

Dave Reis: Thank you very much.

President Tornatta: Thank you very much.

Dave Reis: That's what we needed to know.

President Tornatta: Motion to adjourn?

Commissioner Korb: Hey, we may need some of that deed work. I'll let you know.

Dave Reis: I will give you everything I have.

Commissioner Korb: But, we may need some of that. If I do, we'll contact you.

Dave Reis: Okay.

Commissioner Korb: Thanks.

Dave Reis: Okay.

President Tornatta: Any other public comment? I'm sorry. Any other public comment? If you'll state your name and your address please.

Mrs. O'Hara: I'm the infamous Mrs. O'Hara. I live at 18025 Old Henderson Road. When I purchased the property, we were told that the road behind it was an easement. My son went down, got plat book one and found when the property was originally bought from a party in Illinois that there was an easement road back behind there. There at one time was six houses there. That was an easement for time and all eternity, written and unwritten. It's in your plat book. All I'm saying is, they've had it blocked, the Sheriff had to unblock it. We couldn't even get an ambulance back there when I got sick. It endangers my health. I would ask that the road be allowed to remain open. I noticed that someone has put two fence posts up at the other end of the road in order to put a gate up, I would assume. But, if that's an easement, which it should be, then I think it should be left open as long there is a house livable there.

President Tornatta: Can I ask a question? Do, is, are we playing a game where we can use the road right now until we find out otherwise? Is that the direction that we have at this point?

Ted C. Ziemer, Jr.: I think, Commissioner Tornatta, the problem is that we don't know whether there is a roadway back there or not. When we find out where the county property lines are, I think we will also, maybe at the same time find out to what extent there's a roadway over county property.

President Tornatta: I guess, I'm saying today, if these individuals were to drive back to their properties, can we use that road until we find out otherwise?

Commissioner Korb: I can answer that question. Yes.

President Tornatta: Okay.

Commissioner Korb: They are not allowed to block it in any way, shape or form.

President Tornatta: Okay.

Commissioner Korb: But, in all fairness, just looking at it, you all also have got some of your property on county property.

Mrs. O'Hara: We—

Commissioner Korb: A lot, actually.

Mrs. O'Hara: Actually—

Commissioner Korb: Including a garden.

Mrs. O'Hara: Actually, half of my house is, by your surveys, on county property. I don't know how. I mean, I'm from Indianapolis. I bought property in what my son told me was the best county in the state to live. He loved it.

President Tornatta: Now, have you, have they done any modifications to that house, that you know of, that would push it on county property?

Mrs. O'Hara: No.

President Tornatta: If you find out that there has been an addition on that house, and it crosses into county property, we do need that brought forward.

Mrs. O'Hara: We can't tell.

President Tornatta: No, you bought it—

Mrs. O'Hara: I bought it.

President Tornatta: —initially. So, you can't tell if there have been additions to the house?

Mrs. O'Hara: From what appears to me, the front porch was enclosed and there's been a side porch—

President Tornatta: That's been added?

Mrs. O'Hara: —or a side room. I don't know when it was added.

President Tornatta: Okay.

Mrs. O'Hara: There's been a back porch, there was a front porch that somebody had tried to tear off. We have removed it in order to put a retaining wall for dirt there.

President Tornatta: Okay.

Commissioner Korb: I think the easiest way for this is, and I don't understand how the ambulance could have gotten hung up, because, again, the Sheriff and I were out there last week and we physically drove it and walked it–

Commissioner Nix: I think she's talking before (Inaudible. Mic. not on.)

Mrs. O'Hara: I'm talking before.

President Tornatta: They had it blocked.

Mrs. O'Hara: They had the trailer blocking the road.

Commissioner Korb: Right.

Mrs. O'Hara: And they had a dog cage on there and a pile of dirt.

Commissioner Korb: But, my point is, there's been enough head butting on both sides of the aisle. So, I mean, there's no way that either one of you can be pointing a finger.

Mrs. O'Hara: I'm not saying that. I'm saying that when it was blocked, other than going through the county property, and if it was raining, you can't get through there because it gets slick and muddy. They couldn't get an ambulance back through there.

Commissioner Korb: But, there's another entrance to your home.

Mrs. O'Hara: No.

Commissioner Korb: Yes, there is, because the Sheriff and I drove out of it, and one of the individuals who's living in your home almost backed into us. It's like, how could he not even see a Sheriff's cruiser back there. The Sheriff pulled him over and had a conversation with him as a result of that.

Mrs. O'Hara: That part of the property–

Commissioner Korb: Uh-huh.

Mrs. O'Hara: – that's not mine, as far as I know.

Commissioner Korb: But, it's closest to your home.

Mrs. O'Hara: It's closest to my home.

Commissioner Korb: So why wouldn't you use that as an exit and an entrance?

Mrs. O'Hara: It's the same thing there as it is on the other side.

Commissioner Korb: Okay.

Mrs. O'Hara: When it rains—

Commissioner Korb: Uh-huh.

Mrs. O'Hara: —it's mud. That grassy area gets muddy.

Commissioner Korb: Right.

Mrs. O'Hara: When it flooded this spring, when all of our neighbors were gone, we fed other neighbors animals, including a goat, we took care of other people's property, moving it up out where it would not float away and be destroyed. We didn't have to leave our property, because the water did not get up into our house. Everybody close to us left.

Commissioner Korb: Well, where we are is, the road is open for both of you to use until we figure out where the county lines are. I could be all wet on this, but once we figure it out and delineate where the county lines are, you all will not be able to use that road as a common roadway, because that road does pass through county property. So, at this point in time, and that's why we've asked specifically for Mr. Jeffers and his group, and then if we have to go to the next level with a professional to figure out where those pins are, because when the smoke clears, we're all going to understand where the property is. There will be no more cutting down trees on county land. He'll be arrested if he does that. There will be no more of you all getting angry with each other over property lines, because there is clearly county property between your home and his home. So, that's why I'm saying, we spent a lot of money making runs down to your end and there's no reason for that. So, and I'm just telling you how it is. But, again, it just befuddles me, because I'm sitting there going, there is an entrance, we went out that exit and it had gravel on it. So, there's no reason for us to get into a big discussion here about what's going on, just to let you know that we're in the process of having it surveyed, and then once that is done you will have to remove your property, if there is any of your property, from county land, as will Mr. Reis. It's real simple. But, right now, we don't know.

Mrs. O'Hara: But, when you came down, the trailer and things had been removed.

Commissioner Korb: That's because we requested them to be removed.

Mrs. O'Hara: Right, but that's a paved road back there. That's not a gravel road.

Commissioner Korb: That's a paved road, that's correct.

Mrs. O'Hara: That's right. It was like an alleyway in Indianapolis.

Commissioner Korb: Right, and we're going to figure all that out. Again, there's no reason for us to have this discussion now, because we don't have any information. All I know is, the Sheriff is under strict orders to his deputies, arrest them if they do anything that is out of bounds and out of character. We have asked you all to act like adults. That's not too much to ask.

Mrs. O'Hara: We don't even go out of our house.

Commissioner Korb: Well, obviously, somebody did, because he almost ran over the Sheriff's cruiser.

Mrs. O'Hara: Well—

Commissioner Korb: And I was with him.

Mrs. O'Hara: He was going to work.

Commissioner Korb: That's fine, but we were just like coasting. So, again, I really—

Mrs. O'Hara: I understand what you're saying.

Commissioner Korb: I'm done with this conversation with you and with Mr. Reis until we get an understanding of where the property lines are. Once we do that, then it's a whole different ball game for everybody down there.

Mrs. O'Hara: And, our attorney, Mr. Hambridge, I think I'm pronouncing it right, or something on that order.

Ted C. Ziemer, Jr.: Hambridge.

Mrs. O'Hara: Yes. He requested that the Council attorney contact him, because there is quite an uproar over the deed. We've been 14 months trying to get a deed through ERA, Citibank, Hahn Realty, and Transunion Title Company. So—

Commissioner Korb: And that's not our responsibility. That's Mr. Hambridge's responsibility.

Mrs. O'Hara: I understand that, but the problem is that nobody, this Council, and your surveyors, nobody knows where the lines are.

Commissioner Korb: And we're going to come up with that, but if Mr. Hambridge needs to speak to our counsel, he may contact him.

Mrs. O'Hara: That's all I would ask.

Commissioner Korb: That's great.

President Tornatta: Thank you.

Mrs. O'Hara: You have a good day.

President Tornatta: Thank you both groups for coming out. Any other public comment? Look for a motion to adjourn.

Commissioner Korb: In a hurry.

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered.

(The meeting was adjourned at 6:45 p.m.)

Those in Attendance:

Troy Tornatta	Bill Nix	Jeff Korb
Bill Jeffers	Ted C. Ziemer, Jr.	Madelyn Grayson
Linda Phillips	Paul Esche	Dave Reis
Mrs. O’Hara	Others Unidentified	Members of Media

**VANDEBURGH COUNTY
DRAINAGE BOARD**

Troy Tornatta, President

Bill Nix, Vice President

Jeff Korb, Member

(Recorded and transcribed by Madelyn Grayson.)

**VANDEBURGH COUNTY
DRAINAGE BOARD
AUGUST 5, 2008**

The Vanderburgh County Drainage Board met in session this 5th day of August, 2008 at 6:03 p.m. in room 301 of the Civic Center Complex with President Troy Tornatta presiding.

Call to Order

President Tornatta: We will start the Vanderburgh County Drainage Board meeting immediately, if not sooner. Mr. Jeffers, we'll open up the meeting, Tuesday, August 5, 2008. It's approximately three minutes after six.

**Approval of July 1, 2008 Drainage Board Meeting Minutes &
July 15, 2008 Drainage Board Meeting Minutes**

President Tornatta: Do I have a motion to approve prior meetings minutes?

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: And so ordered.

Deerfield: Section Four: Preliminary Plan

President Tornatta: Mr. Jeffers?

Bill Jeffers: Good evening, Bill Jeffers, Vanderburgh County Surveyor and technical advisor to the Drainage Board.

President Tornatta: Is that on your business card?

Bill Jeffers: No, that costs extra.

President Tornatta: Yeah, have that made.

Bill Jeffers: Okay. Does everyone have an agenda?

Madelyn Grayson: I've got some extras, if anyone needs one.

Commissioner Korb: Are we being quizzed on it later?

Commissioner Nix: It's behind your minutes.

Commissioner Korb: I've got it.

Bill Jeffers: Okay. First item of business is, excuse me, Deerfield, Section Four, preliminary Drainage Plan, of which I have a copy if anyone would like to see it. Would you like to share?

Commissioner Korb: Sure.

Bill Jeffers: In the spirit of sharing.

President Tornatta: Are you making fun?

Bill Jeffers: Of course I'm making fun.

President Tornatta: How dare you.

Bill Jeffers: And, you'll notice on there I have some handwritten notes that are the result of a meeting we had earlier today, around 3:30 to 4:00 or so, with several residents of Deerfield Villa, and Deerfield Subdivision, Sections Two and Three. They came to our office to meet with Keith Poff, the design engineer from Sitecon, and with me to discuss some of their concerns about Deerfield, Section Four. Some specific drainage issues that they have. I think we had a very productive meeting. Several of those property owners have had issues for several years, since about 2003 or so, that they've had to take care of themselves. Some, basically, unfinished business that we hope will be finished with the implementation of Deerfield, Section Four. As I said, this is a preliminary plan that allows the plat to go forward to Area Plan Commission next Thursday. Then, Keith Poff from Sitecon will come back the first week or so of September with a final drainage plan that will iron out all the details that we discussed in the previous meeting, and anything else we discover between now and then that needs to be corrected or appropriately addressed by the final drainage plan. The preliminary drainage plan conforms substantially with the code, and I recommend approval.

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered.

Hirsch Estates: Preliminary Plan

Bill Jeffers: The second item of business is Hirsch Estates. It's also a preliminary drainage plan with approval required so that it can move forward to Area Plan Commission. This is way out on Baseline Road, about a half a mile west of 57. On the drainage plan I gave you, it says Hirsch Minor Subdivision, but in Vanderburgh County it's a major subdivision simply because it's three lots. Otherwise, it would be a minor subdivision. One fella is selling the house on the front lot, building a house on the second lot, and has a third lot surplus that he wants to sell to balance out. A very simple plan. It will come back to you as a final plan to iron out any details that may come forward between now and September. It comports with the drainage code. I recommend approval.

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered.

Relaxation of Right-of-Entry: Stockfleth Ditch

Bill Jeffers: Okay, the next item of business is the relaxation of the right-of-way, or right-of-entry of Stockfleth Ditch. If you'll look on your screen you'll see Kimber Green Apartments, which is owned currently by RCR Properties LLC, Broadmoor

Drive, Champagne, Illinois. Stockfleth Ditch is, its right-of-entry is outlined in red on your screen. It runs from the Lloyd Expressway north, under Virginia Street and on up to Morgan Avenue. The statutory right-of-entry is 75 feet, either side of the top of bank. That right-of-entry actually infringes onto the apartment buildings themselves, which were built several decades ago, before I was County Surveyor, and we're cleaning up some loose ends here. Also, when we get to the next item of business, you'll see another very good reason why we're relaxing the right-of-entry. It is an urban drain, and since 1981, urban drains can be relaxed to no less than 25 feet from the top of the bank. In this case we're recommending 40 feet from the west property line of Kimber Green Apartments, which allows 35 feet working space between the top of the bank and the new line. The County Surveyor recommends that you grant this relaxation, and it will be recorded in a document we will subsequently present to you. And the recommendation is that you relax it as shown on that document. Do you have one of those in front of you?

Commissioner Nix: It basically follows the outline in this drawing, is that correct?

Bill Jeffers: Yes, sir.

Commissioner Nix: Move approval.

Commissioner Korb: Second.

President Tornatta: So ordered.

Encroachment Agreement: Stockfleth Ditch: RCR Properties, LLC
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Bill Jeffers: Okay, then comes Keith Poff, the design engineer who is back here present, if you need to ask any questions. His client now is the Water and Sewer Utility, who's responsibility is to put in a new sewer line that runs parallel and east of Stockfleth Ditch and within the newly relaxed 40 foot right-of-entry. The purpose of the sewer line is to more adequately serve those persons serviced by the sewer line. Our attorney requires that any installation within a right-of-entry be covered by this encroachment agreement, which indemnifies the county against any loss or damages, etcetera, to anyone, as those loss and damages may occur within the right-of-entry. I believe your attorney has indicated that the document is in order. We are awaiting a certificate of insurance from Champagne, Illinois. No, from the utility company, I guess. But, in any case, we're awaiting some signatures, and the certificate of insurance, but I'm asking you to approve the legal form as it's been filled out for the drainage easement encroachment agreement presented to you at this time. We can take care of the rest of it in office.

Madelyn Grayson: We actually have the document signed. Keith brought that today. We don't have the certificate of insurance, but we've got the signed document.

Bill Jeffers: Okay, so, you did receive the signatures, and you're waiting for the certificate of insurance?

Madelyn Grayson: Right.

Bill Jeffers: We will not record this and allow them to begin construction until the certificate of insurance is filed with the County Auditor.

President Tornatta: Do we have a motion?

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered.

Roger Huff Obstruction Petition Hearing
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Bill Jeffers: The last item of business I have to bring before you at this time is the hearing of the Roger Huff petition, which came to you, Roger Huff of 2123 Volkmann Road, asking the Drainage Board to order the removal of certain alleged obstructions on the property of Jason Schmitt, 2125 Volkmann Road. The alleged obstruction consisting of the following materials; soil, gravel, inadequate drainage pipes of miscellaneous types, and of an inadequate circumference or diameter to handle the water, etcetera. The County Surveyor did go out, and during his investigation confirmed the existence of the alleged obstructions in the form and at the locations so said by Roger Huff, and attempted to work with Mr. Jason Schmitt to relieve the situation. I believe we have some pictures to show you the, we'll go with Huff's first to show the alleged obstruction. Here's the undersized pipe that was placed in the watercourse. The bottom picture shows you garden soil. Mr. Huff's property is on the right hand side of the screen. It's the grass area. You can see the vegetation has grown up in a damp situation, because on the left hand side of the screen is excess soil that's been imported into the garden area owned by Mr. Schmitt, thereby blocking the water coming down the hill from the Huff property. Let's see some more pictures. This area, on the top picture is just showing a close up of the chronically wet area, the green area, again, is Mr. Huff's property, and then on the right you can see some stone and some earth that was placed in the water course, holding the water back, as alleged. The bottom picture is the driveway to Mr. Huff's property. Back up one. These pictures are so exciting that they move quickly. Okay, let's see the next picture. Okay, again, on the right hand side is Mr. Schmitt's property. You can see the excess dirt that's been imported to form his garden. On the left is Mr. Huff's property, where you can see that water's been backed up for a period of time that allows the type of vegetation that grows in wet areas, sedges, different kinds of grass like that. The bottom picture is just the same thing taken from a greater distance away. Okay, what else have we got? Then that is the garden area that Mr. Schmitt created with the dirt that he brought in, and you can see the old watercourse is trying to re-establish itself across there. That shows you that it has indeed been obstructed, and it's trying to recreate itself. So, Mr. Schmitt did some work, and brought in some pictures to show the work that he had done. Actually, Tara Brown, his fiancé, brought in the pictures, and was kind enough to sit down with us and create this Power Point. Let's see, that's just an overview of the properties. The three pictures are showing the home of Jason Schmitt on the property, and the fourth picture is the driveway going up the hill to Mr. Huff's property. We're going to be looking at pipes, one of the alleged obstructions is a pipe that goes under the driveway to Mr. Huff's property. There's been a pipe there for many, many years, and Mr. Huff alleges that Mr. Schmitt connected on some undersized pipes when he filled the ditch. Mr. Schmitt acknowledges that, and replaced them with larger pipes. Mr. Schmitt also had tile underneath the garden, but that was pretty much judged to be insufficient to handle the flow, and then he re-opened the waterway in the last week or two. This is showing pipes that existed under the driveway. Tara brought these in to show you the size pipe that was under

the driveway that Jason connected to. Then, you see members of the Schmitt family standing close, whoever it is, standing close to the waterway that went through the area. This is the waterway that was closed up and piped. What do we have next? Some more pictures of the waterway after it was piped. You can see the white pipe coming out here. That's the alleged undersized pipe. I confirmed that it was too small. That's not the one he replaced it with, that's the one under the driveway, but I did view the one he replaced, here's the one that it's been replaced with. So, what used to be about an eight inch pipe, is now an 18 inch corrugated, plastic pipe that Jason Schmitt connected, which, I think that an 18 inch pipe is adequate to handle the flow from what essentially is two acres of tree farm on one side of the driveway, and two acres of rough pasture on the other side of the driveway.

Commissioner Korb: Bill, where are we going with this?

Bill Jeffers: To its conclusion.

Commissioner Korb: Okay.

Bill Jeffers: Okay, apparently I've presented enough information from my side of it. I would then suggest you listen to Mr. Huff's point of view, and then Mr. Schmitt's rebuttal, and then I will conclude my remarks after they have made their presentations.

President Tornatta: How are you doing?

Roger Huff: I find myself in a position that I've never found myself in before.

President Tornatta: Name and address.

Roger Huff: My name and address? My name is Roger Huff, and I now live in Newburgh, because I can no longer live near Mr. Schmitt, due to the catastrophe that he's created at the bottom of the hill. But, I do still own the property on Volkmann Road, and we're hoping to get this situation, at least with the flooding squared away. I think you folks will be seeing me again, due to a number of other issues out there. I won't bore you with that tonight. However, the piece of pipe that (Inaudible) Jason Schmitt has put back into the ditch, and he may well have, is going to handle water which flows from an adjacent property. I've got some photographs, and I don't know that they're going to be adequate. I think that Mr. Jeffers told me he was going to leave this open, because I fully believe that the problem's not even close to being rectified. Do you mind if I approach?

President Tornatta: Sure.

Roger Huff: The area in question that flooded was this entire area that you see here. He had built a dam and so forth here, and brought in, I don't know, ten, fifteen triaxles of soil and piled it there, gravel, debris, garbage, you know, oil floating in it, the whole nine yards. So, anyway, the water backed up, and what he's done now is he's dug out some sort of a little entrenchment which goes absolutely nowhere but uphill. The water that should enter that pipe, and, you know, flow out, comes from an adjacent property entirely. It has absolutely nothing to do with this issue. This water is being held on my property by the fact that he's brought in all of this soil and obstructed the natural flow of the water down the hill and into a ditch that's been there since my father was a small boy. A large ditch. You know, the fact that he put that pipe in, that's all great, because, you know, it was just, you know, the fact that

he had the undersized pipe, the water coming from the adjacent properties, I mean, that's great that he put that there, because it only made the condition worse. But, it doesn't, this is a band-aid—

Commissioner Korb: Is it—

Roger Huff: —this water is still going to flood my property, because there is an enormous amount of dirt and garbage that's been brought in there and dumped. There's ground asphalt, I mean, this guy is parking commercial vehicles all up in this area. It's like an acre.

Commissioner Korb: Excuse me. What we're looking at now, I don't mean to interrupt you, but what we're looking at, is that where he's filled in and put the pipe, and then put dirt over that? Was that the former ditch?

Roger Huff: No, sir. This doesn't even show the dirt, the ditch. This is an area that used to be a lawn type area, long ago, and what you're looking at now is an area that he's filled in with, I don't even know how many triaxles worth of soil.

Commissioner Korb: Okay.

Roger Huff: I mean, an enormous number. The ditch—

Commissioner Korb: And, does that impede the flow of the water? I'm assuming it does.

Roger Huff: The water has nowhere to go except to stand on my land.

Commissioner Korb: Right, okay.

Roger Huff: And, furthermore, what he's done is he's built an illegal building, without a permit, out and over the ditch, which, that's why I say, for that and a number of other reasons you're going to see me again. Because, almost from the beginning of the road to the end of this guy's property, it's nothing but total and complete violation of county ordinances. I mean, we've been run out of our home by this individual. He's shot at our house. There's seven, eight police reports, my renters are terrified of him. You know, it's got to end with him somewhere. But, what I want to see the county do, is get the Engineer's office out there, the Plan Commission office out there, Bill Jeffers out there, and start dealing with this guy, because the rest of us pay our taxes, the rest of us follow the laws and the statutes and the guidelines that the county lays out for us to follow. This guy blatantly defies it all. He's broken the pipes in front of the road, water gurgles up out of the, you know, out of, I've been personally reprimanded by people that were, you know, while I was waiting for my kids to get on the school bus, water and mud just running out into the road, these people stop and say, what's wrong with you people? Why is the road like this? You know, I think, folks, I don't have anything to do with this. It's the guy that lives right here. I live at the top of the hill. But, you know, it's just time that something's done with this individual. He's got a criminal history, and I know this for a fact, because law enforcement has shown it to me. It's as long as both of my legs.

Commissioner Nix: Sir.

President Tornatta: Hold on.

Commissioner Nix: Please stick with the facts that you're here for today.

Roger Huff: The facts are this, you can start at the beginning of Jason Schmitt's property and go to the end, and it is violation after violation after violation of county ordinances. Now, we're here to deal with the drainage tonight, that pipe may well cure waterflow coming off of the adjacent property running under the driveway. That is yet to be seen because we are in a dry season. But, he's done nothing here, except now build about a 10,000 foot chicken pen.

Commissioner Korb: Mr. Jeffers, does he have to do, when he makes these kinds of improvements on the property, is that a running through your office type thing for drainage? How does that work please?

Bill Jeffers: Do you have the plat of the subdivision?

Roger Huff: Yes, I do.

Christi Huff: I would like to ask something, if it's okay, while he's reviewing that. I'm Christi Huff, and I reside at that residence also.

Roger Huff: You used to.

Christi Huff: Correct, before we had to move out. Now, the, to just maybe better clarify, what you see there is where the area that the water had to run into the drainage ditch that used to be there, because it would come off of our property, which is a sloped area, come down into the area, and continue to drain down into the ditch that is now covered. So, we don't have that ditch for the water to drain into, and now we have the area built up and somewhat dammed up, so the water then settles onto our property, which creates, you know, this swampy looking area that we cannot maintain. It also creates a very flooded area, and muddy area, whenever there's heavy rain. There doesn't even have to be heavy rain, any rain. Furthermore, we have been trying to sell our home, this presents a health violation on our property, from what I understand, and we have been unable to sell our home. Realtors will not market our home anymore, because of the condition of the property, of this, and also the conditions that are now on our property, which are the flooded, swampy areas.

Roger Huff: That's the next thing, you know, we would like nothing better than to be as far away from this person as we can be. We cannot get a realtor in this county to take our land and put it on the market, because we're told, by one after another, that man at the bottom of the hill is a huge liability, we cannot ethically sell your land to anyone without disclosing what the possibilities are at the end of the lane. We're landlocked by this guy. We need help from the county to get this disaster at the bottom of the hill squared away so that we can get this house on the market and get out. We're running our children from Newburgh to Scott school now.

Christi Huff: Which is a 30 minute drive, to and from.

Roger Huff: We want to get our house on the market. We want to get away from this guy, but we cannot do it. If the Plan Commission, the Surveyor, if the Engineer would come out and look at this land--

President Tornatta: Right.

Roger Huff: –it's so obvious.

President Tornatta: Well, I tell you what, not to cut anybody off, but we're kind of redundant, running into some things.

Roger Huff: Okay.

President Tornatta: Let's let him look at the plat and give a rendering on that, and then, if we could, we'll hear from the remonstrators, and then we'll have you back up to finish, okay?

Christi Huff: And, I would also like to add that whenever he made the Power Point presentation, they said this area was for a garden. It is now enclosed with a huge chicken pen and fencing, which all of that--

Roger Huff: He's done that in the last three days.

President Tornatta: Okay.

Christi Huff: All of that will be drained onto our property, the chicken poop and anything else that is put in there.

President Tornatta: Okay.

Bill Jeffers: I believe Mr., or Commissioner Korb's question was what the Vanderburgh County Surveyor's office, what they would have to come to us with? It's a minor subdivision, it does not create 10,000 square feet of new, hard surface, therefore, it is not, there are no projects that would be, you know, residential projects. So, it did not go through the Vanderburgh County Surveyor's review, like a major subdivision would. I did not bring a drainage plan to you, because it does not anticipate 10,000 square feet of new, hard surface. The only notations on the plat were that the watercourses and the open drains or ditches that existed on the individual parcels had to be maintained by the owners of those parcels. There was no formal plan, because it's a minor sub.

Commissioner Korb: So, there's no permitting that they would have had to get? There is nothing that--

Bill Jeffers: If someone would want to put in a new driveway culvert out at Volkmann Road--

Commissioner Korb: Uh-huh.

Bill Jeffers: –for the lane, they would need a permit from the County Engineer's office for a new driveway culvert. If someone were to establish 10,000 square feet or more of new, hard surface, they would have to bring a plan to your office. I mean, there's acreage there that they could do that--

Commissioner Korb: Sure.

Bill Jeffers: –if they put up a large horse barn or something. But, that has not occurred yet. The only other issue that comes before your Board, the Drainage Board, or would come to my office is the drainage issue, the statutory ability of Mr. Huff to file a petition alleging the obstruction of a natural surface watercourse, which

I show you in this picture. That is a natural surface watercourse. The obstruction is the dirt that was imported and placed there by Jason Schmitt. I'm glad to hear Mr. Huff say that the pipe is not an issue. I thought the pipe was an issue, because it had been placed in the ditch and it was undersized. Mr. Schmitt has subsequently taken that pipe out of the ditch and replaced it with an 18 inch tile, as I showed you. I'm glad to hear that issue has gone away. So, now we're left with the issue of the obstruction of the natural watercourse, beginning at Mr. Huff's north line, which coincides with Mr. Schmitt's south line. I asked Mr. Schmitt to widen that watercourse and restore it to an open, wide watercourse. He began doing that, he removed all the obstructions from the property line, those railroad ties, those rocks, all that's been removed. He began to open up the watercourse. I went out there Friday and spoke with his fiancé, she said that she would convey to him that he needed to finish that job. I went back yesterday, and a chicken coop has been erected over the watercourse, as Mr. Huff just told you. The chicken coop consists of a six by six wood post, like beams that came out of a barn and a netting. It's just like a nylon netting that holds chickens in and keeps chicken hawks out.

Commissioner Korb: Your professional opinion about all this, Bill, is what? I mean—

Bill Jeffers: Professional opinion?

Commissioner Nix: Can we possibly get that in a summation, after we hear the remonstrators?

Commissioner Korb: Yeah, sure. I'm just, I'm hearing one side of it. I'm hearing that basically the Huff's are up a creek, they don't have much of a leg to stand on, basically.

Bill Jeffers: No, they're here because—

President Tornatta: Right.

Bill Jeffers: —you can order the obstruction removed.

Commissioner Korb: Great. That's my question. So, I'll let you sum that later. Thanks.

Roger Huff: Can I just (Inaudible)--

President Tornatta: Hold on.

Roger Huff: —here, just rapidly? First and foremost—

President Tornatta: Come up to the podium, please.

Roger Huff: Yeah, first and foremost, Bill, and I don't mean to knock you down there, but I'm not saying that that pipe was adequate. I'm saying that he was told to put something in there, and he did. I want to make this clear, we don't know what's going to happen, because we haven't had any hard rains.

Commissioner Korb: Uh-huh.

Roger Huff: Secondly, it says right here, and, you know, this is according to you folks, your rules and regs, any changes to a waterway that is classified as a legal

drain, must have the approval of the plans by the County Drainage Board. Well, he certainly didn't apply for a permit. He certainly didn't get one. He didn't ask us what we thought about it. He just threw some little bitty pipe in there and covered the whole mess up.

President Tornatta: Right.

Roger Huff: That's how it happened.

President Tornatta: Okay. Mr. Jeffers, probably that's not classified as a legal drain, it's a natural waterway.

Bill Jeffers: This is a private drain, or a mutual drain at best. It's not a legal drain, which is common parlance for a regulated drain.

President Tornatta: Right.

Bill Jeffers: You know what a regulated drain is, that's the large ditches we deal with. We have 80 miles of them, and this certainly is not one.

President Tornatta: Okay, Jason and fiancé?

Tara Brown: Can I go back to the others?

President Tornatta: Names, address.

Jason Schmitt: Jason Schmitt, 2125 Volkmann.

President Tornatta: Can you speak up a little bit.

Jason Schmitt: Jason Schmitt, 2125 Volkmann.

Tara Brown: Tara Brown, 2125 Volkmann Road.

President Tornatta: Okay.

Tara Brown: Basically, if you want to go to the area in question, I guess. The pictures that you're seeing that Roger showed were from probably in January, when we had the awful flooding, okay? I'm sorry, but everything was flooded. Every road, every kind of low level area, it's the worst record flood you have seen ever. It's kind of hard to compare this to a heavy rain, first of all. I'm trying to get to the one, okay, this is the garden that we have here. This is what it looks like now.

Jason Schmitt: I did put a fence up around it.

Tara Brown: Yeah, we did put a fence up, and we've got chickens that come and go over. We're not trying to get them to go over there, but we're trying to get them to (Inaudible) over. This is a garden. We do have a fence around it to keep the actual deer and everything else out. We don't have money for a good fence. I'm sorry, but, I mean, you can tell by the corn that's grown that it is not that way. You can tell by looking where we widened it, the area is improved. You can tell by the property line where his "No Trespassing" signs are, how much it is improved. The area was actual dirt to begin with. There were horses there to begin with. It was not grass when we moved in. We do have chickens, it is zoned agricultural and we can have those.

Jason Schmitt: And, also, that waterway he's talking about never ran to that main ditch. It ran in front of where they had their horses, and I just enclosed it and made it for chickens and that. It ran right in front of that building and then into the ditch. It never ran directly straight to the ditch, like how he's saying it did.

Tara Brown: This is a new view of the property line right here, where ours is on the right, theirs is on the left. All we have is a fence up now. You can see how good it looks. I mean, it does not have mud, it is not near as bad as record year flooding. He has called the county on us again for the chickens, are they living in squalor? Dwayne Caldwell came out and said they were fine. I mean, we've had problems, he doesn't like the way we are, we're farmers and other things. I am so sorry. I really am, I'm very sorry. I'm not trying to do anything, but you don't have to move out of your home because you just don't like the chickens that we have. I'm very, very sorry. It's just frustrating.

Jason Schmitt: He also did know I was doing that, because he come down and said that's not gonna hold. He come down several different times when I was doing all this and he never complained about it. He just said I don't think it's going to hold for you. He never did complain about it until we had all the rain.

Tara Brown: We had a really bad year this year. I mean, the farmers are still trying to get over the record year flooding. Give it a year, look at it again, please. Give it six months. Give it some more time, please. He's been farming, third generation farmer, putting tiles in, he somewhat knows what he's doing. I mean, the tiles underneath the garden area should only help. If you can see he lives higher up, it flows down, we widened it, if you can see coming out there. We intend to even have it further. I don't know if you can tell, but right under the trespassing sign we kind of dip it out on our property. This is a very, very silly and very frivolous, petty thing. I mean, you can tell there's no water backed up.

President Tornatta: Alright. Any other evidence?

Tara Brown: Is that the only issue? Also, there's no sediment trail coming down this driveway. If there was water that was coming down, you would see sediment trails. Yes, there has been dirt that was brought in. Not even a whole foot of dirt was there, and we cleaned that up around the side. There's patches of dirt from where we had the trucks and the farm vehicles. We don't have commercial vehicles, we have farm vehicles. It's zoned agricultural. I'm very sorry, you know, it's not a brand new John Deere.

President Tornatta: Alright. Anything else of the Board? Okay. Alright, yeah, if you just take a seat for a minute.

Bill Jeffers: Okay, I guess, just in my summation, I would say that, again, he did replace the undersized pipe with an 18 inch corrugated, plastic tile. I do think that's adequate to drain the two, or two and a half acres that comes from off-site through the ditch that he is supposed to maintain, according to his plat. The natural surface watercourse that was previously obstructed by stone, railroad ties, and earth that was brought into the garden, he has removed the stone, he has removed the railroad ties from the watercourse. He has begun to restore the watercourse into what I asked him, or asked Tara to convey to him would be a grassy waterway through the garden, and eventually through the chicken coop joining with the tiled drain at the east end of his property. He had begun that. I'm a little bit disappointed that he erected the, what I'm calling (Inaudible. Tape flip.) because grass clippings and other

debris can catch on that each time it rains and build up and form another obstruction. But, if he would raise that up in some way, so that water can pass underneath it for the entire width of the restored waterway, I don't think that would be an obstruction.

President Tornatta: Mr. Jeffers? If he did that, wouldn't there still be droppings in the waterway? Is that an issue?

Bill Jeffers: I believe if he restores the watercourse with a steady, downhill grade, as it used to have, and there's only a few high spots left in it at this point in time, and where he trenched through the garden, I'm asking him to widen that out. I believe the issue of chicken droppings would only be the case if the water were impeded and then backed up onto the Huff's property, carrying chicken droppings with it. Because, if there's no way for it to back up, it's all going to go forward into—

President Tornatta: Their property?

Bill Jeffers: —the Schmitt's property.

President Tornatta: The Huff's property.

Bill Jeffers: Not the Huff's, no, the Huff's, that's uphill.

President Tornatta: Uphill?

Bill Jeffers: That's been misrepresented. There's plenty of grade. I'm talking about from the Huff's home, from their house, at the top of the hill, down to Jason Schmitt's property line, there's over a 25 foot drop.

President Tornatta: Okay.

Bill Jeffers: In less than 400 feet.

President Tornatta: So, the droppings would go on the Schmitt property?

Bill Jeffers: Rapidly.

President Tornatta: Okay.

Bill Jeffers: In a hard rain, there's no way it would back up, unless there's the obstruction. I'm simply asking that Jason make some minor improvements to restore the waterway so that there's no question of an obstruction. Now, as to the time limit that Tara alluded to. I did tell them that I was going to recommend to you, because of the progress that had been made, that you give him some more time to finish, and leave the case open for six months or a year, so we get into a rainy season, and I'll report back to you at that time. I think he's made an admirable progression. I want to keep this issue strictly focused on the obstruction of the watercourse.

President Tornatta: Uh-huh.

Bill Jeffers: The other violations that may or may not be present at the location can be handled by those departments—

President Tornatta: Right.

Bill Jeffers: –that are responsible for those violations. I’m not handling–

President Tornatta: Okay.

Bill Jeffers: –building permits, etcetera.

President Tornatta: About the standing water in the other areas, do you believe that will be cleared up with the remedies that you’ve requested he make?

Bill Jeffers: The standing water issue is only applicable to the tree farm area owned by the Huff’s.

President Tornatta: Okay, on their property?

Bill Jeffers: Yes, on Mr. Huff’s property. That’s the only area of standing water that is applicable to this petition.

President Tornatta: Okay, and by no way does that affect the Huff property?

Bill Jeffers: If the obstruction is adequately removed, the water should drain off the Huff’s property and there will be no standing water on the Huff’s property, thereby improving their drainage, which is the criteria for you ordering the removal of...if the removal of the obstruction will cause better drainage of Mr. Huff’s and Mrs. Huff’s property, then that’s the criteria that the statute prescribes for ordering the removal.

President Tornatta: Okay, any other questions of Mr. Jeffers? If not, we will hear from the Huff’s, and then we’ll–

Commissioner Korb: I’m just curious for the Schmitt’s, Jason is this land that you own? Or are you leasing it? Or is this family owned property?

Jason Schmitt: I just bought it not a year ago.

Commissioner Korb: Okay.

President Tornatta: Bought it a year ago, for those who can’t hear. Okay. I’m going to preface this by saying, as Mr. Jeffers said, we have to keep our comments for drainage issues and flow issues in this court, okay?

Christi Huff: And that’s understandable.

Roger Huff: Well, it’s like this, I think. We’re out of our house, excuse me, we’re out of our house because of this guy. I don’t particularly want to wait a year, just to sit and wait to see what happens. I think, Bill, any sane person could come out there and look at this and tell what’s gonna happen. I mean, you’re an expert. I mean, come on.

President Tornatta: Roger, you gotta address us.

Roger Huff: I mean, this is ridiculous. The water has nowhere to go. Any one of you folks could come out there and look at this situation and say, wow, I mean, it’s so obvious. You know, I don’t want the feces on my land, I don’t want the water on my land. I want to be able to sell my place and get away from this guy. I feel like something significant needs to happen here. I mean, if the Surveyor’s office can’t

handle this, if they can't make a determination, I mean, I can't even imagine how many thousands of gallons of water come down that hill. To think that a trench that's this wide is going to handle all of that. At the end of it, it has nowhere to go. There's nowhere for it to go. It has no choice but to back up.

President Tornatta: Okay.

Roger Huff: It's simple, really.

President Tornatta: And, what we're going to, unfortunately, in your case, what we're going to rely on is our Surveyor, because he's been at this a long time, believe it or not. He's seen a lot of these cases, and with all due respect, that is a guy that we rely heavily on because of his experience.

Roger Huff: Well, let me say this, I've lived there for 12 years.

President Tornatta: Right.

Roger Huff: And, before that my family has lived there for about 50. My family used to own that home. I used to play in that yard when I was a child, and I've seen how fast the water can come down through there. How it would fill that ditch up and run it out into the yard. That ditch no longer exists.

President Tornatta: Right.

Roger Huff: You know, I know what's going to happen.

President Tornatta: It kind of sounds like, the way he's moving, he would like to see that ditch back to how it was.

Roger Huff: Yeah, I would too.

President Tornatta: Okay. In that, if there's a chicken coop that is restricting the drainage, or potentially could restrict the drainage, it be lifted up to a level that would allow the eventual flow of those waters.

Christi Huff: But, I think the ditch that, I think it's a little confusing with how this story, how the picture is being drawn. Because the ditch that we're talking about is right at that tree, that large tree that you see there in the front of that picture on the right.

President Tornatta: Uh-huh.

Christi Huff: Right there is where the drainage ditch used to be. So, that is all covered up, and that's what we're talking about where the water has no room to flow now.

President Tornatta: Right.

Christi Huff: Our property does not downgrade all the way into the property line. We do have a flat area that is shown on the pictures that is flooded, and it was not, those pictures were not taken when we had that record rainfall in February and March. Those were taken long after that. It's not just that flat area that floods, but it's right along the easement.

President Tornatta: Right.

Christi Huff: The easement where, you know, our slope starts to flatten out and starts, you know, getting closer to his property line, all of that remains flooded and muddy whenever it rains of any amount, because the water sets on that low area, because it has nowhere to go. Now, our vehicles are constantly covered with mud, and that whole ditch from where you see that truck, all the way to the road is filthy, completely filthy.

Roger Huff: And that's a driveway. That's a driveway that I spent 12 years, and I don't know how many thousands of dollars building. This man in less than a week of having moved into that home turned it into a goat path. I mean, the mud runs out into the road, water boils up out of the pipes that are broken from constant traffic from his heavy tractors, tractor trailers coming and going. The Engineer's office has yet to even respond to come out to look at that. You know, I have, when we try to get our kids, well, when we used to live there, on and off the bus, I mean, they get in the vehicles, they've got mud all over their shoes, I mean, you've got mud up into your windshield. I mean, this used to look like a county road.

Christi Huff: And, it's not the farming that we have issues with, because when we tried to—

Roger Huff: Well, he's got an acre.

Christi Huff: —discuss this with them, I said, we've got to get the drainage issues taken care of, because this is obviously flooding, and those were fruitless efforts, okay?

President Tornatta: Right.

Christi Huff: So, the civil way of dealing with it was out the door. So, that's why now we've had to take it further. So, you know, farming, whatever they want to do, that's not the issue. But, if, even if there is a trench dug through the chicken area or the garden area, then the other place it's going to go to is in the middle of the driveway, which is what is already happening, because it simply has nowhere to go. So, in order for the large drainage ditch to be restored, all of that is going to have to be dug back up, all of that gravel where his truck sits, his truck is sitting, basically, on top of where the ditch used to be, or a little bit south of that. I have lived here also for, you know, ten plus years—

President Tornatta: Right.

Christi Huff: —so, I know what I'm talking about—

President Tornatta: Right.

Christi Huff: —okay?

President Tornatta: That's fine.

Christi Huff: You know, where the building has been built over the drain. All of that would have to be removed in order for our property not to be polluted with whatever is on their farm, in order for us to have an attractive piece of property again so that we can sell it.

President Tornatta: Okay.

Christi Huff: That's all.

President Tornatta: Okay, and what I think we're going to come to, and I think Mr. Jeffers alluded to it, we're going to need to see some drainage in action.

Christi Huff: Well, the pictures—

President Tornatta: Understand. Understand, and there's been some remedies since those pictures, I believe. So, I'm not saying total, I'm saying that he's going to have to go out there and evaluate what's happening and what will happen in the future. If we close the case today and rule a certain way, would that be doing justice to either side? Maybe not, because it might be against you.

Christi Huff: Uh-huh.

President Tornatta: So, what I would recommend to this Board is that we take this under advisement, keep the case open, let Mr. Jeffers look at it, as we've done in other cases. What we found is that the remedies are blatant, once we're able to see the drainage in action.

Christi Huff: Okay, well, whenever we do contact the county office, are we assured that some representative is going to come out there that day, and not days later, so, that the issues can be witnessed?

President Tornatta: Well, with the case open, Mr. Jeffers knows that that's on his topic.

Roger Huff: I think what she's trying to say is that when it rains hard—

President Tornatta: Yes.

Roger Huff: —that's the time to look at it—

President Tornatta: Yeah.

Roger Huff: —not a week later.

Christi Huff: Right—

President Tornatta: Right.

Christi Huff: —because those are the answers that we are getting.

President Tornatta: We will address that, if that's the Board's wishes.

Christi Huff: Okay.

President Tornatta: Okay? Thank you.

Christi Huff: Thank you.

Bill Jeffers: Well, if that's your, if what you're indicating is what comes to be, I will say that I'll go out there, with a survey crew, and I will stake grade from their property line, from the Huff's property line, all the way down to the existing ditch. I'll stake grade through the garden and the chicken coop and assure that adequate grade is laid out and available for Mr. Schmitt to achieve, and an adequate width of waterway is laid out and available for him to achieve to drain this two and a half acres that drains through that waterway. Because that's what it amounts to, two and a half acres.

Commissioner Nix: Mr. Jeffers, one other thing, there's been quite a bit of mention about mud, is, could you make some recommendations to, and I don't know if this is seeding and strawing and that type of thing, or maybe some silt fences until some of this stuff is, this material is stabilized.

Bill Jeffers: Well, I'm going to have to say that the mud issues that were expressed in the last go round, the last five minutes or so, ten minutes, are not related to the obstruction issue. The mud is being dragged from out by the entrance of this lane to the county road. You can see it in the right hand, or the left hand picture there. You can see the county road in the distance, where the driveway terminates into the shadow of the trees, that's the county road. That's where, that's the origin of the mud, not up here at the obstruction. The mud's being dragged in from where the driveway meets the county road, and it's being dragged up the way by the tire tracks. That is not an issue that's involved with the obstruction or this hearing. That may be a sediment issue. That may be an unauthorized excavation on the part of Jason Schmitt out there in the right-of-way, it may be all kinds of problems, but it doesn't have anything to do—

Commissioner Nix: Okay.

Bill Jeffers: —with the obstruction.

Commissioner Nix: Thank you.

Tara Brown: Can I say one more thing?

President Tornatta: Yes.

Tara Brown: If I could, when she said the ditch is exactly what she said, right there where the tree is, and if you can look where those pine trees are, it's at least 50 feet away. Okay? That's the area she's complaining about. There was no ditch in the garden area ever to begin with. It was pure, just dirt.

Christi Huff: That is not what I have heard (Inaudible. Talking over each other.)

Roger Huff: I have photographs (Inaudible. Talking over each other.)

Tara Brown: I do too. Right here. Did you see those rocks? That's where the ditch is. See the rocks, you can see them actually right there where it goes by, that is the ditch. You can even see the little thing over there. That is the ditch. There is the area.

President Tornatta: Okay.

Tara Brown: There is not any actual ditch through where the mud actually ever, ever was. Did it flow through there just because it was coming down? Yes. It did. You can see that. We tried to widen it, we did everything. You can see the actual size of the ditch when we first moved in by the rocks, how wide and how big it is. That's before we put a pipe through there.

President Tornatta: Right.

Tara Brown: It's just—

President Tornatta: Well, we're not adding anything. So, let's stop here.

Tara Brown: Okay.

President Tornatta: Okay? You're not adding, let's don't take anything away.

Tara Brown: Gotcha.

President Tornatta: Let's maybe get a recommendation from this Board, how to proceed, and go from there. Thank you.

Commissioner Korb: Well, obviously, we need to wait until, I hate to say it, but rains. But, in the meantime, Mr. Jeffers, I guess, my question, or my thing what we're talking about, Commissioner Tornatta, is to go ahead and table this, I don't want to say indefinitely, because that sure sucks all the wind out of the Huff's sails, and can certainly understand why they would want to try to sell the property, and frustrated because they can't, when realtors are saying no to them.

President Tornatta: But, they also have a pending case on this, and if there's any injustice, then that would be remedied—

Commissioner Korb: Yep.

President Tornatta: —by this Board.

Commissioner Korb: Absolutely. So, I vote we pend this until we get another recommendation from Mr. Jeffers and his office. I think that's the logical thing to do at this point in time.

President Tornatta: Do we need, Mr. Jeffers, do we need to put a timing, some type of timing on this for possibly the sale of their home?

Bill Jeffers: Well, I think the statute indicates that anytime you extend the meeting, you should give a positive, a definite date of when you'll reconvene.

President Tornatta: Would you entertain a six month date?

Commissioner Nix: Well, I would think that we could—

Bill Jeffers: I think we can go a little bit quicker —

Commissioner Nix: —surely, something could be done quicker.

Bill Jeffers: — than that.

Commissioner Nix: Yeah.

President Tornatta: Okay.

Commissioner Nix: I would like to see—

Bill Jeffers: Sometime in September?

Commissioner Nix: Yeah.

Commissioner Korb: Is my thought.

Commissioner Nix: A late September meeting, and , hopefully, you'll be able to make the improvements we're talking about here and get this, you know, get this cleaned up.

President Tornatta: It would be September 16th.

Commissioner Nix: That's the last meeting in September?

President Tornatta: Yes.

Jason Schmitt: (Inaudible. Not at microphone.) Because that water never ran into that ditch anyway. (Inaudible).

President Tornatta: Okay.

Tara Brown: (Inaudible. Not at microphone.)

Bill Jeffers: No, I'm, the way I want to stake it for Mr. Schmitt will take it exactly where it ran before. I don't want to change the watercourse. I want to restore it.

President Tornatta: And he will go over that with you.

Bill Jeffers: Right.

President Tornatta: Okay. Alright, if you want to—

Commissioner Korb: That's great. We'll just table this until September the 16th, our meeting that we have, and Mr. Jeffers come back with your recommendations, and, hopefully, we will see some progress at that point in time.

Commissioner Nix: So moved.

Commissioner Korb: On Mr. Schmitt's behalf.

President Tornatta: And, so ordered. Thank you all. Any other business?

Public Comment

President Tornatta: Any public comment? Any claims?

Bill Jeffers: No claims today. They will be in the next meeting.

President Tornatta: Mr. Jeffers, thank you very much.

Bill Jeffers: Thank you.

President Tornatta: Motion to adjourn, do we have one?

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered.

Commissioner Nix: Thank you, Bill.

(The meeting was adjourned at 6:55 p.m.)

Those in Attendance:

Troy Tornatta

Bill Jeffers

Roger Huff

Tara Brown

Bill Nix

Ted C. Ziemer, Jr.

Christi Huff

Others Unidentified

Jeff Korb

Madelyn Grayson

Jason Schmitt

Members of Media

**VANDERBURGH COUNTY
DRAINAGE BOARD**

Troy Tornatta, President

Bill Nix, Vice President

Jeff Korb, Member

Recorded and transcribed by Madelyn Grayson.

**VANDERBURGH COUNTY
DRAINAGE BOARD
AUGUST 19, 2008**

The Vanderburgh County Drainage Board met in session this 19th day of August, 2008 at 6:20 p.m. in room 301 of the Civic Center Complex with President Troy Tornatta presiding.

Call to Order

President Tornatta: Mr. Jeffers?

Bill Jeffers: Yes, President Tornatta.

President Tornatta: We're ready to start the Vanderburgh County Drainage Board meeting, Tuesday, August 19, 2008—

Commissioner Nix: Are you going to let them clear out?

President Tornatta: —it's twenty after 6:00.

Approval of the August 5, 2008 Drainage Board Meeting Minutes

Bill Jeffers: Would you like to approve the minutes of the previous meeting?

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered.

Discount Tire Drainage Easement Encroachment Agreement

Bill Jeffers: The first item on the agenda is an encroachment agreement submitted by Discount Tire Company at Burkhardt Crossing Subdivision, out by Lowe's on the east side. They're asking, as shown on the document that Madelyn has for your signature, that they will be encroaching the drainage right-of-entry of Crawford Brandeis Ditch with parking facilities, a small monument sign, and some landscape plantings. This is lot 27 of Burkhardt Crossing, just south of the car wash, and just north of Culver restaurant. Let me see if I can find it. Ted Ziemer sent his indication that the attached drainage easement encroachment agreement follows our standard form for the same, provided that Discount Tire provides with a certificate of insurance, within satisfactory limits, and naming the county as an additional insured, and is satisfactory for execution from a legal perspective. The County Surveyor recommends entering into this agreement.

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: I abstain. So ordered.

**Engineering Agreement: American Structure Point:
East Side Urban Drain @ Stockfleth Ditch**

Bill Jeffers: The next item is an engineering agreement with American Structure Point of Indianapolis on the East Side Urban drain located at Stockfleth Ditch. This agreement would produce construction plans, and we would enter into a construction management agreement with them to accomplish embankment repairs and the re-design and construction of a new control weir to facilitate the lowered flood plain of the east side TIF district. The way that this agreement is structured gives us options to exercise various, you know, levels of involvement, and if we exercise everything within the agreement, which I do recommend we do over a period of time, it will be, I believe it's on there, \$78,000, excuse me, \$74,700, not to exceed that amount. The time line is in appendix C. The signature page is page number seven. This will also involve what I recommend to be a study of some railroad structures that I believe to be obstructions. Norfolk Southern has three railroad structures that I want analyzed in this agreement. If they are obstructions to the floodway, they will be recommended to be removed as well. I find the, all parts of this proposed agreement to be exactly what we want, and I have submitted it to Mr. Ziemer for his review and comments. His comment, by e-mail yesterday was—

Commissioner Korb: I'm going to Russia?

Bill Jeffers: He has received the attached local funded engineering agreement to be entered into between the county and American Structure Point, Incorporated for civil engineering services, etcetera. The agreement follows our standard form for consulting agreements and satisfactorily sets forth the necessary insurance requirements, description of the project, and project charges, which shall not exceed \$74,700, and is in all respects satisfactory for execution from a legal perspective, and may be placed on the agenda for the 8/19 meeting.

President Tornatta: Does he get paid by the word?

Commissioner Nix: I think so.

Bill Jeffers: Apparently.

President Tornatta: Can we have a motion?

Bill Jeffers: I'm practicing for his job.

President Tornatta: Motion?

Commissioner Nix: So moved.

Bill Jeffers: Thank you.

Commissioner Korb: Second.

Bill Jeffers: A motion and a second.

Commissioner Korb: Where are we going with this?

President Tornatta: So ordered.

Bill Jeffers: Okay, to its conclusion.

Setting of Hearing Date: Evelyn Utley Obstruction Petition

President Tornatta: Mr. Jeffers, hearing date on Evelyn F. Utley petition.

Bill Jeffers: Right. We have three available dates within the 90 day period of receiving the petition. The next available date is September 2nd, the following date, September 16th, and the last date that we can hear it would be October 7th.

President Tornatta: I'm just going to get wild and crazy and ask that maybe we entertain 9/16. 10/7 is the Fall Festival.

Bill Jeffers: Good idea.

Commissioner Korb: What did you just say?

Commissioner Nix: 9/16.

Commissioner Korb: Oh, okay.

Bill Jeffers: 10/7 coincides with the Fall Festival.

Commissioner Korb: Right.

President Tornatta: So, if we could get a motion on that?

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered.

Approval of Ditch Maintenance Claims

Bill Jeffers: I have claims from ditch contractors. They've all been reviewed by the County Surveyor. They are accompanied by inspection reports. I recommend you pay your ditch contractors, in accordance with those blue claims.

President Tornatta: Motion?

Commissioner Korb: So moved.

Commissioner Nix: Second.

President Tornatta: So ordered.

Notification of Future City Reimbursement: Nurrenbern Ditch Work

Bill Jeffers: I've entered into a discussion with the City Department of Transportation, we have a ditch along the east side of Fuquay Road, out by the Dunn development area. It's called Nurrenbern Ditch. It has an accumulation of sediment in it over a

period of time due to development within the city. It still is our ditch to maintain. The city had several streets and pieces of public and private property that were adversely affected by poor drainage, and they went out with an agreement from me and started removing some sediment. I wanted to notify you of that. I'll be coming back to you with possibly some hours, time spent by a city crew and asking for a reimbursing of the city. The same that we would reimburse a contractor. No action is necessary at this time. I just wanted to notify you that they are working on that.

Notification/Update of Work: Conway-Dennis-Wazny Obstruction Petition

Bill Jeffers: And to notify you that either tomorrow or Thursday, our contractor will be out at the Conway-Dennis-Wazny petition site, to work on Mr. Tim Harris' property, to remove that obstruction of overgrowth.

President Tornatta: Okay.

Bill Jeffers: And, that's all the business I have to bring before you tonight.

Commissioner Nix: That obstruction, how will that be handled financially then, with our contractor?

Bill Jeffers: That's the one where the petitioners and the respondent agreed they would split it four ways, if it wasn't over, what was it, eight or ten?

Brenda Jeffers: (Inaudible. Comments made away from the mic.)

Bill Jeffers: Around \$415 each.

Commissioner Nix: So, we get reimbursed then for it?

Bill Jeffers: Yes, sir. We pay them out of the General Fund, or the Ditch General, and we're reimbursed by the four parties.

Commissioner Nix: That's what I remembered. Thank you.

Bill Jeffers: Yes, sir.

Public Comment

President Tornatta: No public.

Commissioner Korb: Is that it?

President Tornatta: So, I'm going to assume no public comment.

Commissioner Korb: Unless Bill wants to say some more.

Bill Jeffers: Where are you leading me, Jeff?

Commissioner Korb: I don't know. Where are we going with this, Bill?

President Tornatta: Can I have a motion to adjourn?

Commissioner Korb: So moved.

Commissioner Nix: Second.

President Tornatta: So ordered.

(The meeting was adjourned at 6:27 p.m.)

Those in Attendance:

Troy Tornatta

Kathryn Schymik

Others Unidentified

Bill Nix

Madelyn Grayson

Members of Media

Jeff Korb

Brenda Jeffers

**VANDERBURGH COUNTY
DRAINAGE BOARD**

Troy Tornatta, President

Bill Nix, Vice President

Jeff Korb, Member

(Recorded and transcribed by Madelyn Grayson.)

**VANDEBURGH COUNTY
DRAINAGE BOARD
SEPTEMBER 2, 2008**

The Vanderburgh County Drainage Board met in session this 2nd day of September, 2008 at 5:55 p.m. in room 301 of the Civic Center Complex with President Troy Tornatta presiding.

Call to Order

President Tornatta: Alright, we'll go ahead and get this thing started. I'm going to open the Vanderburgh County Drainage Board meeting, Tuesday, September 2, 2008 at, what's that 6:55?

Commissioner Nix: 5:55.

President Tornatta: 5:55.

Approval of the August 19, 2008 Drainage Board Meeting Minutes

President Tornatta: Motion to approve the previous minutes.

Commissioner Korb: So moved.

Commissioner Nix: Second.

President Tornatta: So ordered.

**Approval of Notice of Public Hearing for Evelyn F. Utley
Drainage Obstruction Petition**

President Tornatta: Mr. Jeffers?

Bill Jeffers: Good afternoon, President Tornatta. I'm asking you tonight to sign the notice of a hearing of the Evelyn Utley petition, September 16, 2008, so that Madelyn can mail that to the persons shown on the service list attached. Do I have a motion?

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered.

Approval of Ditch Maintenance Claims

Bill Jeffers: Under other business, I have one claim for Allican, excuse me, Allen Relleke, waterway restoration on the Conway-Dennis-Wazny-Harris property on Anthony Drive and Peachtree Lane. That's complete satisfactorily, and the paperwork is attached.

Commissioner Nix: Move approval.

Commissioner Korb: Second.

President Tornatta: So ordered. So, that, everything went smooth on that one?

Bill Jeffers: The only thing I would say is the soil was extremely dry and powdery, and I'm going to have to keep an eye on it to make sure the seeding and everything went well. Hopefully, we'll get a little shower and get that grass growing.

President Tornatta: Super.

Bill Jeffers: I have no other business, President Tornatta.

President Tornatta: Okay.

Commissioner Korb: What?

Madelyn Grayson: I think you just set a new record.

Commissioner Korb: Oh my gosh.

Public Comment

President Tornatta: Any public comment?

Commissioner Korb: Sorry.

President Tornatta: Any public comment? Patty? No, the answer is no. Other business? No. Motion to adjourn.

Commissioner Korb: Move for adjournment.

Commissioner Nix: Second.

President Tornatta: So ordered.

(The meeting was adjourned at 5:58 p.m.)

Those in Attendance:

Troy Tornatta

Bill Jeffers

Others Unidentified

Bill Nix

Ted C. Ziemer, Jr.

Members of Media

Jeff Korb

Madelyn Grayson

**VANDERBURGH COUNTY
DRAINAGE BOARD**

Troy Tornatta, President

Bill Nix, Vice President

Jeff Korb, Member

(Recorded and transcribed by Madelyn Grayson.)

**VANDEBURGH COUNTY
DRAINAGE BOARD
SEPTEMBER 16, 2008**

The Vanderburgh County Drainage Board met in session this 16th day of September, 2008 at 5:55 p.m. in room 301 of the Civic Center Complex with President Troy Tornatta presiding.

Call to Order

President Tornatta: Good afternoon, everybody, we're going to start the Vanderburgh County Drainage Board meeting, Tuesday, September 16, 2008 at 5:55. Mr. Jeffers?

Approval of the September 2, 2008 Drainage Board Meeting Minutes

Bill Jeffers: Good afternoon.

President Tornatta: We're going to approve the minutes first, though.

Commissioner Nix: I make a motion that we approve the minutes of the previous meeting. Would there be a second for that?

Commissioner Korb: I'm sorry. Second.

President Tornatta: So ordered.

Commissioner Korb: Having a senior moment. Do I need to do something else now?

Commissioner Nix: No, he's running the meeting.

Commissioner Korb: Okay.

President Tornatta: We're ready.

Bill Jeffers: Okay, I'm questioning the use of that senior moment comment. How do you feel about that, Ted?

Ted C. Ziemer, Jr.: I just give legal advice.

Bill Jeffers: Well, I'm a member of AARP and get a senior discount at the smorgasbord.

Commissioner Nix: After your senior moment.

Bill Jeffers: So, I'm going to take you to task for that someday, Jeff.

Commissioner Korb: Alright.

Follow Up Report on Roger Huff Obstruction Petition

Bill Jeffers: The first item of business is a follow up report on the Roger Huff petition. You'll remember that Roger Huff petitioned to ask the Drainage Board to remove obstructions, order the removal of obstructions on Jason Schmitt's property, earth fill and other items to cause better drainage of Mr. Huff's property. Today is the date

set for a follow up report from the County Surveyor. Two weeks ago I viewed the Jason Schmitt property and found that Mr. Schmitt had graded an earthen swale through his garden and chicken coop area, down to where it joins with the natural surface watercourse on the east side of his shed, lean to shed. That swale is approximately six feet wide at the bottom, ten feet wide at the top, a foot or so deep, and capable of carrying a significant amount of storm water runoff away and downhill. It's got a one and a half foot drop between the Huff property line on the north, or excuse me, on the south, and where it passes through the chicken coop and joins with the other watercourse. Behind the shed there's approximately a foot and a half drop. I think that removes the obstruction to the watercourse that existed, and facilitates the sufficient runoff of water from the Huff property, thereby removing the alleged, and, actually, it wasn't just alleged, it was verified by my previous investigation. It removes the obstruction. I noticed Mr. Huff is in the audience. Jason Schmitt is attending to farm duties, but his fiancé is here, should there be a request from the board for information. If anyone steps forward I would please ask them to stick to the obstruction and its removal, and that all other issues be handled in their appropriate venue.

Commissioner Korb: Mr. Jeffers, did you, you have inspected it, is that correct?

Bill Jeffers: Yes, sir.

Commissioner Korb: And your findings were, were they satisfactory to you?

Bill Jeffers: That the obstruction has been removed--

Commissioner Korb: Yes.

Bill Jeffers: --from the watercourse.

Commissioner Korb: Okay.

Bill Jeffers: And the watercourse has been restored.

Commissioner Korb: And that's going through the chicken coop, is that correct?

Bill Jeffers: Yes, sir.

Commissioner Korb: Okay, and we decided at our last, the last time we had this discussion, that was really all we had jurisdiction over, is that correct?

Bill Jeffers: It's my feeling that that's the only watercourse that drained the Huff property.

Commissioner Korb: Okay.

Bill Jeffers: The pipe drains property to the west of the lane, which is not Mr. Huff's property. So, my conclusion is that the obstruction has been removed and it will affect better drainage of Mr. Huff's property.

Commissioner Korb: Okay.

President Tornatta: Alright, but Mr. Huff's here, so we'll allow him to speak.

Bill Jeffers: If he would like to do so.

President Tornatta: That would be great. Thank you. Mr. Huff, before you say your name and who you're with, just keep in mind we do want to stay right to the subject, but give you ample time to go over your issue.

Roger Huff: I'm Roger Huff, and, as you know, this is my wife, Christi. It was our understanding at the last meeting that Mr. Jeffers was going to come out and stake grade the area, which would ensure that the water would, in fact, travel downhill. As far as I know that hasn't happened. I certainly never saw any stakes or anything of that nature. Jason Schmitt did create a trench through his chicken coop, however, it's quite easy to see from standing in the driveway that the grade clearly goes uphill. A child could determine that. If there were a torrent of water coming down the hill, I think it would begin to pass over that, but a torrent of water doesn't come down the hill, rain waters travel down the hill and they settle. So, I do not think that this is going to cure the problem, by any means. I don't believe it will even begin to. I just spent \$1,024 repairing the damage that Jason Schmitt has done to my land, and I would like to feel that this situation is going to be rectified so that I don't have to spend that money again. It was my understanding that this was going to be stake graded. So, I mean, what we have here was impromptu excavation in the middle of the night on Jason Schmitt's part inside of his chicken coop. You know, Mr. Jeffers may have, in fact, come out and noticed that Schmitt did some excavation—

President Tornatta: Uh-huh.

Roger Huff: —but it certainly was never stake graded. I am a landscaper, and I can tell you this, in order to get water to travel, as it should, stake grading, laser grading, something of that, you know, it needs to occur. It didn't occur.

President Tornatta: Do you have some pictures you want us to see?

Christi Huff: Yes. So, essentially, what he is saying is the grade comes right back to where the water was originally collecting. I wish I would have had an opportunity to get a Power Point for everyone to see, but I was unable to do so.

President Tornatta: Right. That's fine.

Christi Huff: What I have here are pictures previously of the drainage ditch that we tried to address earlier. This was not brought to the attention for some reason, this is the drainage ditch, okay, this is their property, this is going up to our house. This was the drainage ditch that has been there since the basic creation of the property. It's a natural drainage ditch. Okay, right before, this is where the chicken coop now is and their garden area. This was the drainage ditch that was there previous to them moving in. This was approximately two years ago, a year and a half. Here's another picture of the drainage ditch. You can see the bridge going over. This is just, to give you a better idea of the grade of the property, you know, water comes down this way, comes down that way, and there's the drainage ditch to also catch that. Okay, and this is a prime example of, sorry, heavy rains collecting, and the water is obviously traveling down to this drainage ditch. Okay, if it goes beyond, now, this area right here is where the chicken coop and garden is now. This is just another example of the grade and how the water travels. This is a recent picture of that area. Okay, so, the trench goes from about here down to, you know, where the blockage was before with the rip rap and so forth. So, you can see that there's debris, I mean, not debris necessarily, but vegetation and so forth that's going to

affect, you know, how easily the water is going to travel through. This is the current chicken coop. This is another example of the grade of the hill on their property, you know, the chicken coop starts up here goes downhill. You see here where the ditch has been filled in. This, let me find you a clearer picture. Oh, I don't have it. Can you grab the other pictures over there, please? Okay, so the drainage ditch that was now there, is not there anymore. So, the trench starts here, about, you can see where the damage was before on the grass. The trench starts here and goes uphill, barely, not a high grade, but still uphill, so whenever it rains it's going to go right back to where it was. So, this is where, an example of the drainage ditch no longer existing, okay.

Commissioner Nix: Where was the obstruction?

Christi Huff: The obstruction was here, originally. Also, the larger drainage ditch, the natural one that was formed on its own over the years—

Roger Huff: Okay, can I interject something here? It was also my understanding, at the last meeting, that Jason Schmitt was going to open this ditch up again, and that Mr. Jeffers was going to come out and inspect it to ensure that an adequate i.d. pipe had been in place. After the last meeting I had a conversation with Mr. Jeffers, and he told me that, yes, that had been done. Well, standing on my property I can clearly see that about 25 to 30 foot of that ditch was opened up, and that some sort of pipe, which I would consider at least approaching an adequate i.d. pipe was in place there, but that entire ditch certainly was never opened up. Furthermore, I don't believe that it was ever inspected while it was open to ensure that that pipe goes all the way through. I think what we have there is a wooden leg in the ground to make it look like something's been done. That's my opinion, and I think it's really safe to say.

Christi Huff: And as the meeting ended last, our last meeting here, Mr. Jeffers did indicate that he did wish for the natural water drainage to be able to run its natural course. So, that is why we are addressing the larger drainage ditch also, so that the rest of the water has a place to go. You know, he can make the trench through the chicken coop, but that does not affect all of the water that's collecting from all of the other, you know, sides of the property. I don't know if you remember, but we are trying to sell our home. We're obviously not going to be able to sell it if there are flooding problems, so that the new owner can come back and, you know, sue us later. But, I do know that we went through, about a year and a half ago, a major ordeal with, concerning the soil quality in that area, requiring us to have two and a half acres of property in that particular area, a two and half acre ordinance, and this completely affects it adversely by blocking the drainage, filling in the drainage ditches, and, you know, if we have to have that two and half acre ordinance so that adequate soil, or so that adequate area can absorb the soil, I don't see, this is just a backwards move.

President Tornatta: Okay. Let me stop you there. Appreciate you coming out. Let's hear from Mr. Jeffers, and then we'll move on.

Madelyn Grayson: Mr. Huff, may we keep these pictures for the record?

President Tornatta: Do you need these?

Roger Huff: You may keep them, but I would like to have them back, because I'm going to court on Thursday with Jason Schmitt, and I will need the pictures (Inaudible).

Madelyn Grayson: Can I make copies of them real quick then, before—

Roger Huff: Certainly.

Madelyn Grayson: Okay.

President Tornatta: Mr. Jeffers?

Bill Jeffers: Okay, I went out with my survey crew to place grade stakes for Mr. Schmitt to utilize in the grading of the swale, and he had already graded the swale. So, that's why no grade stakes were placed, because he had already completed the job. We took our level transit, our level rod and three men, myself included, and we shot grade from Mr. Huff's property line, down through the garden, down, I'm using the word down through the chicken coop, and there's a one and one half foot fall, in elevation, from the property line to the last point we shot below the chicken coop. As I said earlier, it does not run uphill, unless our level is busted. If a landscaper, or anyone else, would like to go out and check my grade, they are welcome to do so. I am not a child, and I can determine grade. After the meeting, our last meeting, and within days after our last meeting, and prior to Jason Schmitt making the final improvement, which I have described, we had a two inch rainfall at the site, and, yes, there was a trench through the garden, the swale was not there, and there was not one drop of rain water standing on Mr. Huff's property at 8:30 in the morning, within four hours after that rainfall event. With regard to the natural drainage ditch that runs through the property, or did run through the property, it ran under the driveway, which is not Mr. Huff's property, it is an easement he enjoys to enter and leave his property. The pipe under the driveway appears to be an 18 inch pipe. Mr. Schmitt told me that the pipe from that point forward to his shed that he put in the ground is an 18 inch pipe. He then connected to about a six inch diameter white, plastic pipe. I asked him to remove that. He did so. The pipe that I see coming out of the ground now, down at the creek is an 18 inch black, plastic pipe, just like the one that goes under the driveway. It's of the same diameter, or appears to be. If someone else would like to go measure it, and they know how to use a measuring tape, be my guest. There are scraps of that pipe laying on top of the ground that were not used, and they too are 18 inch diameter pipes. So, I'm assuming that the 18 inch diameter pipe runs from the driveway, and that pipe under that driveway has been there for years, when the Huff's owned all of the property, that's the diameter pipe that was under that driveway. That so called natural drain or larger drainage ditch that's been shown to you in the pictures, that's now covered and piped, and drains an area of land, which when I look at the plat does not belong to Mr. Huff, the petitioner. Our statute that we're operating under charges us to remove obstructions to cause the better drainage of the petitioner's property. What I would say to you in closing, I'm not even going to address the two and half acre ordinance, that's a sanitary sewer ordinance. That's just a county-wide ordinance, you've got to have two and a half acres to be on a private sanitary system. If you're not hooked up to a city sewer system, two and a half acres is the minimum. It doesn't apply here. I mean, it does apply, they have to be on two and a half acres, but it doesn't apply to anything to do with drainage. In closing I would simply say that if there is a flooding problem, or if you feel that there is a potential for a flooding problem, or if Mr. Huff wishes to press the issue that there's a potential for a flooding problem, that you simply leave this issue on the table until we have a rainy season and we shall see.

President Tornatta: I think that's a great motion.

Commissioner Nix: (Inaudible).

President Tornatta: We do.

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered.

Follow Up Report on Paul Esche Petition

Bill Jeffers: I'm going to skip the report on the Paul Esche petition, in the interest of time, except to tell you that, or remind you that October 15th is the drop dead date for Ms. Linda Phillips to affect her repairs. I've been on the telephone with her contractor and Ms. Phillips, and it doesn't appear as if that's going to happen as we wished. So, October 7th, I'll come back to you either with a recommendation to hire your own contractor, but I would like your permission to talk to the attorney about what our options are. I did inform Mrs. Phillips simply that if she wasn't satisfied with the decision of the board, she can take it to Circuit or Superior Court, as the statute allows.

Commissioner Korb: I put that in the form of a motion, permitting Mr. Jeffers to work with County Attorneys.

Commissioner Nix: Second.

President Tornatta: So ordered.

Hearing of Evelyn F. Utley Petition to Remove an Obstruction

Bill Jeffers: Now on to the matter for this evening, the hearing of the Evelyn F. Utley petition. There is a Power Point associated with this. I'll read the Surveyor's report, which I sent you via e-mail attached. In her petition Evelyn Utley alleges obstructions of a natural surface watercourse and drains causing inferior drainage of her property at 6017 Oak Hill Road, Evansville, Indiana. On the old, this is a 1968 Plano metric map of the county, and I've inscribed on top the watercourse that runs down through the properties. The first house you see on the left of the second arrow belongs to the Schneider's, the next house on the left is Mrs. Utley's, and the house on the right is the remonstrator, the respondents house, the Smith's. You can see clearly that the watercourse ran between the two houses. The Smith's, as the respondents, Utley, as the petitioner, and the watercourse favored the Utley side of the line. Then it crosses Cresthaven Drive and runs through the west side of what is now, pardon me, I'm sorry, it passes on the west side of the Volz's property, until it comes to the roadside ditch for Oak Hill Road. Ms. Utley alleges that the obstructions to the drain, and to the natural surface watercourse exists on the property of Mr. and Mrs. Charles Smith, 3216 Cresthaven Court, Evansville, Indiana. Although the Utley petition itself does not contain an exact description of the alleged obstructions, Ms. Utley attaches documents to her petition that give the opinion of Joe Buchanan, Hydromax, Incorporated, a sewer and drain cleaning service, that the drainage pipe on Ms. Utley's property is in severe need of repair, excuse me, "The drainage pipe

on Ms. Utley's property is in severe need of repair.", due to Buchanan's observation that "there are several sink holes located over the drainage pipe", indicating, "the pipe has joints that are offset or separated". Does everyone have a copy of this report, or would like one? Anyone need one?

President Korb: I don't have one, but I don't need one.

Bill Jeffers: Okay. It should be noted that when the County Surveyor spoke with Mr. Buchanan, he said then he could not absolutely confirm his suspicions regarding the condition of the pipe without first running a camera or probe through the pipe, and that Ms. Utley had not authorized such an expense. I included that sentence because an obstruction can include, by statute, a condition that impedes, or significantly impedes the flow of water through a drain. In his document attached to the petition, Mr. Buchanan also offers his opinion that a wooden deck, landscaping on the Smith's property, "contribute to some of Ms. Utley's flooding problems", but does not say specifically how or whether such material and objects are obstructions to the natural surface watercourse or the pipe drain. Okay, I'm asking again, please be aware that this hearing is enabled by IC 36-9-27.4, a statute providing for the verification of alleged obstructions, the removal of which will cause better drainage of the petitioner's property. It's my opinion that even where there are known conditions that contribute to poor drainage, if those conditions are other than obstructions to a drain, or other than obstructions to a natural surface watercourse, as clearly defined by the statute, that such conditions are not relevant to the hearing, to the extent that the Board should hear or act upon them, and a remedy for such inapplicable conditions must be sought in some other court or venue. In response to the petition, the County Surveyor and staff have visited the site of the alleged obstructions on several occasions, investigated the allegations and submit the following observations with regard to the alleged obstructions of the drain and natural surface watercourse at this time. Here is the aerial photograph showing Ms. Utley's property, outlined in blue on the left, the Smith's property, outlined in blue on the right. The home below the word Cresthaven is the Volz's home. I must take the watercourse first, then we have a series of pictures showing the watercourse. I'm saying it no longer exists as it did prior to the construction of Ms. Utley's home. That is to say old county maps that I've shown you show the natural surface watercourse, or the valley, running downhill, southwestwardly and through the property owned by Gene Schneider immediately north of Ms. Utley's home. This one is from 1990, and you can already see that the watercourse is flattening out. It doesn't have those distinct, narrow lines. So, these are made from aerial photographs, and what that signifies, basically, is that the person making the map cannot see the detail of the natural surface watercourse any longer, due to alterations of the land, between the first map and this one. Okay, we can go to the photographs now. Wait, this is Andy Easley's survey, fairly recent survey of Ms. Utley's property. I don't know the exact date, but the corners are still capped and marked with orange ribbon, etcetera, so I would say it's relatively recently. It shows a pipe up at the northeast corner of Ms. Utley's property, and then that runs down to a drain that says "area drain" down here about three quarters of the way down. A little bit higher. Right there. Down a little. Right there, area drain, and then according to some of the neighbors, they believe that the pipe runs diagonally across the corner of her property and across the Volz's until that pipe arrives down at Oak Hill Road. I'm thinking that pipe replaces the natural surface watercourse, but I'll get into that in a moment. The watercourse enters Ms. Utley's yard and the Smith's yard approximately at the inlet of that pipe. The pipe is located on the Smith's northwest corner, as I've said. From there, the natural surface watercourse then runs basically along the joint property line between the Smith's and the Utley's, but favors the Utley's side of the line. The natural

watercourse runs southwestwardly, rather than due south, more and more as it eventually crosses the Utley property and nears Cresthaven Court. By the time it gets to Cresthaven it runs entirely on the Utley property. Now, as to the obstructions of the natural surface watercourse, as defined by statute. One must identify objects, materials and conditions that lie within or near the natural surface watercourse and prevent or significantly impede the flow of water through the watercourse. With regard to Ms. Utley's petition the following structures, materials, objects and conditions are found within or in close proximity to the original natural surface watercourse, and may qualify as obstructions, because, in fact, they do or will prevent or significantly impede runoff through the watercourse. First, Ms. Utley's outbuilding at the northwest corner of her property, I think you can see that on the aerial photograph. Ms. Utley's wooden fence, no, it would be on the aerial photograph. There's a shed right there where the palm of the hand is. There's a wooden fence all along the east property line, then there's some fill associated with the Smith's new garage that has a white shed roof on the front and a shingle roof on the back part of it. There's some fill associated with them having built that garage that was disposed on site. There's a gravel driveway they built to the garage, there may be some fill associated with that that has encroached into the waterway. Some fill associated with installation of the pipe itself, that's between the two, the garage and the shed back there. There's some fill that covers the pipe, I mean, you have to, once you put a pipe in you've got to cover it. Some landscaping of the Smith's along the new driveway and the Utley's fence. The Utley's have a concrete slab here on the end on Cresthaven, but you can show a picture of the slab if you like. That's the location of it, plan view. We'll see some pictures of that slab, it was poured to park their Air Stream trailer some years ago. It blocks the watercourse. Trees planted years ago by the Utley's, now consisting of about three large, oh, I'm going to say 24 inch diameter Poplar trees over top of the pipe drain. Let's scroll down and look at some trees. Picture number six. Picture number seven. There's a tree in the background. Picture number eight. There's a tree and some landscaping and the fence. All that should be an open watercourse, if it was left natural. We can look at the other side of the fence, there's Ms. Utley's backyard, you can see landscaping and fence in the watercourse, concrete sidewalk. Oh, pick another picture, now we're looking out to the south, the watercourse is now over on her property at this point, and there's landscaping on the right and the left that has encroached into the watercourse. Removal of all these objects and material from within or near the watercourse surely would improve drainage of Ms. Utley's property, but it's unlikely that she truly desires removal of many of the items, particularly the ones she's placed or enjoys. On the other side of the coin, it would seem unfair to single out for removal only those materials I've shown you on the Smith side of the line, when objects and materials on the Utley side of the line may equally and in some cases more dramatically impact the natural surface watercourse. If all the objects and materials that prevent or significantly impede the flow of runoff are left to remain in their present location, then effective drainage of Ms. Utley's yard and her home solely depend upon the pipe drain and the inlets to the pipe. So, let's look at those. That's on down around, there's an inlet, number 17. There's an inlet to the pipe that drains Ms. Utley's side yard. Her side yard is totally dependent upon that. Now we're looking at it from the Smith's side of the yard. See the wire grate? That's about a 24 inch diameter, maybe an 18 inch diameter opening. That's a grate, a homemade grate that used to be on top of that opening. Someone took a blow torch and blew a few dime sized holes in it. I asked them to remove that, you might get more water to go down. The Smith's were kind enough to remove that for Ms. Utley. Let's look at the pipe in the back there.

Commissioner Nix: That's a restrictor plate, Mr. Jeffers.

Bill Jeffers: It's a restrictor plate.

Commissioner Korb: That's what we call it in NASCAR.

Bill Jeffers: I call it an obstruction. GW would say I call that an obstruction. Number 19, this is a drop box right there by Mr. Schneider's property line where the watercourse first enters the Smith's property, next to, that's a nice looking drop box, by the way. I would like to be able to make one like that myself. Somebody did some handy work there. Number 20 is an 18 inch diameter concrete tile, keep that in mind, 18 inch diameter concrete tile. Now, this pipe that appears to be laid at about a two percent grade along the Smith's west property line gets down to that inlet we also looked at, and then from that inlet we believe it runs diagonally across Utley's property, across Cresthaven, across Sondra or Sandra and Larry Volz front yard out to Oak Hill Road. The entire run of pipe was installed by private parties, has been privately maintained since its installation, privately owned, except for that part that may cross, that crosses Cresthaven, which may or may not be a county road. I don't know, because some surveys show it is, some surveys show it isn't. There are no records known to the County Surveyor or Highway Department as to the design of that pipe, but using its apparent size and grade, I believe it's capable to convey flow up to 15 cubic feet per second. The watershed area above the pipe is six acres, large residential lots with grassy lawns, for the most part. They are on a three percent gentle land slope, 500 feet long, so such a watershed might be expected to contribute about ten cubic feet during a, cubic feet per second, during a 25 year storm, and about 13 cubic feet per second during a 100 year storm, indicating that an 18 inch pipe, which is capable on that grade, and I didn't calculate the head, there's at least an eight inch head above that pipe, but even without the head, it's carrying up to 15 cubic feet per second, or in excess of the 100 year storm. I have eyewitness testimony from at least one of the party's that the rush of water that comes down that hill has traditionally been carried by this pipe with no problem.

Commissioner Korb: Mr. Jeffers, if I may?

Bill Jeffers: Yes, sir.

Commissioner Korb: Did you find some obstructions that was, and what would be your suggested remedies for those? Or, are you getting to that?

Bill Jeffers: I'm getting to that, sir.

Commissioner Korb: Okay, I'm just trying to keep Ted out of trouble.

Commissioner Nix: Thank you, Mr. Jeffers.

Bill Jeffers: You're welcome, Mr. Nix. Okay, verification of the obstruction, or a collapsed pipe, or separated pipe joints, let's look at the pipe joints that have been uncovered.

Commissioner Nix: Bill, just in layman's terms though right now, basically what they've done is they've taken a natural flow and they've tried to divert it to this inlet and take it underground?

Bill Jeffers: Well, it's not even diverted. The inlet is right in the natural flow. It picks up the natural flow.

Commissioner Nix: It's tried to divert, but it's not necessarily taken place.

Bill Jeffers: It's tried to carry it underground rather than overground.

Commissioner Nix: But, there's not enough diversion to get it to this structure, so it—

Bill Jeffers: It all arrives at that structure. Yes, sir.

Commissioner Nix: Okay.

Bill Jeffers: From uphill. From the Schneider's property I would say nearly 100 percent of the flow that went through the watercourse arrives at that drop structure. The Smith's have dug up the pipe because Utley, Ms. Utley thought that there were some separated tiles. There's your pipe joints, pretty tight, pretty tight. There may be some other areas, it would require digging up the entire landscape on both sides of the line to find the rest of the joints. I did find a few minor sink holes on the Volz property, way out there by Oak Hill Road. I didn't ask them to dig up their yard yet. Try to skip down here, because I know there are some people wanting to get out of here, here are the possible obstructions, you can read the rest of my report at your leisure; tree roots, particularly from the trees planted atop the pipe. Those trees were planted, it's my understanding by the Utley's. Roots could be growing into the pipe, but I can't verify that. Rip rap that was placed at the inlet to the pipe, on the Smith's property, which may have washed into the pipe during heavy storms. Again, I cannot verify that. I looked through the pipe, I could not see any. Debris that may have washed into the pipe, such as limbs, hay, straw, whatever, from upstream properties. Again, without running a camera down the pipe, as was offered by Hydromax, I am unable to confirm or deny an obstruction to the pipe. So, until someone orders a probe or a camera run through the pipe, the only suggestion that I can offer to help Ms. Utley at this time affect better drainage of her yard and her home is to remove the decorative concrete blocks and brick bats around the inlet. Next picture, that's holding back four inches of water right there, remove the iron plate, which the Smith's already have done for her, maintain that heavy wire grate covering the inlet free of leaves that might fall from those large trees, and accomplish some minor regrading in her side yard to cause a more positive drainage away from her home and towards that inlet. If you look at some of the side yard pictures you can see she has tried to do some of that regrading, I think it could be done a little more effectively. I acknowledge that this report doesn't address all of her complaint issues, but, again, until someone runs a camera down there, I went to the City Engineer's to borrow a camera, theirs is disabled and they don't have the funds to fix it. The County Engineer doesn't have a camera, and I don't have a 500 foot sewer tape to run down through there. I'll leave the rest for you guys to read at your leisure. That's my report at this time.

President Tornatta: Would, so do we have the petitioner here?

Bill Jeffers: The petitioner is here with her representative, and the respondent is here with some of her representatives.

President Tornatta: Okay. Let's start with the petitioner please.

Kathryn Kornblum: Good evening. Kathryn Kornblum, and I'm going to utilize some of the Power Point, if possible. I would like to, as with clay tiles, these were put in 40 years ago. They expand, they contract, tree roots get in, we don't know what the problem is. Yes, it needs to be cameraed. It's on Mr. Smith's property. Mrs. Utley

doesn't have the ability to trespass on to Mr. Smith's property and get that taken care of. We've asked the Smith's to do that, they declined. Things were fine until '92, when the Smith's moved in. They started making changes to the landscape and the natural waterflow. Some of those changes that they made in '92 caused themselves problems. They retained water. Because of that, they started putting in piping and everything, going around. I would like to pass out a few photographs. This is one of the pipes. It's supposed to go into this drain opening. As you can see there, they've covered the drain opening with rock. So, instead of going into the drain opening, it's now going down and ending up in Mrs. Utley's yard. Here's a picture of the washout. You can see the watercourse as it goes down, around where it should be going into here, all the water should be going into this thing, it is not. As Mr. Jeffers points out, with that drain opening, we should be able to accommodate the water. It cannot, because of various sundry things. There was a gravel driveway and a garage put in in '95. That gravel now washes down the road and covers Cresthaven. There was, in 2004, a carport and deck and flower beds put in. I have color pictures where you can see here, the water is (Inaudible. Talking away from microphone.) In addition, Mr. Schneider's property (Inaudible) he is contributing to it (Inaudible). You have two (Inaudible). We see several issues here. One, we need to have it scoped with a camera to see where the problem is. It does connect all the way down and goes down, across Cresthaven and across the neighbors property and ties into Oak Hill. That needs a camera on it. So, we need to have the Smith's, because it's on their property, whatever needs to be done to have that camera done. Hydromax can do it. They have the ability to do it. Mrs. Utley is willing to contribute to the cost, it's just a matter that it's on the Smith property. She doesn't have a right to go on the Smith property. The rocks that are on top of the drain opening that is supposed to take this water down underground and over to Oak Hill, they need to be removed. The watercourse, which is now changed through all this landscaping and everything, needs to be analyzed so that that water does go into that drain opening. Right now it isn't. It's diverted every which way and ends up on Mrs. Utley's property, which is the low end. Cresthaven goes down to her, and Lakeridge which is on the back side of Mr. Schneider's property comes down. Then we have Mr. Schneider's drainage now coming because of his landscaping and lack of grass onto Mrs. Utley's property. In other words, she's getting every, the natural watercourse that existed when her home was built and the drain was put in to accommodate that natural watercourse is no longer, as Mr. Jeffers pointed out, in existence as it was, due to changes on the Smith property and the Schneider property. I don't know about the Utley property, as far as the concrete pad that you see in the one corner, the water goes across that, that's not where it's accumulating. It's leaving her property across it. So, it's not contributing to it.

Commissioner Korb: Help me, Ms. Kornblum, if you can, where are you going with this? What are you seeking?

Kathryn Kornblum: What we're seeking is that a professional come out there, work with Mr. Jeffers, and get the rock removed, get what needs to be done to put the water back into the drain. We also want that the drain be scoped to make sure that if there's tree roots or whatever that may be blocking it.

Commissioner Korb: Uh-huh. So, at this point in time you're not looking for any financial remediation?

Kathryn Kornblum: Well, not until we know what the problem is?

Commissioner Korb: Okay.

Kathryn Kornblum: The exact problem.

Commissioner Korb: But then once we find out what the, once the problem is found out, what are you going to be seeking?

Kathryn Kornblum: Then we're seeking, depending upon what they find out. If they find out that the deck needs to be removed, then we're seeking to have that removed.

Commissioner Korb: Okay.

Kathryn Kornblum: If the landscaping tiles and—

Commissioner Korb: You just want it fixed so it drains?

Kathryn Kornblum: We want it fixed.

Commissioner Korb: Okay, but you're not getting ready to pop them for a financial settlement, I'm assuming? You just want the thing fixed?

Kathryn Kornblum: We just want it fixed at this point.

Commissioner Korb: Okay.

Kathryn Kornblum: The, her house, her, she's got separation, the driveway is now separated from her garage, you know—

Commissioner Korb: Sure.

Kathryn Kornblum: —massive damage.

Commissioner Korb: Okay, great.

President Tornatta: We're going to hold it right there, and talk to the—

Commissioner Korb: I'm sorry. I didn't mean to cut you off. I just wanted to cut to the chase.

Kathryn Kornblum: I wanted to also.

Commissioner Korb: Thanks.

Commissioner Nix: Just one question for Mr. Jeffers, so I'm clear before we go on, does that structure split the property line? Is it staggered? Is it right, I noticed the fence, it looks there's a fence that does.

Kathryn Kornblum: I have the (Inaudible).

Bill Jeffers: As near as I can tell, the structure starts on the Smith property, at their northwest corner, runs down to the inlet that we showed you that straddles the fence line. Ms. Utley's fence is slightly to the west of her property line. Let's look at the pipe. I mean, the inlet.

Commissioner Nix: Just a question. Does it, or does it not?

Bill Jeffers: I can't answer that simply.

Commissioner Nix: Okay.

Bill Jeffers: No, number 17. As you can see, that fence straddles that inlet. If the fence is on Ms. Utley's property, then part of the pipe's on Ms. Utley's property. You will hear testimony from one of the respondents, I believe, that they think that the pipe at this point right here takes a 45 degree turn and goes through Mrs. Utley's property for a couple hundred feet. So, let's say we scoped it from where it begins down to this point, yes, the majority of that would be on the Smith property.

Commissioner Nix: Do we know who put that pipe in?

Bill Jeffers: I'll let them tell you that.

Commissioner Nix: Okay. The structure, I mean, the structure and the pipe.

President Tornatta: Are the Smith's here?

Gail Smith: Yes.

President Tornatta: Come on up, please.

Gail Smith: Good evening. I'm Gail Smith. We bought that house in '92. Shortly there after we had a heavy rain. We ended up having, oh, a good foot of water in our garage. We too had a water problem. It was obvious, with all the water coming down, we were going to have to do something. So, we had an excavating crew come in and dig out everything. After we did that, well, guess what? It rained again. We had four inches of rain, right there at our house. So, we put in landscaping timbers so that not to completely hold the water back, because you know you can't hold water back, you have to slow it down. We put rock in, we spent probably close to \$40,000 in all to try to correct our water problems. Whenever we put in the garage and everything, we also used a scope to make sure we did not do any kind of damage to the Utley's. At that time, the Utley's thought that that big drain that they say all the rocks are on, well, they're all off. That opening, that's what she wants taken off, they're all off. She thought that was her drain. She thought that where the trees were planted was her property. So, not long after we put that garage in, we had a terrible storm, and one of the trees between the garage and her existing shed fell over on our new garage. We didn't have power for three days. So, we had to have that tree taken out. So, at the time that we had that tree taken out, we offered to take out all the trees so that we wouldn't have any more problems. They declined. That was their trees, they put them trees in and that's what they wanted. So, we said, okay, that's fine. Not a problem. So, everything we did, we tried to control the water as not to go on her. Anytime you slow water down, that's what it does, you know, you try to eliminate that problem. Okay, so, my husband is pretty well an invalid now. I put the deck on so that he won't have to worry about weed eating and getting down there where all that drain is. I put the landscape timbers in so as to do vegetables and what have you. Well, over the last few years, they started sinking in, but the walkway, and that's where she got the idea that my pipe was busted and needed to be, was in serious need of repair. So, I dug the pipe up, and what it ended up being was where I had that tree removed, and it had rotted. So, that's why everything looked like it was sinking in. As Mr. Jeffers said, the pipe is in good condition. Okay, I took out all the landscape timbers, I have done everything, like you said, I took the ground thing off. I have done everything to try to, you know,

accommodate her. What she don't seem to realize, and I have tried to tell her in the past, that when they installed the fence, the people that put her fence in supposedly cracked the pipe. And, also, George, her husband, before he died, he also made the statement that he thought that he was going to have to replace the pipe that goes into that pipe, because his sump pump kept backing up. Now, you know, if your sump pump backs up, and you've got a crack in this pipe, that's going to cause a lot of water damage since '95 and this is 2008. How much water damage are you going to have in a situation like that? As far as the pipe being busted, I also have a witness, Mr. Schneider's son, who was enlisted by Mr. Utley's help to try to remedy the problem. The problem with the pipe.

President Tornatta: Okay, what would be the problem with both of you getting together on the cost to have it—

Gail Smith: I told her she could, they called me in January and asked me if they could go in and have it scoped out. Fine, not a problem. Will you pay for it? No, I won't pay for it because most of it's on her problem. She would not even listen to what the problem was. There's a big hole in her pipe on her side and she won't, you know—

President Tornatta: Okay.

Gail Smith: —that she put in whenever she put the fence in.

President Tornatta: Commissioners?

Commissioner Korb: Go ahead, I was just going to say, Mr. Jeffers, your opinion? I say this not sarcastically, I mean, you are one who normally has done your homework very well. What's your assessment of this situation?

President Tornatta: Mrs, hold on.

Commissioner Nix: One question real quick, are you having any water problems (Inaudible)?

Gail Smith: No.

Commissioner Nix: You're having none whatsoever?

Gail Smith: Uh-uh.

Commissioner Nix: You don't have any flooding, nothing, no water back up?

Gail Smith: No. No.

Commissioner Nix: Okay. Thank you.

President Tornatta: Thank you, Mrs. Smith. Appreciate it.

Bill Jeffers: I would just reiterate that I believe, as Ms. Kornblum and others have said, the pipe needs to be scoped. A camera needs to be run down that pipe and find out where the obstruction exists. Mr. Nix asked who's property the pipe's on, from the inlet at the north end of the properties, down to the drop inlet with the wire cover, that appears to be mostly on the Smith's property. So, if the obstruction exists

there, that's their obstruction. From that wire grate inlet, that's southwesterly I believe, it runs through Ms. Utley's property and the Volz's property and underneath Cresthaven, by the way, that would not be the Smith's property and would not be their responsibility if the obstruction exists there. I really don't know about this, a tree, excuse me, when they put a fence in, Gail Smith says she believes they busted the pipe. If there's actually a hole in the top of that pipe when they augured down to put the fence in, that would give access to tree roots right there.

President Tornatta: Right.

Bill Jeffers: It is a concrete pipe. It would take a crack in that pipe to let tree roots in. Mr. Schneider's here, Ms. Smith represents that he saw the hole in the pipe.

President Tornatta: Would there be any issue with ground cover on either side?

Bill Jeffers: Ground cover?

President Tornatta: Yeah, I mean, there's seems to be no ground cover, and I don't know if that's the Smith's side or the Utley side.

Bill Jeffers: Oh, that's on the Utley's side. I would think, possibly, two causes for that, the standing water over a period of time would kill the grass, and then Ms. Utley told me she frequently puts bags of top soil down over the area to, I guess, raise it or level it. I had suggested to her that she plant grass seed or sod there to get some grass growing, but she could better tell you exactly the process is there.

President Tornatta: Okay.

Kathryn Kornblum: Are you talking about there?

President Tornatta: I'm going to have you—

Bill Jeffers: This area here.

Kathryn Kornblum: That's the Schneider's property.

Bill Jeffers: This is Ms. Utley's property where it's bare.

Kathryn Kornblum: Is that what you're referring to, or the other picture I gave you?

President Tornatta: This one right here. That whole road has no ground cover in it. I just, to me it can't accept—

Bill Jeffers: Well, go back to that last, number 12. If you look really closely, we've got the lights on, but if you look really closely at the tree crown, the root crown of that tree, you can see that the root crown of that tree is rotting, and there's a root exposed coming out here towards the word area. That would indicate standing water. Root crown damage like that would indicate chronic standing water. Chronic standing water also kills grass. That's an assumption on my part. But, I took the course from Larry Caplan.

Commissioner Nix: I had the same course.

Bill Jeffers: Yeah.

President Tornatta: Alright. Summation?

Kathryn Kornblum: As far as the fence cracking the pipe, my client knows nothing about that. She's saying that's not true at all. I do want to point out that the open drop picture, that was just recently put in. You can see in picture eight, that, see how she's having to, this is on the Smith side, they're having to hold up the ground. See how they have the concrete blocks holding it up. The watercourse is coming down, and that's acting like a chute right onto Mrs. Utley's property. There again, we would just like to, first of all, step one, have the thing scoped. If there's a crack, there's a crack, and it needs to be addressed.

President Tornatta: Would your client be willing to do the scope, and then if, with the findings, come back and maybe present that to this board or to the Smith's? If so, if there's something that needs to be further done, I mean, this body could make a decision.

Kathryn Kornblum: Are you willing to pay for the scope?

Evelyn Utley: I'm not sure that they understand the problems.

Kathryn Kornblum: Well, we need to, they need to get out of here, we need to get out of here. We need step one.

President Tornatta: Well, don't, it's not an issue of getting out of here. The issue is, if she pays for the scope—

Kathryn Kornblum: Will you pay for the scope?

President Tornatta: And, mind you, when I said pay for the scope, obviously, you know how to address your client, but—

Evelyn Utley: But, I haven't caused all my problems.

President Tornatta: Well, hold on, I understand that there's remedies for the cost, at some point. And, we can—

Kathryn Kornblum: We would reserve the right to be able to come back and ask for a reimbursement.

President Tornatta: Absolutely.

Kathryn Kornblum: Yes.

Commissioner Korb: That's what we would suggest. At least we can find out what the problem is.

Kathryn Kornblum: That's step one.

Commissioner Nix: No, you're looking at—

Kathryn Kornblum: Step two is also the change of the watercourse that has been done by the Smith's with adding the garage, adding the, they brought in tons and tons of dirt. So, there's been changes made through the years.

Commissioner Nix: But, I guess, the concern I have, or it's not necessarily a concern, but it's a comment Mr. Jeffers made a little while ago was the fact that he says that if this is maintained, that this will take the water. Is that correct, Mr. Jeffers?

Bill Jeffers: I believe that if we ask the Smith's to remove everything in the natural surface watercourse, that we then have to ask Ms. Utley to remove everything in her side of the natural surface watercourse.

President Tornatta: Right.

Bill Jeffers: And, that would mean everything that you've seen in these pictures, all the landscaping, the driveway, everything that's in the true, natural surface watercourse, if it's removed on one side of the fence, it should be removed on the other.

Commissioner Nix: Once again, my question--

Bill Jeffers: Now, and your question was, will the pipe handle it? I believe it will, if it's in good repair. Now, we can go to the General Drainage Fund where all these hundred dollar filing fees accumulate, if you want me to go there and pay for the scoping work, I'll do that and charge it back to where we find the obstruction. Okay, I'm not asking you to go to the boat, these folks back here to go to the boat, but you're taking a gamble. I pay for it up front, and they pay for it where we find the obstruction.

President Tornatta: Well, I mean--

Kathryn Kornblum: I think that's fair, because as we said, it goes across Cresthaven.

President Tornatta: Right.

Kathryn Kornblum: I mean, once it's left Mrs. Utley's property, there's quite a bit of drainage that goes all the way across and hits Oak Hill.

President Tornatta: Okay.

Gail Smith: The water coming from me is not the one hitting her. The water that she is getting is coming from up, from Lakeland. All the water that comes across the Schneider, from all the other families, that's the one that goes into that drain. Nothing that comes from me.

President Tornatta: Well, but, if you displaced the watercourse, then it is your issue.

Gail Smith: But, it's not. It's still, all you have to do is sit in my sunroom on a rainy night and watch, it looks like a river.

President Tornatta: We're probably not going to do that. Appreciate the invite.

Gail Smith: I'm just saying.

Commissioner Korb: If you're serving popcorn, I'll come.

Commissioner Nix: Along those same lines though--

Gail Smith: (Inaudible).

Commissioner Nix: Ma'am?

Gail Smith: But, it is coming from across the (Inaudible).

President Tornatta: Hold on one second.

Commissioner Nix: Along those same lines, there were some things basically done to cover this up that would restrict this at some time, is that correct? That piece of metal that was put on the top.

Gail Smith: They put it on.

Commissioner Nix: Okay.

Gail Smith: Not I.

Commissioner Nix: Okay.

Gail Smith: Not I.

Commissioner Nix: Just so I understand who put that on.

President Tornatta: Okay—

Gail Smith: And, as far as the blocks, they're not there to hold anything. I was going to change the landscape timbers, put the stones there and build up a rock retaining wall instead of the wood.

President Tornatta: Right.

Gail Smith: But, you know what, my back's out, my neck's out, my hip's out, my pelvic's like this and I can't do it anymore.

President Tornatta: Okay, but here's what we've got to find out first. I think first it seems like we need to find out about the pipe.

Gail Smith: Okay.

President Tornatta: Am I in the ball park here?

Gail Smith: Are you willing to listen to a testimony of the person who tried to repair it?

President Tornatta: Well, no.

Gail Smith: Okay, that's fine.

President Tornatta: But, I appreciate that.

Evelyn Utley: I would like to speak, please.

President Tornatta: Okay.

Evelyn Utley: (Inaudible).

President Tornatta: No, wait, that's fine. But, first, I think we would like to see that the pipe is—

Commissioner Nix: Clear.

President Tornatta: —is clear.

Commissioner Korb: Clear.

President Tornatta: Then, after that, we could maybe make more of an assessment, is that the thought?

Commissioner Korb: That's my thought.

Kathryn Kornblum: My thoughts are, after that, then the next step is to see what needs to get taken care of so that the pipe is utilized—

President Tornatta: Right.

Kathryn Kornblum: —instead of Mrs. Utley's yard.

Commissioner Nix: I guess, that's the point I'm trying to make here is that if that pipe, if, Mr. Jeffers, in your humble opinion, if you think this is going to take care of it, it's just a matter of scoping this thing out, finding out where the obstruction is, getting the water to this pipe, and this is a done deal.

Kathryn Kornblum: Right.

Commissioner Nix: Is that correct?

Bill Jeffers: That would appear to be correct, except that Ms. Utley, through Ms. Kornblum, is pointing up the hill, outside the natural watercourse. This water that naturally comes down the hill off the Smith's, is not the watercourse I'm talking about. That's why I asked at the beginning of the meeting, the beginning of the hearing that we don't address these sheet flow issues, these other issues, in other words, I guess, what I'm saying is, let's stick to the watercourse and the drain. The watercourse shown by those arrows and the drain that carries that watercourse. These issues off to the east, the sheet flow of water coming down a natural hill that was created by Mother Nature. If the Smith's are maintaining a nuisance over there, take it to Circuit Court.

President Tornatta: Right.

Bill Jeffers: Take it to Superior Court. If that's a nuisance, in other words, there have been several instances here, before you Commissioners were Commissioners, when other Commissioners were the Drainage Board in the past, that people were not satisfied with our finding. So, they took it to Superior Court or Circuit Court, and the Judge didn't rule on 36-9-24. or 27.4, he said, okay, they're maintaining a nuisance over here, and they have to fix it and pay them \$7,000, Judge Tornatta.

President Tornatta: Right.

Bill Jeffers: Okay?

Commissioner Nix: Correct me if I'm wrong. One more time, just to get to the bottom of this, if we can determine that the water that goes into this inlet, that that pipe is big enough to carry that water away, for this particular case that we're hearing right now, this hearing, and we determine that there is an obstruction and where the obstruction is, then, basically, that's all we're talking about here today?

Bill Jeffers: In the pipe.

President Tornatta: Yes.

Bill Jeffers: In the pipe.

Commissioner Nix: Thank you.

President Tornatta: Okay.

Bill Jeffers: This surface water that's coming from all these odd other directions—

Commissioner Korb: That's not our concern. We can't—

Bill Jeffers: Right, but that's been brought up to you, and they're trying to say even if we do what I said we're going to do, there's still that issue over there to the side.

Commissioner Nix: And there very well could be.

Bill Jeffers: Okay.

Commissioner Nix: That's understandable.

Commissioner Korb: But, that is, yeah.

President Tornatta: Okay, so, can I please have you finish, and if your client needs to say something, that's fine.

Kathryn Kornblum: What she's going to bring up is that she believes, and several other people believe that Mr. Schneider has messed with pipe, and I'm pointing out to her that the scoping would show that.

President Tornatta: Right.

Commissioner Korb: Uh-huh.

Kathryn Kornblum: So, I would propose, take your proposal to take it out of the budget that you were talking about, the one hundred dollar fees, get the whole thing scoped, all the way down to Oak Hill, and see if there's an obstruction in the pipe.

President Tornatta: I think that that would be a, on the recommendation of the Surveyor, on the scoping of the project.

Kathryn Kornblum: From there, assuming there is a problem with the pipe, get the pipe fixed. If there isn't a problem with the pipe, then address the natural watercourse to see what has been changed that's interrupted (Inaudible)--

President Tornatta: And that would be the continuation of this meeting.

Kathryn Kornblum: That's exactly right.

President Tornatta: Okay.

Bill Jeffers: Then, I will be going to vendors and asking them for the best price I can find for scoping the pipe. I'll go to Hydromax first, get his price, I'll go to two other people, get their price. As far as fixing the pipe, that will have to be done by, and paid for by whomever—

President Tornatta: Right.

Bill Jeffers: —the pipe's—

President Tornatta: Is responsible.

Bill Jeffers: —property is on.

Commissioner Nix: The same way if that obstruction was at the surface, it's down below.

Bill Jeffers: Right, well, wherever that is, if it's in Cresthaven and that's a county road, we do it, if it's on private property, they do it.

President Tornatta: Okay, of the parties involved, of the parties involved, are you, okay? Because it might be on your dime. We are going to call the shots on who we pick.

Bill Jeffers: And, we're talking about—

President Tornatta: Speak up now.

Bill Jeffers: —all the way down to Oak Hill Road, that includes the Volz's.

President Tornatta: That's right. So, I mean—

Kathryn Kornblum: It needs to be addressed.

President Tornatta: Okay, and we can do that, and we can provide the set up.

Commissioner Korb: And we'll go forward from there.

President Tornatta: Is that okay?

Kathryn Kornblum: Yes, thank you.

President Tornatta: Can I have a motion please?

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered. We will continue this particular case until October 7th.

Approval of Ditch Maintenance Claims

President Tornatta: Okay, motion to approve claims?

Commissioner Korb: Motion.

Commissioner Nix: Second.

Commissioner Korb: So moved.

President Tornatta: So ordered.

Public Comment

President Tornatta: Okay, any public comment? With that being said, motion to adjourn?

Commissioner Korb: So moved.

Commissioner Nix: Second.

President Tornatta: So ordered.

(The meeting was adjourned at 7:00 p.m.)

Those in Attendance:

Troy Tornatta
Ted C. Ziemer, Jr.
Roger Huff
Gail Smith
Members of Media

Bill Nix
Bill Jeffers
Christi Huff
Evelyn Utley

Jeff Korb
Madelyn Grayson
Kathryn Kornblum
Others Unidentified

**VANDERBURGH COUNTY
DRAINAGE BOARD**

Troy Tornatta, President

Bill Nix, Vice President

Jeff Korb, Member

(Recorded and transcribed by Madelyn Grayson.)

**VANDEBURGH COUNTY
DRAINAGE BOARD
OCTOBER 7, 2008**

The Vanderburgh County Drainage Board met in session this 7th day of October, 2008 at 6:45 p.m. in room 301 of the Civic Center Complex with President Troy Tornatta presiding.

Call to Order

President Tornatta: We're going to open up the Vanderburgh County Drainage Board agenda, or meeting, Tuesday, October 7, 2008. It is roughly 6:45.

Approval of the September 16, 2008 Drainage Board Meeting Minutes

President Tornatta: Motion to approve the previous meeting's minutes.

Commissioner Nix: I move approval.

President Tornatta: So ordered. Second and so ordered.

Approval of Ditch Maintenance Claims

Bill Jeffers: Would you like to approve a claim?

President Tornatta: We can. Claim for Hydromax for \$1,350.

Commissioner Nix: Move approval.

President Tornatta: Second and so ordered.

**Arrowood Subdivision: Amended Final Drainage Plan
Windemere: Sections 4 & 5: Amended Final Drainage Plan
Ivy Meadows Subdivision: Amended Final Drainage Plan
Liberty Estates: Section One: Amended Final Drainage Plan**

Bill Jeffers: I have a group of four amended, final drainage plans, which I did explain to Mr. Korb earlier. Would you like to hear the explanation for that? He's heard it.

President Tornatta: You were, you had, you were explaining that in—

Bill Jeffers: Yeah, right.

President Tornatta: I was listening to that. Thank you.

Bill Jeffers: Okay, as I said, Commissioner Korb is aware of my explanation for these. So, I'll go ahead and enter that into the record. It's Arrowood Subdivision, Windemere, Sections Four and Five, Ivy Meadows Subdivision, and Liberty Estates, Section One. All four of those plans that are in front of you at this time, as a package, are amended, final drainage plans. Essentially, the idea is that the subdivisions had been complete for some time. There are still a few lots left undeveloped in those subdivisions, but, essentially, the drainage plan has been working for several years, in some cases, a few years in others. There are some minor discrepancies between what was on the original plan and what's out there as

built. But, the plans are each accompanied by pictures, and with calculations and narratives that clearly show that the plans, that the system is in working order, and the recommendation of the County Surveyor is to waive any minor discrepancies and approve the as built, amended, final drainage plans for those four subdivisions, so that the punch lists can be processed and the inspections can proceed from the County Engineer's office, and ultimately the letters of credit released to the developers so they can move forward with their financing. That's the recommendation.

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered.

Veolia Transfer Station: Final Drainage Plan

Bill Jeffers: Okay, now we'll move back to the top of the agenda, with Mr. Korb here present.

Commissioner Korb: Thank you. I'm sorry, nature calls.

Bill Jeffers: No, that's quite alright. Just some things that you were already aware of that we moved on. Veolia Transfer Station, this is a solid waste, or a refuse transfer station. It's a final drainage plan that's located north of Boonville-New Harmony Road on Warrick County Line Road. It's an extension of an existing facility out there who's drainage plan is already in place and operating satisfactorily. I have a letter accompanying the plan from the operator of the existing facility to the south saying that they have not experienced any drainage problems, and don't anticipate any from this expansion. It does comport with the drainage code, and the recommendation is to approve.

Commissioner Korb: So moved.

Commissioner Nix: Second.

President Tornatta: So ordered.

Deerfield: Section Four: Final Plan

Bill Jeffers: The next drainage plan is Deerfield Subdivision, Section Four. This is a final drainage plan. It has been discussed before in Drainage Board as a preliminary. There were some remonstrators who met with the developers engineer and me at the County Surveyor's office and we discussed some of their concerns. I worked subsequently with the engineer, Keith Poff, from Sitecon, to address those concerns. Basically, it's to intercept, and if you look on the plan, I have highlighted the intercepting swales that capture and convey the storm water from the interior of this site to off-site, or on-site drainage control facilities and then release it into off-site facilities on Eissler Road. I believe that our work has succeeded in addressing those concerns, but keep in mind that there may be some existing drainage problems associated with storm water runoff from the unimproved project site, in its current natural, or unimproved condition. I've heard those concerns expressed. There may be others I'm not aware of, but keep in mind that these problems thus far were the

responsibility of developers and subsequent owners of adjacent property, particularly Deerfield Villas, adjacent to this undeveloped site to handle and address those problems. Because the site, you know, it remains natural and undisturbed at this point, or up to this point, so, any water that came off that naturally vegetated site was not an accelerated run off. So, it was someone else's to address. Now, the purpose of this plan you have in front of you is to capture and convey and manage the newly generated storm water that we anticipate resulting from new pavement and rooftops within the subdivision that's going to be developed, and to do that in a manner that satisfies the requirement of our drainage code. This plan does do that. That's about all I have to say at this point in time. The recommendation will be to approve this plan, unless something unknown to me comes up. There are people in the audience who would like to express some of their concerns possibly. I believe all those concerns have been addressed satisfactorily. The design engineer, Keith Poff, and Mr. Mominee are here, in case there are any questions of the designers. I'll let the, I'll turn the microphone over to anyone who would like to speak to it.

Commissioner Korb: My question is, is this coming, Deerfield coming before us through Redevelopment? Do we know guys?

President Tornatta: I don't know at this time.

Bill Jeffers: Through?

Commissioner Korb: Wasn't there something with Deerfield that had gone through the Redevelopment Commission?

Commissioner Nix: For rezoning?

Commissioner Korb: For rezoning and has not appeared to us yet? Or, am I mistaken on that?

Bill Jeffers: I don't know about Redevelopment Commission. It came to you—

Commissioner Korb: Area Plan Commission?

Bill Jeffers: —via Area Plan Commission as a, what happened was, this was all laid out and designed, this big lot here was all divided up into smaller lots at one time.

Commissioner Korb: Right.

Bill Jeffers: This was all part of Deerfield, and the time limit lapsed for the recording of this portion of the plat.

Commissioner Korb: Okay.

Bill Jeffers: So, the developer has come back to you, and that's why it's gone through the hearing process again. It basically looks about the same, except that this large area is going to remain one lot.

Commissioner Korb: But, I don't think we've heard that though, Commissioners, though have we, from Area Plan?

President Tornatta: Was this the one that was supposed to connect to Deerfield—

Bill Jeffers: Right.

President Tornatta: –out on Mt. Pleasant, correct?

Bill Jeffers: Yes, sir. It would start here at Eissler Road, there would be a new connection at Eissler Road, and then the road would wind through the new development, connect up with the old road, or the existing road and go all the way through Deerfield, it's Carrington Drive, and end up at Mt. Pleasant, oh, what, maybe half a mile west of 41.

President Tornatta: Yeah.

Bill Jeffers: The concern from some of the neighbors regarding traffic was people cutting through from–

President Tornatta: Right.

Bill Jeffers: –Woodgate.

President Tornatta: And I agree.

Commissioner Korb: I mean, I don't remember that coming before us yet. That's what my question is.

President Tornatta: Well, the–

Carol Stevens: If I might say something (Inaudible)--

President Tornatta: Hold on.

Commissioner Korb: Come on up.

President Tornatta: You have to come up. I'm sorry.

Carol Stevens: Part of that discussion, Carol Stevens from Deerfield. Part of the discussion was that a lot of the residents wanted not to have access from Eissler, because they thought everybody would go through Carrington and on to 41.

Commissioner Korb: Yes, Ma'am.

Carol Stevens: Basically, what you all said was, you were sorry, but because legally they had met all requirements you had to vote yes.

Commissioner Korb: I don't think that was us that said that. I think that was the Area Plan.

Carol Stevens: The Area Planning Commission.

Commissioner Korb: Okay.

Carol Stevens: This was before them.

Commissioner Korb: Okay, so that's coming before us, I think, Madelyn said on October the 21st.

Madelyn Grayson: Well, the next rezoning meeting is October 21st, it depends on whether Area Plan recommends that it go forward or not.

Commissioner Korb: Gotcha. Okay, thank you.

Keith Poff: Keith Poff, Sitecon, Incorporated. We do not have a rezoning petition for this land, and we were before the Area Plan Commission for the primary plat approval on August 14th.

President Tornatta: There's an issue about—

Ted C. Ziemer, Jr.: That doesn't come to the County Commissioners then.

Commissioner Korb: I don't remember that. That's what I'm saying.

Keith Poff: It goes to the Area Plan Commission for the subdivision approval.

Commissioner Nix: Right.

Keith Poff: August 14th. So, that was done. There is not a rezoning.

Commissioner Nix: If there's no rezoning, we don't see it.

Commissioner Korb: We don't see it. Right.

Keith Poff: There is no petition for rezoning on this land.

Commissioner Korb: Okay.

President Tornatta: What is the, what are you going, well, there was something before us that talked about the last couple of lots, where that would, where there would actually be, we were talking about whether there would be a barrier or some type of barrier put between those two subdivisions, and I was assured that there was some type of talks on-going about that. Because having that direct cut through does affect how people bought, when they bought in the Deerfield Subdivision. I mean, that traffic pick up is unfair to the residents that are established.

Keith Poff: Okay, the layout that you see that has been approved is effectively the same layout that was utilized for the primary platting of the area prior to 1994, even, I can recall the project in the mid '80's. So, the only reason that it wasn't completed, there was a termination of primary plat approval. It used to be an 18 month period. Currently it's a five year period from that primary plat approval, but since he did not record a section after 1993, that primary plat approval had expired, and therefore we came back with another primary in order to approve this, but this is the same layout that they've had proposed here ever since the land was taken into a developer's hands.

President Tornatta: Well, I mean, and it very well could be, but, I guess, there was a prior layout before Eastland Mall was there, there was a prior plan for this area before the Civic Center was here, so, things will change due to the changes in building and what have you in an area. The extent of time between the build up of Deerfield and what we have here, I believe is taking advantage of those people that are up on that hill that have built out and have filled out the Deerfield area. I thought that before when this was coming before us, because I wanted something worked

out, you know, I want to see growth in that area, there's no question about it, but, to have those houses where they are, I'm sure purchased because of the quietness of that street, then to push as many cars as I know are going to be going through that area, you're coming late to the dance.

Keith Poff: I don't know that I agree with that observation. This—

President Tornatta: Well, then cut it off. Cut it off in that area. Cut it off at that last lot.

Keith Poff: There was no termination of the streets, with a cul-de-sac. The end of the phase that was recorded was an intersection, not a dead end. We, many times the developers are going into undeveloped ground and they don't have a tremendous desire to make those extensions into the other lands, or make those available. MPO in the county encouraged the interconnections between the projects in order to get traffic to spread from one area to the other. So, this connection does fit into what normally we hear from your planning office to make the connections, not cut them off. I live in a project named Bridlewood, and that was the very thing that was required of us was to make a connection from the subdivision known as Bridlewood into the other project that's over on Petersburg Road. To have a connection in between in order to spread the traffic out, rather than to keep funneling all of the traffic out through the single, or two entrances, and put every homeowner on to the same roadway coming in or out of the project.

Commissioner Nix: I guess, just to, we probably ought to stick to drainage issues here, really. This really isn't an issue about traffic or traffic flow. That needs to be addressed at another day at another meeting. I think the whole reason for this meeting tonight is drainage issues.

President Tornatta: I understand, and point taken. Maybe the reason we got into it, there was an explanation of why we did, what we did, when we did, and probably took that a little too far.

Commissioner Nix: That's fine.

Commissioner Korb: Do we need a motion?

President Tornatta: Hold on, no, come on up.

Dan Lentz: My name is Dan Lentz. My wife and I own a lot in Deerfield Three that is affected by the activities in Deerfield Four. I don't know if I know how to use this pointer or not, but I'm lot 63 there at the corner of Doe Run and Carrington Place. My lot is right here.

Commissioner Nix: So, you have an unimproved lot, is that correct?

Dan Lentz: Yes, I do.

Commissioner Nix: Just a lot, no home?

Dan Lentz: Right.

Commissioner Nix: Okay.

Dan Lentz: It's identified as lot number 63 on the drainage plan, lot number 60 in the subdivision site plan. What I'm interested in finding out is, initially there was supposed to be a swale that ran along this line, because all this up here is much higher than the lots down here.

Commissioner Nix: There is one that's shown.

Dan Lentz: But it was never installed. There was supposed to be a swale, a drain and a pipe to pipe it over to the detention lake which is across the street. I guess it's somewhere right here. That was never installed, even though it was on the approved drainage plan in 1994. The developer has agreed to install such a swale, but it hasn't been done yet. The problem I have right now, particularly is, the developer is clearing land up here, disturbing land, and it's created the potential for drainage to come down in all these lots. My problem is I can't get any commitment as to when they're going to put this swale in, whether it be a final swale, like the drawings call for, or will it just be a temporary swale to allow me to go ahead. I was ready to build a house, then when Deerfield Four was announced I stopped, because my builders advised me not to go ahead until we knew what we were going to be dealing with as far as drainage coming down from Deerfield Four. So, I have talked to Mr. Jeffers, and he really has been very helpful. Without him, I don't think I would have found out what was supposed to be there, to be truthful. So, I'm very appreciative to him to what he's done for me, but I would just like to find out, if I could, from Sitecon what their plans are, and if there's any way that this could be done, could be expedited so that I could proceed with building a house, or whatever I want to do.

Commissioner Nix: Keith, you show, on this drawing I've got here, you show, you've highlighted a swale. It actually shows, it looks like it was either supposed to have been put in there, or it is going to be put in now.

Keith Poff: This is what we're proposing for Deerfield, Section Four. Even though there's a drainage easement on the back of Section Three, they never improved it, the intercept swale. So, the reason that it's not (Inaudible) is that we're trying to pick an alignment that doesn't tear out trees—

Commissioner Nix: The existing contours?

Keith Poff: It is an intercept swale. So, we're capturing everything that's upstream of that point.

Commissioner Nix: Okay.

Keith Poff: Mr. Lentz's lot is here. There is going to still be some flow that comes through this little (Inaudible) that we're not going to be affecting.

Commissioner Nix: Which is just naturally there now? This contour that is existing hasn't been changed?

Keith Poff: Right.

Commissioner Nix: Unimproved?

Keith Poff: This is still an unimproved area. So, we'll be capturing what's above us, we won't be taking care of anything (Inaudible) below us.

Commissioner Nix: That's a pretty good drop there, isn't that, 451 to 460?

Keith Poff: Oh, yeah.

Commissioner Nix: I guess, this must really head downhill?

Keith Poff: Yes.

Commissioner Nix: Okay.

Keith Poff: Then we'll have to (Inaudible). Then probably (Inaudible) there will be a (Inaudible) inlet here, then come back into the storm (Inaudible).

Commissioner Nix: Do you understand what's going on here?

(Inaudible. Several people talking at once.)

Commissioner Nix: Well, yeah, if you could maybe show that on the, with the highlighter, I'm sorry. Or, with your pen there. Keith, if you would show—

Dan Lentz: The thing I'm trying to point out is they have disturbed the ground extensively out there, and so now there really isn't any protection from the natural vegetation that was there at one time. I don't know why that was done, to be truthful.

Commissioner Nix: Can you get that pen, the pointer? Show about where that starts and where it ends. You said there would be an inlet of some type or another? No, there's a pointer there.

Keith Poff: Okay, the area we're talking about is the backyard area here. This is going to behind between Section Three and Section Four—

Madelyn Grayson: Hey, Keith, could you make sure you're closer to the microphone so we can get your comments on the record?

Keith Poff: Okay, this is the area here that we're talking about. Mr. Lentz lives up, or has a corner lot here. What we're proposing is to put an intercept swale on the Deerfield Four side of it to capture any water that comes down that is above that location. We'll have to have a, in a permanent state we're going to have an area inlet collect the water there, and it's going to drain to the east back to an existing pipe system before it enters into the lake. So, that's what the plan is for the permanent installation.

Commissioner Nix: But, Keith, also point out that the natural contour just to the north and west of there, which still falls that direction—

Keith Poff: You can't see that, when we say intercept, we will capture everything that's above that, but below that there's an area that's going to drain still, continually through that natural valley, across that lot, and go, effectively to the intersection of Doe Run and Carrington Drive. That is something that's not going to be impacted by Deerfield, Section Four.

Dan Lentz: I don't expect anything to be done about that.

Keith Poff: Okay.

Dan Lentz: That's my responsibility.

Commissioner Nix: Okay.

Unidentified: I have a question about the other section—

Commissioner Nix: Ma'am, you need to come up. Ma'am, you need to come up to the microphone, please.

Unidentified: The other point was, this section up here, those lots are eight feet higher than our house. I know that, I think in your final you said that you were going to put some kind of swale or something in there, is that correct?

Keith Poff: Yes, it's an intercept swale that divides between one project and another.

Unidentified: What exactly is an intercept swale?

Keith Poff: That's simply to intercept the flow of water that's on the surface and going from one area into another.

Unidentified: Is it like a ditch, like two feet by one foot?

Keith Poff: The minimum is going to be one foot deep, one foot bottom, three to one side slopes. So, it occupies at a minimum seven feet of width. Mr. Jeffers has additionally recognized that, you know, your lot is a downstream area for part of what would drain that way. He's added a restriction that the lots that are improved on the two cul-de-sacs would not be allowed to have discharges in the rear of the property. So, we will not be having anything more going into that area than what is naturally there now.

Unidentified: And is the swale going to be on that side, stage four, or whatever that is?

Keith Poff: Yeah, it can only be on our side.

Unidentified: And is there any time frame for that?

Keith Poff: That is going to be the first phase of the project. I can't tell you when the ditch will be cut, but that's the section of the project that's going to be done first. He's only going to record those lots and the Gregory Court area in his first phase.

Commissioner Nix: Is the grade change that steep in this area too? Seventeen feet or so?

Keith Poff: Yes.

Commissioner Nix: Okay, because it really drops off.

Keith Poff: There's a very small area that contributes in that direction. Therefore, when we set up one of these minimum county ditches, it should have more than enough capacity to carry that water down the hill. The ditch there will aim toward the street system, which is a conveyance component as well.

Dan Lentz: There's a point I would like to make. Mr. Jeffers knows better than me, I'm sure, but there is an ordinance that I understand that if land is disturbed that erosion control has to be implemented within a certain length of time. That's where I'm coming from primarily.

Bill Jeffers: Right, what I had talked about with Mr. Lentz, and I would like for the other two parties here that are expressing exactly the same concerns about off-site water that is generated as result of immediate land disturbance, whether the developer goes forward with building homes, building streets, whatever, as I said at the beginning of the presentation, to keep in mind that there are existing drainage problems, from the existing natural land, as it lays before the land disturbance. We don't have any control over those. When that land was naturally woods, the Carson Estates, whatever the ground cover was, we don't have any control over the water that comes off of there the way that Mother Nature throws it onto it. But, now, when the developer goes and strips off trees, or otherwise disturbs greater than one acre of land, that immediately kicks in your Rule Five ordinance, and at Mr. Lentz's and some of the other off-site neighbors, out of their concern, or concern for them, I made sure that Mr. Poff included in his erosion control package that went to Mike Wathen at the County Engineer's office, that those intercept swales that I highlighted over here on your, the three of them that are of most concern to the people here in the audience, including the lady to the east, she's here also and hasn't spoken yet, and Mrs. Dorothy Joest who's here with her, you know, and hasn't spoken yet, all those are highlighted on that map, those are included in the erosion control plan. So, as soon as the developer disturbs that ground, those diversion swales, as they are called in the erosion control plan, must be put in place and maintained for the entire time that he maintains that Rule Five permit. The first permit is for five years. If he's not finished in five years, he's got to re-up and get another five year permit. Regardless of what he does after he disturbs that ground, regardless of how far the project goes, he's got to maintain those diversion swales, because he disturbed that ground. Now, I also explained to Mr. Lentz, and I want everyone else to understand that there may come a storm that overtops those swales, because they are designed for a 10 or 25 year storm. There may come storms that just, you know, just a toad strangler that overtops them, and in those cases, if that brings mud or water down onto the neighbors, they should immediately call Bill Jeffers or Mike Wathen and we will go out there and we will enforce the regulation on the developer that he has to repair or upgrade those swales to capture what was discovered to be, or, you know, to repair the deficiency and move forward. So, that's the best we can do under the current codes, and that's what we have to work with.

President Tornatta: Just kind of outside the box here, this didn't come before the Commissioners for approval, for those sitting out there, just to tell you who are concerned about this. On the Drainage Board, and I got a little rambunctious to run on about the project, which I do not support, because of the impact of what's established. I don't like that type of scenario. But, we are in a Drainage Board meeting, and if the Drainage Board, if the drainage is correct, and the recommendation of the Surveyor, who is the guy who is going to tell us what he thinks the drainage looks like is correct and we have faith in him, then that might be a separate subject. So, for those of you who are out there, if that's the case, understand that there are two separate issues here, one is drainage, and one is what we like to see, or what is going to happen because of a subdivision. One we can do something about, which is approve or disapprove a drainage because of its legality, and one we can't touch. So, for those of you who are out there, just a little distinction between the two issues that we're talking about. Because our hats, at this time, are in the drainage sector.

Bill Jeffers: And to expand on that just for 30 seconds, those issues were discussed in Area Plan Commission. As a point of information this ground can remain agriculture, under our zoning code you can have single family dwellings, multiple single family dwellings in a subdivision without changing from Ag to R-1. So, the zoning issue never came before the County Commissioners. Not recently. If it did, it came before them in 1994 or 1993. Okay, that's the first issue. The second issue, there were many concerns expressed during Area Plan Commission, of which I'm a member and Commissioner Korb is a member, a cut through for the new developments that have occurred since 1994, Woodgate for example, a couple of hundred lots, yes, this will provide a cut through, and there were extreme concerns about that expressed by several members of Area Plan Commission during the plat hearing. But, we have a local judge who imposed upon us a ruling that if Area Plan Commission does not vote yes to approve a plat that comports with the zoning code, as written currently, as exists, that we're all in contempt of court. We lost a million dollar law suit in that regard, both in that court and in a court in Chicago, that is currently under appeal, but that's the way life is in Vanderburgh County at this time. As explained to me, that's the way it is in the State of Indiana. Under our zoning statutes, if it comports with the code, it must be approved. The only alternative we have is to change the code. I don't want to get into any other extraneous matters, there may be benefits to having two connections for a couple hundred lots, you know, if a tree were blown down over one of them, for example, you still have emergency access through the other. There's pros and cons, but there was extreme concern expressed by members of Area Plan Commission, who then are forced to go ahead and approve it because it comported with code.

Commissioner Korb: My first, I have two questions, Bill. My first question is, Mr. Lentz, I don't see you, are you behind...there you are.

Dan Lentz: Yeah, I'm right here.

Commissioner Korb: You had your question, you wanted some clarification, are you getting your question answered clearly so you know what to do going forward? Or what do you need from us?

Dan Lentz: Excuse me.

Commissioner Korb: Sure, come on up, that's why I'm asking.

Dan Lentz: I would just like some help in knowing when the swale that's supposed to be there will be installed. Whether it's going to be a permanent swale that was in the plan, or whether a temporary swale to take care of the fact that the earth has been disturbed up there and created the potential for a lot of water to come down my lot. So, I don't know whether that can be answered or not, but that's what I really want to know, because like I said, I'm trying to build a house—

Commissioner Korb: Sure.

Dan Lentz: —and I would like to know when I can proceed with that.

Commissioner Korb: Bill?

Bill Jeffers: Okay, Mr. Lentz would like to build a house. I would love to see him build a house.

Commissioner Korb: But?

Bill Jeffers: There's no but, it's when. The developer may be moving some trees, I haven't been out there to look. I understand he's moving them from one source, because they're in the way of this road that's going to be punched through. Whatever he's doing, if it's not a timbering operation, timbering operations are exempt, if it's not a timbering operation he must install that swale ASAP. Okay? Now, I'm not going out there tomorrow, I'm not going out there Thursday, I've got an Area Plan Commission meeting. I will go out there Friday, if it's not a timbering operation, if it's a land clearing operation, I'll take Mike Wathen with me and we'll instruct the developer to begin installing that swale, hopefully next week.

Commissioner Nix: Mr. Poff, are you at liberty to speak on behalf of the developer, as far as getting this (Inaudible) done?

Bill Jeffers: And, on another issue, there is going to be sewer line go in adjacent to the swale. I would not like to see a permanent swale put in all nice and seeded and matted and everything, and then have the sewer people come in and dig it all back up. So, possibly, as I explained to Mr. Lentz, in that regard, it will be a swale moved over maybe ten feet from its permanent position to accomplish the same thing over the next year or so while they decide when they're going to put the sewer line in.

Commissioner Korb: But, Mr. Lentz is asking a question, I'm sorry is it Lynch or Lentz?

Dan Lentz: Lentz, L-e-n-t-z.

Commissioner Korb: Okay.

Commissioner Nix: I think this will clear it up. Mr. Poff, are you at liberty to address what the developer will and won't do, at this time?

Keith Poff: Not specifically the dates. I know that he has a contractor, an excavator who's been retained for the work. So, he does have someone lined up. We received Monday the permission to move soil, so, he's just now this week ready to take this on. So, I will encourage them to construct this swale. The swale that Mr. Lentz needs, I will encourage them to build it in the permanent nature for the portion that's running from the southwest to the northeast. The area inlet location that's going to be permanent, I will probably recommend that we do a temporary connection from that location into the existing storm sewer system.

Commissioner Nix: But, it would be installed permanently, but it will be maintained during their whole process? So, it will be functional.

Keith Poff: Oh, yeah, it must be maintained.

Commissioner Nix: I guess, what you said, Bill, was that possibly Thursday you could go out and look at the site?

Commissioner Korb: Friday.

Commissioner Nix: Excuse me, Friday? Okay. So, does that satisfy—

Dan Lentz: Oh, certainly. What Mr. Jeffers says is exactly what I've been trying to find out. I don't know exactly what he means by ASAP, but I'm certainly going to be reasonable on this.

Commissioner Nix: He's Johnny on the spot. He's good.

Dan Lentz: So, yeah, without him I would be nowhere in this project. But, that completely satisfies me, as long as they go ahead and do what they say they're going to do.

Commissioner Korb: My encouragement, Mr. Lentz, is if you don't mind, continue to work through Bill, in his office, because he does a great job with that.

Dan Lentz: He does.

Commissioner Korb: And that way we'll know that you've expressed, or you've experienced satisfaction to your question. But, I didn't want you to leave tonight until we sort of had a little bit of a feel to give you some answers to your unanswered questions to date.

Dan Lentz: I appreciate that very much.

Commissioner Korb: That's not a problem.

Keith Poff: I hope it was clear that today is Tuesday, yesterday was the first day that we had permission under the storm water pollution prevention plan—

Commissioner Korb: Sure.

Keith Poff: —to do any work relative to excavation.

Commissioner Nix: But, one thing you've got to keep in mind, there's some sensitive issues between developed and undeveloped property. That needs to be paid attention to first, above all else.

Keith Poff: We were informed that he was only taking the trees down. There wasn't any excavation work being performed.

Commissioner Nix: If that's the case, then Mr. Jeffers can confirm that. But, if they go in there and start ripping and tearing, this stuff needs to be in place.

Keith Poff: We understand, and we advise our clients to that matter. This is only the second day that the permit is active.

Commissioner Korb: Sure, I don't think that Mr. Lentz was being a jerk about it. He was just saying, hey, I need some, I would like to have an end date going on here, and I respect the fact that you just started this process, and not looking for a drop dead date, I think that Mr. Lentz has already expressed his ability to say, hey, I'll be flexible here, just give me a ball park idea.

Keith Poff: Now is the time to cut it.

Commissioner Korb: Yeah.

Commissioner Nix: Correct me if I'm wrong, there's a difference between cutting a tree down and hogging one out with an excavator.

Keith Poff: Yes, there is.

Commissioner Nix: If you start hogging them out with an excavator, you're ripping and tearing and this stuff needs to be in place.

Keith Poff: Right, if the root wad comes out of the ground, then you are (Inaudible) the soil.

Commissioner Nix: All bets are off.

Commissioner Korb: Great. Bill, do you mind if we put that on your shoulders to kind of follow up? That would be great. Thank you so much.

Dorothy Joest: I'm Dorothy Joest, this is my neighbor Gene Elpers, and we're on the west end there. We have a problem with the original swale when we built out there was not deep enough to hold the water.

Gene Elpers: All the water comes from down in through here, all comes through our, there's three houses right there that this will affect. Water comes from this area, it comes all the way down, and from this way it goes east, or west. This is, we're concerned about the water on us.

Dorothy Joest: Now, Bill says there's going to be a swale there, but we don't think it's deep enough that it's going to take all that.

Commissioner Nix: Once again, I think we're getting back to a natural drainage situation. Correct me if I'm wrong, Bill, that whole area that, that whole opened up area is not being disturbed at all? Is that where you're—

Dorothy Joest: Well, it's a hill, yeah.

Gene Elpers: Yeah.

Dorothy Joest: And it's still runs over onto people down the street there.

Commissioner Nix: But—

Dorothy Joest: But we're worried about where the subdivision is going to be, there's going to be less ground for the water to soak into, so it's still going to be more coming over on us. I have a VCR of when we first built out there, how the water poured over there. Mr. Dentino did not make the swale deep enough, but they tell me they don't have any VCR's up here anymore, so I'm going to have to transfer it to disc before you can see it.

Commissioner Nix: Basically, the way this is drawn you've got the same situation between the undeveloped and the developed now, except for that area, that unimproved area up above there. There's nothing going to be done with any of that. You're aware of that?

Gene Elpers: Yes.

Commissioner Nix: If you're getting water from there now, it's going to, you're going to continue to get water.

Dorothy Joest: No, we're not.

Commissioner Nix: Okay.

Dorothy Joest: Well, there's a, we paid to dig a deeper swale than what was put in there originally. We're just asking that he make this swale a little bit deeper.

Gene Elpers: Deep enough that it will take the water.

Dorothy Joest: That it will take the water—

Commissioner Nix: It's the same section—

Dorothy Joest: —out to the ditch like they planned.

Commissioner Nix: —it's an A, which is, you know.

Dorothy Joest: Because one foot is not going to do it.

Commissioner Nix: These are designed drawings. I mean, you know, I can't—

Dorothy Joest: Can you do that? Can you dig a deeper one, Mr. Poff?

Gene Elpers: Do you think it's deep enough to carry the water?

Keith Poff: Well, our calculations show that the slope of the ditch has the greatest effect on the capacity of the channel. So, if we have a reasonable slope on the ditch, it's going to be able to carry quite a bit of water. We will not be setting up to carry absolutely every event that's going to come our way. We have a drainage ordinance that requires us to set up a ditch for a 25 year storm.

Commissioner Nix: Can you read that?

Commissioner Korb: Uh-uh.

Commissioner Nix: He's got young eyes. He can see everything. Is it 432? Is that 432?

President Tornatta: Uh-huh.

Commissioner Korb: Are you serious? You can read that?

Commissioner Nix: 423?

President Tornatta: (Inaudible).

Commissioner Nix: They do that so if there's a mistake they can just—

President Tornatta: 423.3.

Commissioner Nix: Okay.

Dorothy Joest: They just bulldozed the trees too.

Commissioner Nix: About a nine foot fall from here to here, and you've got the same, you get the same elevation, or the same section on all these, three to one.

Bill Jeffers: Where did they do—

Dorothy Joest: They did that behind Gene's house.

Bill Jeffers: Right up in here?

Dorothy Joest: Yeah.

Bill Jeffers: Okay.

Dorothy Joest: I guess where they're going to put the road.

Bill Jeffers: How about right up in here?

Dorothy Joest: No, no.

Bill Jeffers: Okay.

(Inaudible. Two different conversations going on at once. One at the microphone, and one at the Commissioners desk.)

Bill Jeffers: Well, there's the top of the hill right there. All this water—

Commissioner Nix: Because of this not being here now, they're having so many water problems.

Bill Jeffers: It's not uphill, that's down hill. That goes down hill. That goes downhill like that. This water's going this way.

Commissioner Nix: Doesn't it come this way?

Bill Jeffers: No.

Dorothy Joest: It goes out, there's a drain across down there.

Bill Jeffers: This water here goes down through here.

Dorothy Joest: Right.

Commissioner Nix: Nine foot (Inaudible) fall down through there.

Bill Jeffers: That's from this area right in here.

Commissioner Nix: From 432 to 423.

Bill Jeffers: It's not all up in here.

Dorothy Joest: No.

Bill Jeffers: It's just this area right here.

Dorothy Joest: Okay.

Gene Elpers: Will this one foot, whatever they are, will that take care of all that water.

Commissioner Nix: It meets the—

Bill Jeffers: I believe it will.

Dorothy Joest: If not, will you have them come back and dig it deeper?

Bill Jeffers: Because what they're doing is they're having all this water that used to come here—

President Tornatta: Okay.

Bill Jeffers: —is being cut off. All this now goes this way.

President Tornatta: Dorothy?

Bill Jeffers: So, the only thing you're left with—

President Tornatta: This way.

Dorothy Joest: Okay.

President Tornatta: Here you go. Okay, we talked about the swale and what's proposed, and it is in code at this time. Understand it's the slope, as he said that's taking care of some of those water issues, not necessarily the depth.

Dorothy Joest: Okay.

President Tornatta: So, okay? So, at this time, it comports to code—

Dorothy Joest: We'll wait and see what it does then.

President Tornatta: I understand.

Dorothy Joest: If not, they can come back and dig it deeper.

President Tornatta: I understand. Right, right. You know, you can definitely bring that back before us.

Dorothy Joest: Okay.

President Tornatta: Okay?

Dorothy Joest: Thank you.

President Tornatta: You're welcome.

Dorothy Joest: I hope you get your martini, Ted.

President Tornatta: Yeah. We're definitely going.

Bill Jeffers: It will be a triple. Again, because he's disturbing ground behind Dorothy, behind Mrs. Joest and Mr. Elpers' house, because he's disturbing ground there too, that kicks in the erosion control plan. Which the new Rule Five erosion control plan, the new requirements require a drainage plan in that plan itself. That code has no upper limit. In other words, if what he puts in there as a diversion channel does not handle the job, he has to upgrade it. So, it's my opinion, in this market, regardless of how much clearing he does, it's not going to move real quickly. We'll have plenty of time for a big event between now and next June to find out whether it works or not. If it doesn't work, it gets upgraded. We have a lot of leeway now with this new Rule Five, and it's been my experience that Mike Wathen from the County Engineer's office and I, when we go out, we're able to get good cooperation from the developers. I anticipate getting good cooperation from this developer.

President Tornatta: Is there anybody else to speak to this issue?

Commissioner Korb: I guess, my question, Carol, did you get all your questions answered too?

Carol Stevens: I believe so. Yes.

Commissioner Korb: Are you sure? Okay. Mr. Lentz, you're good?

President Tornatta: Hold on, we have a hand in the back.

Beverly Howell: We live—

Commissioner Korb: Just state your name, please.

Beverly Howell: Beverly Howell. We live east of Deerfield there. I'm concerned about the drainage. How are they going to drain it down to the ditch on Eissler Road? I'm not clear on this. Can somebody help me on—

Commissioner Nix: Ma'am?

Beverly Howell: Can you help me on this?

President Tornatta: Well, yeah.

Keith Poff: I think that's probably the best—

Commissioner Nix: Here, Ma'am, if you can step up right here.

Beverly Howell: Pardon?

Commissioner Nix: Come on up here and we'll show you.

Beverly Howell: Okay. I'm really not clear.

Commissioner Nix: There's a new—

Keith Poff: There's an existing pipe that sits in here (Inaudible. Talking at Commission desk. Multiple people talking away from microphone.)

Beverly Howell: Okay, now what do you do with (Inaudible)?

Nathan Mominee: It's going release into an existing roadside ditch under Eissler Road?

Beverly Howell: But (Inaudible) goes across our drive. How are you going to handle this?

(Inaudible. Multiple people talking away from microphone.)

Keith Poff: We're (Inaudible) into the path of (Inaudible) roadside ditch (Inaudible).

Beverly Howell: Well, yeah, there's a ditch, we can't help that there's a ditch across the road (Inaudible). But, how, where are you going to put this water? That's where I'm not clear, to get it over to the ditch on the other side?

Nathan Mominee: The water runs through the historical path of drainage—

Beverly Howell: I'm not clear on this.

Nathan Mominee: It's an existing roadside ditch, that's where this water from this area has always historically drained to, and we basically try to slow it down at the bottom of the hill—

Beverly Howell: And then what happens to it then?

Nathan Mominee: Then we release it at the same place it was always going before, but at a (Inaudible).

Beverly Howell: In our drive?

Commissioner Nix: But you have to understand, you have to understand what this is here for. This is to fill up and release at a—

Nathan Mominee: Controlled.

Commissioner Nix: —controlled rate, but it's not like you're getting every bit of this water all at one time.

Beverly Howell: But it will go right across our drive here.

Commissioner Nix: Like it has for years.

Beverly Howell: We have a drainage pipe underneath it that we put in.

Keith Poff: Under the county road?

Commissioner Nix: You put one under the county road?

Beverly Howell: The road's not developed there.

Commissioner Nix: Oh, it's not?

Beverly Howell: Uh-uh.

Keith Poff: This is a county road right here.

Beverly Howell: No.

Commissioner Nix: What?

Keith Poff: It is a county road.

Nathan Mominee: It's in right-of-way. It's just the end of Eissler Road.

Beverly Howell: Are you going to put in—

Nathan Mominee: (Inaudible) go down the hill into the unnamed tributary and eventually reach Pigeon Creek.

Beverly Howell: It will be going right into our property.

Commissioner Nix: Where's your home?

Beverly Howell: Our home is right in here. We have a pole barn right here.

Commissioner Nix: Okay.

Commissioner Korb: But if it's coming downhill and it hits here—

Commissioner Nix: Yeah.

Beverly Howell: But there's no, see the ditch ends right here.

Commissioner Nix: (Inaudible), which way does this go (Inaudible)?

Beverly Howell: There's Eissler Road, and then this is our drive.

(Inaudible. Multiple people speaking at once.)

Nathan Mominee: There's not, actually I'm pretty unfamiliar with the channel after that.

Commissioner Nix: So, this actually falls off anyway to 17, 16?

Nathan Mominee: Right, that's (Inaudible). We're actually reducing—

Keith Poff: We're intercepting that.

Nathan Mominee: (Inaudible).

Commissioner Nix: So, you're taking, basically, what they're doing is they're taking everything here, instead of it coming off across on your property, which is an existing contour, these are existing contours.

Beverly Howell: Uh-huh.

Commissioner Nix: So, they're actually taking all that water up and taking it down and dumping it this way.

Beverly Howell: You will put a pipe underneath the road then?

Keith Poff: That's not in our plan at this point.

Beverly Howell: What are we going to do with the water?

Keith Poff: It already crosses under the road, doesn't it?

Beverly Howell: Yeah.

Keith Poff: Okay, it will continue—

Beverly Howell: It's just a small pipe.

Commissioner Korb: This is your pipe? That's a yes. You gave yourself away their, kiddo.

Beverly Howell: Well, it isn't developed. I mean, the road isn't extended down there.

Commissioner Nix: It's a private lane?

Beverly Howell: Yeah. Eissler Road ends really up here.

President Tornatta: If I was your attorney, I would say, shhhh.

Beverly Howell: Eissler Road ends up here.

Commissioner Nix: It appears from what I see, by putting this in you're not going to get anymore of this here. Apparently, right now you're getting some of this on your property.

Keith Poff: The high point, the ridge is here.

Commissioner Nix: So, you're getting basically (Inaudible), I can't read this.

Commissioner Korb: That's a 12.

Keith Poff: There's the ridge.

Commissioner Nix: So, everything falls back this way. This will divert, everything from here this way will divert around this way, and from here this way will divert down to here. So, it's going to make your situation better. The water still has to go somewhere.

Commissioner Korb: So, it's going to be going down here versus staying up here?

Commissioner Nix: No, it will actually, it will get caught up in this detention basin—

Commissioner Korb: And go that way?

Commissioner Nix: —and then be released at a slower rate. I don't know what kind of hold, how much volume you've got in this thing here.

Nathan Mominee: Well, it's a ten year, undeveloped release rate.

Commissioner Nix: Okay, so it's pretty good size.

Nathan Mominee: We're good enough to hold a 25 year developed rate.

Commissioner Nix: They're going to hold water here, temporarily, and release it at a slower rate across here.

Beverly Howell: Across our drive.

Commissioner Nix: Because that's the way the natural flow is, Ma'am.

Keith Poff: Not at the surface, under.

Commissioner Nix: No, no.

Beverly Howell: Under the drive?

Keith Poff: No, under the road.

Beverly Howell: Under the road, into the pipe?

Keith Poff: We're bringing it to the same place that it goes today.

Beverly Howell: Okay, that's what I'm concerned.

Keith Poff: Which is in a roadside ditch.

Beverly Howell: I didn't want to be sliding all over the ice trying to get out of there.

Commissioner Korb: That's a great question, seriously, though.

Beverly Howell: Really.

Commissioner Korb: So, it's going to be draining away from (Inaudible).

Beverly Howell: Uh-huh.

Commissioner Korb: (Inaudible) and takes its natural drainage (Inaudible). As Bill said, what you've been experiencing is all this water from here, so, you've probably been getting a lot of water here.

Commissioner Nix: I don't know if you can see this upside down or not. Which one is that here, that is an A isn't it?

Keith Poff: Yeah, normally they take care of most flows.

Commissioner Nix: Yeah, this is what they're putting in. Yeah, this right here. See this swale?

Beverly Howell: Uh-huh.

Commissioner Nix: In other words the water comes down here, it's going to pick up in here and travel away, instead of here.

Beverly Howell: And you're going to go under the road?

Keith Poff: Yes.

Nathan Mominee: Some of the water from this side of the ridge is going to be diverted and (Inaudible).

Beverly Howell: Then there was another question.

Commissioner Korb: Right.

Beverly Howell: There's really some beautiful trees right through here, where is this ditch going to be?

Keith Poff: This is the path, you can see that we have an easement for it here. It's not near the property line, but here it is very close to the property line. So, I think we're aiming from a point that's within what, seven feet from the line, over to probably 25 feet?

Nathan Mominee: I was personally on the site to pick up (Inaudible), and I spoke with you out there.

Beverly Howell: Yeah.

Nathan Mominee: And, actually, I shot some of those large trees, because those are obstacles, and they're also assets, so we don't-

Keith Poff: (Inaudible).

Nathan Mominee: (Inaudible).

Beverly Howell: Okay, you're not going to-

President Tornatta: No, thanks, I'm good.

Nathan Mominee: We'll be minimizing the impact of those trees (Inaudible).

Beverly Howell: Okay. I was concerned where that was going to be, whether that could be moved over to salvage the trees.

Nathan Mominee: Usually it is easier for us to build the ditch around a large, nice tree than it is to try to move that tree.

President Tornatta: Okay, let's do this. You guys can maybe explain that stuff. I mean, I appreciate all that. We're gonna kind of move on and get on. Any other persons wanting to speak to this issue? Okay, alright. So, we have a recommendation on the floor to accept. Do I have a motion?

Commissioner Korb: So moved.

Commissioner Nix: Second.

President Tornatta: So ordered.

Commissioner Korb: That's Deerfield. Holy cow, we've only got one, two, three, four more to go.

Bill Jeffers: We've done those, hallelujah!

Continued Hearing: Evelyn Utley Petition to Remove Obstruction

Bill Jeffers: We're moving down to the Evelyn Utley petition. We're going to continue that hearing. We paid the claims. I don't have any other business. Hopefully, there's no public comment, there's been plenty. So, we've got one item left, and that's to continue the Evelyn Utley hearing. Okay, Ms. Utley is here with her representative, her legal representative, Ms. Kathryn Kornblum, and I e-mailed you this report earlier. There's no reason to read it, I'm just asking you to put it in the record.

(Insert Surveyor's Report)

Camera scope inspection

On September 9, 2008 at 9:39 a.m., Hydromax (with subcontractor SubCam, Inc.) began the inspection with the camera robot entering the 18-inch diameter pipe from the inlet box at the north end of the pipe run at the north line of Smith's property.

The method used can identify the exact location of the camera robot within the pipe at any location along the inspection route.

The pipe was found to run along the extreme western edge of the Smith property for approximately the first fifty (50) feet of pipe, then under a wooden deck as it gradually veers toward the west and crosses into the Utley property.

The pipe then runs in a generally south by southwesterly course, and following the natural surface watercourse exactly as it is shown on old county maps, for approximately one hundred (100) feet through the Utley property under the eastern side yard of the home, under two driveway slabs, and then under Cresthaven Court.

There are several active taps to the concrete pipe from both the east and the west along this first one hundred fifty (150) feet of pipe run. There is one inactive tap through the ceiling of the pipe directly under the Utley main driveway to the garage where the driveway slab is visibly poured right atop the former area inlet that apparently served to help drain the surface watercourse at that point.

From the southern edge of the Utley property, the pipe then runs approximately nineteen (19) feet diagonally and southwesterly across Cresthaven Court pavement before entering the Volz property on the south side of Cresthaven Court.

The final run of the pipe is southwesterly through the Volz front yard for approximately one hundred (100) feet to a catch basin in the east right-of-way of Oak Hill Road.

The exact distance measured by the robot camera for the pipe run examined from the north end to the catch basin at Oak Hill Road is two hundred seventy-one and one tenth (271.1) feet.

It is estimated the concrete pipe is forty-five (45) to fifty (50) years old from testimony of the property owner(s).

The overall condition of the pipe considering its age and service is good.

There were no major offsets of the pipe joints, and generally no major defects found in the majority of the pipe run except for two noticeable defects that require, may require attention if surface conditions reflect subsidence in the Volz's yard:

- a) one small hole in the interior pipe wall with soil visible at 265.2 feet, six feet east of the terminus inlet; and
- b) one place in the interior wall with reinforcement visible at 249.6 feet, about 22.5 feet east of the terminus inlet indicating potential pipe failure.

Both instances of potential pipe failure already show minor subsidence in the Volz's lawn where the property owner could easily expose the defects for repair if needed.

There were two (2) broken places discovered in the pipe wall where apparent past repairs were affected using asphalt shingles or similar material, and no soil entering the pipe at those two patches – one large patch at 61.2 feet (Utley) and one small patch at 257.7 feet (Volz).

There is some expected wearing away of the cement surface of the interior of the pipe from friction and abrasion exposing aggregate to the surface.

There is some minor and expected accumulation of sediment in the pipe at places where the pipe has sagged over the years. The sediment does not exceed more than an inch or so in depth. None of the accumulated sediment constitutes an obstruction at this time.

There is some minor root intrusion, but nothing notable – mostly fine roots at 56.1 feet, 72.5 feet, 76.5 feet, 84.7 feet, 117.7 feet, on Utley property; and 195.3 feet, 199.7 feet and 204.1 feet, on the Volz property. None of the roots constitute an obstruction at this time.

Summary

Specific to the Petition, there are no objects or materials constituting significant impediments to the flow of water through the 18-inch diameter concrete pipe; therefore, there are no obstructions of the drain as defined by IC 36-9-27.4 in the opinion of the county surveyor.

Finally and with regard to obstructions to the natural surface watercourse, in the opinion of the county surveyor, there are objects and materials constituting significant impediments to the flow of storm water run-off through the historic alignment of the natural surface watercourse as follows:

- * A shed at the northeast corner of the Utley property.
- * A fence along the east property line of the Utley property.
- * Three (3) large poplar trees planted along the east property line of the Utley property.

- * Statuary, landscape blocks, and other landscape features including planted beds of shrubbery and earthen fill placed in the watercourse on the Utley property.
- * Two concrete driveway slabs on the Utley property.
- * Minor amounts of soil, concrete waste and loose rock on the Utley property and the Smith property immediately adjacent to the Utley property.
- * A small portion of the wooden deck built by the Smiths and straddling the property line.

None the less, it remains the opinion of the County Surveyor that due to the diameter, grade and head pressure available to the pipe, and until more serious structural deterioration occurs, the pipe drain is capable of conveying storm water flow from storms up to and including the 100-year storm event so long as the entrance(s) to the pipe and the entire subsurface run is kept free of obstructions in the future.

(End of Surveyor's Report)

Bill Jeffers: I'm sure you've already read most of it and are familiar with it. I'll go straight to the summary. Well, I'll say that we did run a camera down through there. Hydromax, with their subcontractor ,SubCam, Incorporated, ran a camera down through there September 9th, and I have a hard copy of their report. We also have a DVD of the entire thing, cave crickets and all. I mean, it was very interesting. It would take an hour to show it to you. So, we'll dispense with that.

President Tornatta: Well, then, hurry up and start it.

Commissioner Korb: Does it look a whole lot like a colonoscopy?

Bill Jeffers: Run it, Brenda.

Commissioner Korb: Does it look a whole lot like a colonoscopy?

Bill Jeffers: Yes, it did.

President Tornatta: I don't have anything until 10:00.

Bill Jeffers: Okay.

Commissioner Nix: I do.

President Tornatta: What?

Bill Jeffers: Okay, so, basically, I'm just explaining to you, kind of every so many feet what we saw. We did find a couple of small holes that were patched with asphalt shingles, blah, blah, blah. We did not find any objects or materials that constitute a significant impediment. Therefore, we did not find an obstruction to that concrete tile drain.

Commissioner Korb: Which was a little bit of a surprise, yes?

Bill Jeffers: It was a surprise to me.

Commissioner Korb: Okay.

Bill Jeffers: We're in the summary now. With regard to, this is on page three, with regard to the natural surface watercourse, yes, indeed, as I explained last meeting, there are objects in that old, historic natural surface watercourse on both pieces of property which constitute a statutory definition of obstruction. But, at that time I did not recommend that you order those removed, because if you had them removed from the Smith's property, you would have to have them removed from the Utley's property. I believe both property owners enjoy those improvements. They consist of sheds, fences, landscaping, trees, etcetera, concrete driveway slabs. There are some minor impediments that could be dressed up, and I will continue to work with them on that. There are some discharge pipes from the Smith's garage that I'm going to ask them to extend over to the drop basin, just as a courtesy. If they would do that, that would, I believe, further satisfy Ms. Utley, that some of the water that is coming on to her property could be put directly into the pipe. There's some other minor dress up things we could do, but, nonetheless, it remains my opinion, down here in the summary that due to the diameter, the grade, and the head pressure available to that pipe, and until more serious structural deterioration occurs, I believe that the pipe drain is capable of conveying storm water flow from storms up to and possibly including the 100 year storm event, so long as the entrance to the pipe, and the entire sub-surface run is kept free of obstructions in the future, as it is now. Okay? That's my report. If there's something anyone would like to add, both parties are here present and I'll let her roll.

Kathryn Kornblum: Kathryn Kornblum for Mrs. Utley. Since the last time we were here, I showed you a bunch of pictures, there has been changes to the land. They've removed rock, put some dirt in, and we will see if this takes care of the problem. At this point we don't know, and with the extension of the pipes, which contributed to the water going around the drainage opening, instead of into the drainage opening, that should help the problem also. So, at this point in time, we're just working with Mr. Jeffers on this, and another engineer in order to address Mrs. Utley's property where she needs to make changes.

Commissioner Korb: So, you and your client, at this point, are satisfied?

Kathryn Kornblum: Until—

Commissioner Korb: Until—

Kathryn Kornblum: —we—

Commissioner Korb: —we have an event?

Kathryn Kornblum: Yes.

Commissioner Korb: Okay.

President Tornatta: Which would keep—

Kathryn Kornblum: Our first step was to do the pipe.

Commissioner Korb: Yeah.

Kathryn Kornblum: Our next step is to find out what else needs to be done.

Commissioner Korb: Sure.

Kathryn Kornblum: So, that's where we are, at the second step right now.

Commissioner Korb: But, it sounds to me like this is somewhat neutral. So, who's winding up paying for the scope? I'm sorry, I probably shouldn't have brought that up.

Bill Jeffers: I didn't find any obstructions, so, and I did find a couple of minor defects on the Volz's property, which, you could dig up with a shovel and repair. Okay? So, I don't want to bill anybody at this point in time.

Commissioner Korb: Okay.

Bill Jeffers: The Auditor has informed us that we \$1,700 in the account. I turned in a claim for \$1,350. We have plenty of money in all of our drainage accounts that should we have a horrible event that would cost us \$20,000 or \$30,000, we would still have it covered somewhere else.

Commissioner Korb: Okay.

Bill Jeffers: So, why don't we leave it on the table, let it ride until we see another event, and I would like to work with the Smith's, I would like to work with Mrs. Utley and her engineer and see if we can't just work as three or four neighbors together to resolve some more of the minor issues.

Commissioner Korb: Love the way that sounds.

President Tornatta: So, will you make that in the form of a motion?

Bill Jeffers: Just extend the hearing –

President Tornatta: Continue, continue.

Commissioner Nix: (Inaudible).

Bill Jeffers: Oh, there may be someone else we want to hear, yes. I'm sorry.

President Tornatta: Mrs. Smith?

Commissioner Korb: They're shaking their heads no. So, that's a good sign.

President Tornatta: Okay.

Commissioner Korb: Okay.

President Tornatta: So, we need a motion to continue this.

Commissioner Korb: I so move.

Bill Jeffers: I have the report here if you want a copy.

Commissioner Nix: I second.

President Tornatta: So ordered.

Commissioner Korb: Thank you. I'm so sorry you all had to wait for all of this.

Commissioner Nix: I'm sure you have a whole lot more stuff to come before us, don't you, Mr. Jeffers?

Commissioner Korb: Pray not.

Bill Jeffers: No, my agenda disappeared.

Commissioner Nix: I'm just kidding.

Commissioner Korb: You know better than to say stuff like that to him.

Commissioner Nix: It was just a bad joke.

Public Comment

President Tornatta: Is there any public comment?

Commissioner Korb: Under public comment, right.

Bill Jeffers: Under public comment, I would like to remind everyone, regardless of the weather, the Fall Festival goes on. Now enjoy yourself.

Commissioner Korb: Whoa, what about the claims? Do we have claims?

Bill Jeffers: We've paid our claim.

Commissioner Korb: We did those?

President Tornatta: We did those.

Bill Jeffers: Yes, sir.

Commissioner Korb: I didn't—

President Tornatta: Okay—

Bill Jeffers: You were outside.

Commissioner Korb: Okay, great, great. Good, good, good, good.

President Tornatta: Okay, hold on, real quick. Public comment? No public comment? Okay.

Commissioner Nix: Move to adjourn.

Commissioner Korb: Second.

President Tornatta: So ordered.

(The meeting was adjourned at 7:45 p.m.)

Those in Attendance:

Troy Tornatta	Bill Nix	Jeff Korb
Bill Jeffers	Ted C. Ziemer, Jr.	Madelyn Grayson
Keith Poff	Dan Lentz	Carol Stevens
Dorothy Joest	Gene Elpers	Beverly Howell
Kathryn Kornblum	Others Unidentified	Members of Media

**VANDERBURGH COUNTY
DRAINAGE BOARD**

Troy Tornatta, President

Bill Nix, Vice President

Jeff Korb, Member

(Recorded and transcribed by Madelyn Grayson.)

**VANDERBURGH COUNTY
DRAINAGE BOARD
OCTOBER 21, 2008**

The Vanderburgh County Drainage Board met in session this 21st day of October, 2008 at 6:50 p.m. in room 301 of the Civic Center Complex with President Troy Tornatta presiding.

Call to Order

President Tornatta: I would like to call to welcome everybody to the Tuesday, October 21, 2008 Drainage Board meeting. It is 6:50 p.m.

Approval of the October 7, 2008 Drainage Board Meeting Minutes

President Tornatta: I would like to get approval of the minutes, please.

Commissioner Korb: So moved.

Commissioner Nix: Second.

President Tornatta: So ordered.

Vectren's Scott Township Substation: Final Plan

President Tornatta: Mr. Jeffers, I believe we have drainage plans for Vectren's Scott Township substation, which is their final plan. Am I in line?

Bill Jeffers: Yes, sir.

President Tornatta: That was a yes, sir.

Bill Jeffers: That's correct, President Tornatta. We, on the screen, have an outline of an 80 acre tract owned, previously owned by the Farney's at Baseline Road and Princeton Road. It's just northwest of Azteca Milling Company. The Farney's sold the north half of that 80 acre tract, that's hatched in yellow, that's a 40 acre tract that they sold Vectren for a new substation. It's a considerable project associated with the new high line that they're running across the county, from Warrick County to Posey County, along Baseline Road. They did submit, by way of Morley and Associates, a substantial plan, along with other documentation showing the containment of the 100 year storm and the release at the required ten year rate, into a....let me see if I have my pointer. It will all be released at this point right here, into this agricultural waterway on the Farney's property, that runs east about, oh, 800 feet, and then north to Pond Flat ditch. That waterway, I understand is going to be piped with a 24 inch tile by the Farney's, who will continue to use it as an agricultural field. As I said, the accompanying documentation to this plan shows that everything is in accordance with the code for an impacted drainage area. The County Surveyor recommends approval of the final plan for Vectren's Scott Township substation.

President Tornatta: Do I have any questions?

Commissioner Nix: Move approval.

Commissioner Korb: Second.

President Tornatta: So ordered.

Bill Jeffers: I'm sorry, did anyone need an agenda?

President Tornatta: I think we have them.

Bill Jeffers: You have them? Okay.

**Report: Linda Phillips October 15th Deadline for Completion:
Big Hill Drive Drainage Obstruction Project (Clear Creek Subdivision)**

Bill Jeffers: The next item on that agenda is my report regarding Linda Phillips October 15th deadline for the completion of the removal of the obstruction, as ordered by your Board. On July 15, 2008, you ordered Ms. Phillips, of 9223 Big Hill Drive, Evansville, Indiana, to restore or repair the waterway along her east property line. This is on the report that I put in front of you that's highlighted, there's certain segments highlighted in yellow. I then, in the second paragraph, go on to say some specifics of the restoration of that waterway with regard to cross section and erosion control fabrics, etcetera that should be used. The work was to be completed, according to your order, by October 15, 2008. As of this morning, at 8:00 a.m. local time, it had not been done. Your Drainage Board, I believe, ordered, entered the order in conformance with 36-9-27.4. A respondent against whom an order has been entered under that statute is subject to an action under section 22 of that statute, if the respondent fails to pay the amount for which the respondent is responsible under the order. You didn't give an amount, you just simply said complete the work. In this case Ms. Phillips is the respondent, whom the Board ordered to complete the work, and she has not done so. You may alternately direct the County Surveyor to complete the work, under section 16 (A) (2) of this statute, at the expense of the respondent. You have the option of causing payment for the work, in accordance with section 22, which I give you a copy of farther along on the same page, by first paying for the improvement, if you were to order me to do it, out of the General Drain Improvement Fund, as we have done before, and then asking Ms. Phillips to pay that amount. If Ms. Phillips fails to pay that amount, whatever it may be, you may bring an order in any court having jurisdiction in the same manner as a creditor may recover an amount owed under contract. So, you can ask your attorney, but I think that's probably Circuit or Superior Court.

Ted C. Ziemer, Jr.: Right.

Bill Jeffers: So, at this time, you have a choice of authorizing an advance on the General Drainage Improvement Fund, I'm operating off page two of that little report. You should order, if you should order, excuse me, if you should authorize an advance on the General Drain Improvement Fund, I could go out and have that done by a contractor. Skipping down, you may want to take some additional precautions before issuing such an order, and I give you, on the bottom of that page, the language regarding judicial review that's available to the respondent, so, you may want to ask for your lawyer's advice over how to proceed at this point. I feel you've done everything in accordance with the statute. I feel I've done everything in accordance with the statute, but you may want to take precautionary steps when moving forward. I noticed Ms.--

Ted C. Ziemer, Jr.: Can we talk to her and find out why this isn't done?

Commissioner Nix: I think that's an excellent idea.

Bill Jeffers: Pardon me?

Commissioner Nix: Could we talk to Ms. Phillips?

President Tornatta: Yeah. Ms. Phillips?

Linda Phillips: I'm Linda Phillips of 9223 Big Hill Drive here in Evansville.

President Tornatta: Okay, I guess, the one question is why haven't we completed the proposed changes that we assigned you?

Linda Phillips: Okay, I contacted the man that I initially had hired to do the work, the one that left me high and dry when Mr. Jeffers came out to my home and left a note on his machine telling him to stop the work. I asked him if he would come back out and finish the work, and he told me, yes, that he would. So, he came back out and left his backhoe, told me that he would be back, he was in the middle of another job, and he would be back to finish it. In that time frame I received a phone call from Mr. Jeffers asking me who was going to do the work, and asked me if he could have that contractor's name and phone number. I told him, yes, I've tried to work with him as best I can. The next thing I know my contractor's gone again. So, Mr. Jeffers, in conversation said that he talked to this gentleman and this gentleman said that he was told that we didn't want the work done. Nobody I know talked to the man and told him that. I've tried countless times to get a hold of the man that I hired, the surveyor that I hired to mark the property and write up the proposal that I gave you on what needed to be done, because when he talked to me on the phone he gave me one story, which was on a Friday, and on a Tuesday when I came in here I was handed a letter that day, I didn't read it, because I assumed it said what the man told me on the phone. It wasn't. It's what Mr. Jeffers wants done. So, I've tried to get a hold of this gentleman, this surveyor, he will not call me back. He will not get on the phone and talk to me. The only thing they will say to me is, lady, you've got problems, which tells me, after he's talked to Mr. Jeffers, something's changed. After I talked to my contractor, something changes. I can't get anybody to work for me, because when they talk to Mr. Jeffers, everything goes, Mr. Jeffers told me he wants to come out and do it himself. He said, why don't you just let us come out and do it? I don't want them to do it, but I can't seem to find anybody that can work with him. I don't know what to do.

Commissioner Nix: Mrs. Phillips, I was just curious, has this taken place, what you're saying—

Linda Phillips: Has what taken place?

Commissioner Nix: No, no, no, no, has this taken place since our last meeting?

Linda Phillips: Yes. I've had surgery since I've been here—

Commissioner Nix: Okay.

Linda Phillips: I cannot work. It's all I can do to deal with you guys. I'm telling you, you guys have really pushed this....where did he go? He should be here to listen,

if he's on the board. If he's making decisions concerning me, why would he get up and leave?¹

President Tornatta: Well, he, at this point, is not making that decision.

Linda Phillips: I've contacted another gentleman to come and do the work for me. He has come, he has looked at it, he has assessed it. He wants to go talk to Mr. Esche to see if Mr. Esche will talk to him, explain to him what he wants done. Mr. Esche doesn't even care enough to come here and discuss this. It seems like all he wants to do is cause me pain and torment. I was the one, all I wanted to do was make the ditch attractive. It looks like trash out there. They're nice homes, in my opinion. We're the only one with that mess in that subdivision, and all I want to do is clean it up. But, all I'm doing is running into problems, and I can't figure out why. I can't get any work done if I keep getting the Surveyor to stop everybody I hire.

President Tornatta: Okay. Ted, if we were to have this work done and assess this on a property tax bill, could that be done over a period of years?

Linda Phillips: Mr. Nix, you, Mr. Jeffers told me that you said it wouldn't take two hours work. How much could it cost?

Ted C. Ziemer, Jr.: It's not like a Barrett Law.

Commissioner Nix: I don't know that it should take two hours. It's not a lengthy thing to do. It won't take long to do. It just needs to be fixed. I mean, that's all we asked you to do.

Linda Phillips: Well, you know what, that's fine, but everybody I hire that comes out there tells me they cannot understand why I have to fix his property. Why I'm responsible for anything—

Commissioner Nix: Ma'am--

Ted C. Ziemer, Jr.: No, that is the problem—

Linda Phillips: It is.

Ted C. Ziemer, Jr.: —I think, though that you're experiencing. We're long past whether you're fixing his property or your property.

Linda Phillips: Why are we past it?

Ted C. Ziemer, Jr.: Because—

Linda Phillips: Because why?

Ted C. Ziemer, Jr.: I'm going to tell you.

Linda Phillips: I'm listening.

¹ Commissioner Korb left the meeting at 7:00 p.m.

Ted C. Ziemer, Jr.: Because the representative of the Board, the County Surveyor, has done a survey and has determined that this needs to be repaired. The Board listened to the evidence, they listened to what you had to say, they listened to what he had to say. You may not like it, but they determined that you've caused the obstruction and you need to repair it.

Linda Phillips: There is no obstruction.

Ted C. Ziemer, Jr.: Excuse me, excuse me.

Linda Phillips: There is no obstruction.

President Tornatta: Linda.

Ted C. Ziemer, Jr.: I'm not trying to argue with you—

Linda Phillips: You are.

Ted C. Ziemer, Jr.: No, I'm not. I'm telling you what the law is, and that's what you really need to get an understanding of. The law is that the Drainage Board has entered an order that you repair this. You may not like that, but that is the order—

Linda Phillips: So, just because you—

Ted C. Ziemer, Jr.: Excuse me.

President Tornatta: Hold on.

Ted C. Ziemer, Jr.: You either get a contractor to fix it—

Linda Phillips: Sure.

Ted C. Ziemer, Jr.: Excuse me. No, you haven't, because there are people who will do it. You either get that done, or we will take one of the two routes here, and have it done ourselves, and then you will pay it that way. If we have to sue you in court, you'll not only pay what the final judgement is for the cost of the repairs, but you'll pay my attorney's fees. You don't want to do that, and I don't want you to do that.

Linda Phillips: No, I don't want to, because, you know what, you have done nothing to help me. I called you and talked to you on the phone, and you told me that you would make sure that the surveyor—

President Tornatta: Hold on.

Linda Phillips: —that I hired, the surveyor I hired would be here that night.

President Tornatta: Okay.

Linda Phillips: And he's not.

President Tornatta: It is, it is—

Linda Phillips: Explain to me why—

President Tornatta: It is my meeting.

Linda Phillips: –no, why can't I ever finish a sentence?

President Tornatta: Because we've went down this road.

Linda Phillips: It's not your meeting, it's my meeting.

President Tornatta: It's my meeting.

Linda Phillips: I'm the one that's going to be out the money.

President Tornatta: I control this meeting.

Linda Phillips: I can talk just as long as you can without–

President Tornatta: And we'll adjourn this meeting, and we'll make–

Linda Phillips: Yeah, you're the one that's going to church with the guy that I'm trying to deal with. You tell me where that's right.

President Tornatta: I don't–

Linda Phillips: Oh, you don't, you tell me you don't know Paul Esche outside of this business?

President Tornatta: I do not.

Linda Phillips: I know where he goes (Inaudible)--

President Tornatta: But, I do know a lot of people outside this business–

Linda Phillips: Sure you do.

President Tornatta: –so, I mean, that's–

Ted C. Ziemer, Jr.: Ms. Phillips, if you'll just let me say–

Linda Phillips: That's a conflict of interest.

President Tornatta: Okay, anyway, with this Board in mind, we gave a date of October 21st, at this point is it the Board's wishes to carry on with fixing the problem? I think we have given enough time, in my opinion–

Linda Phillips: I have been in the hospital–

President Tornatta: –for this plan.

Linda Phillips: –I have had surgery–

President Tornatta: Ma'am, I would please appreciate–

Linda Phillips: –I explained to you that I could not do it.

President Tornatta: Please—

Linda Phillips: I gave that the very first day. You always want to quiet me—

President Tornatta: You have to—

Linda Phillips: —why can't I ever finish?

President Tornatta: Because you have talked enough.

Linda Phillips: I haven't, you won't let me finish.

President Tornatta: I need you to please be quiet.

Linda Phillips: You think because you're sitting on that side of the podium that I have no right to say anything. I should have a right to finish just like you do. This is not your money you're spending. I told you, I hired a man, he talks to him, and the next thing I know the man's gone.

President Tornatta: Ms. Phillips—

Linda Phillips: Explain to me why I—

President Tornatta: Ms. Phillips—

Linda Phillips: —can't fight city hall?

President Tornatta: Ms. Phillips, we are done talking to you. Thank you very much.

Linda Phillips: Yeah, you're done—

President Tornatta: Thank you very much.

Linda Phillips: —because you want to be done.

President Tornatta: No.

Linda Phillips: Oh, yes, it is.

President Tornatta: We're done, because you have taken up a lot of this—

Linda Phillips: I haven't, that other man stood up here and talked for how long—

President Tornatta: —Board's time.

Linda Phillips: —over something that has nothing to do with Drainage—

President Tornatta: Thank you. Mr. Nix?

Linda Phillips: —and you never said a word to him. Explain to me—

President Tornatta: Ms. Phillips, my next call will be to security.

Linda Phillips: I don't care.

President Tornatta: I would assess that you need to take a seat.

Linda Phillips: I'm not doing anything. He talked about freedom of speech, and I have freedom of speech. You tell me why I don't have the right to stand up here and talk?

President Tornatta: I'm going to ask this Board to make a decision at this time.

Linda Phillips: I'm going to tell you something, you talk about, Mr. Jeffers talks about the flat piece of ground that I built my home on, this, you tell me that's a flat piece of ground. The builder built it up. It wasn't me, the builder did it. I stood out there and took these pictures today from my garage. You tell me that is a flat piece of ground. The builder built it up. All I want to do is just fix it, make it look attractive. I'm the one that initiated fixing it.

Commissioner Nix: We've asked, we've been very, very patient with this.

Linda Phillips: I have been in the hospital.

Commissioner Nix: Ma'am, please step back.

Linda Phillips: I am sick.

Commissioner Nix: Step back to the podium, please.

Linda Phillips: I explained to you, initially, I was going to be in the hospital, I was going to be sick for an extended time. I'm not working now. It's hard to do those things when you can't lift anything, or move, or drive, or walk, or anything else. I tried to deal with him. Are you going to deny that you did not call my contractor? Did you not call and ask for his phone number? Yeah, I would duck my head too if I was you. The next time you talk about praying for somebody in your meetings, look up what it says about the widows and the orphans, okay.

President Tornatta: I appreciate that.

Linda Phillips: Yeah, I appreciate it too. I tell you what—

President Tornatta: Ma'am, I'm serious.

Linda Phillips: I'm serious too. I am offended that you people think I am so stupid that I really believe that I have to fix that man's property.

President Tornatta: Please, I would like to go to the question. The question is, where do we go from here?

Commissioner Nix: I would like to ask Mrs. Phillips one more time, and, please, please, let's keep this civil.

Linda Phillips: I'm trying.

Commissioner Nix: No, look, nobody's raised their voice on this end, you don't need to raise your voice. Mrs. Phillips—

Linda Phillips: That's not raising it.

Commissioner Nix: Mrs. Phillips, if we were, hypothetically, if we were, if we would give you a little bit more time, is this something you can fix?

Linda Phillips: I have a man I'm looking at right now, I talked to him today--

Commissioner Nix: Okay.

Linda Phillips: --and he's trying to understand why, he was going to call Mr. Jeffers and ask him why, again, that I have to do anything to that man's property? That should be equal expense. Now, I don't care whether the attorney wants to admit it or not, you told me that you were going to have everybody here that night, including that surveyor to find out what was going on. Now, whether you called him or not, I don't know, but the man never came. Doesn't it strike you odd that everybody that he deals with will never talk to me again?

Commissioner Nix: Mrs. Phillips, we don't have--

Linda Phillips: Does it not?

Commissioner Nix: --we don't have that in any other circumstances. This man deals with a lot of people day in and day out, we don't have that problem.

President Tornatta: Mr. Jeffers?

Commissioner Nix: I can testify to that, I work with the man everyday and I know that.

Linda Phillips: Well, you know--

President Tornatta: Can you come to the podium please?

Commissioner Nix: Mrs. Phillips?

Linda Phillips: Me?

Commissioner Nix: No, just stand aside.

Linda Phillips: I'm listening.

Commissioner Nix: Okay, just let Mr. Jeffers speak please.

President Tornatta: I just need to know when was our first hearing on this issue?

Bill Jeffers: I would have to check the record, but it was either at the end of June, or the beginning of July. Your order was issued on July 15th.

Linda Phillips: And I had surgery (Inaudible)--

President Tornatta: Which was the--

Bill Jeffers: That was the second meeting, I believe.

President Tornatta: Which was the second, the time that we implemented something was actually the second time that we had--

Bill Jeffers: That's correct, that was July 15th.

President Tornatta: –went over, which was moving in, okay, July 1st was the first time, July 15th was the second time, that we spent approximately one hour in each meeting deliberating and talking about what we were going to do, the issue, we had a hearing, the hearing was established, and we had a hearing. We discussed in the hearing that we were going to give, which was one month, if I'm not mistaken, past what was comfortable with the Board, which ended up being October–

Bill Jeffers: 15th.

President Tornatta: –twenty, October 15th, to get that work done. And, to my knowledge, what I'm hearing right now is that we are working on getting somebody out to get that problem. Now, my only issue here, Mr. Nix, is that it's almost like, it wasn't enough that we had a hearing, it wasn't enough that we had a meeting, it wasn't enough that we had a deadline, now we are accepting that somebody has done nothing to further this cause, and in that, we are going to try and allow this to go on farther–

Linda Phillips: No, you're not.

Commissioner Nix: Mrs. Phillips, Mrs. Phillips, please, please, please, keep your comments to yourself.

Linda Phillips: He interrupts me.

President Tornatta: I'm not really comfortable with doing that.

Bill Jeffers: Well–

Linda Phillips: I guess, you are, you're buddies with him.

Bill Jeffers: –before anything else is said, what I'm hearing is that there's another contractor who wants to argue about–

Linda Phillips: No, he doesn't want to argue.

Bill Jeffers: –whether or not he should be working on someone else's property, which is what the last contractor told me when I called him, to see what his progress was. In other words, we were getting close to that time when the seeds needed to go down so they would sprout in time to establish root growth before winter comes on–

Linda Phillips: You can grow grass in the snow.

Bill Jeffers: –and I called him, to simply ask him what the progress was, and he said, well, a relative of Ms. Phillips approached me at the store and told me that they were still uncertain whether they should be working on someone else's property, etcetera.

Unidentified: That's a lie.

Bill Jeffers: He said he no longer wanted to be involved.

Linda Phillips: Well, he's never told me that.

President Tornatta: And, we're going to stop with this hostile situation—

Linda Phillips: Who's hostile, besides you?

President Tornatta: There's no hostility up here.

Linda Phillips: Yes, there is. You interrupt me—

President Tornatta: We asked you one question.

Linda Phillips: —you will not let me finish. You won't let me finish.

President Tornatta: That's because I've already heard all I want to hear from you.

Linda Phillips: You know what (Inaudible)--

Bill Jeffers: If there's any—

President Tornatta: We have had—

Linda Phillips: —from you.

President Tornatta: Well, then go away.

Bill Jeffers: If there's--

Linda Phillips: You go away.

President Tornatta: Because we are going to—

Linda Phillips: We're talking, you go away.

President Tornatta: —render something.

Linda Phillips: Like Mr. Korb did, he's not man enough to stay here and discuss it.

President Tornatta: Then this meeting will be over, and the final verdict will be you will owe.

Linda Phillips: Yeah, I know, because you're a crook.

President Tornatta: Okay, I would make a recommendation that we keep on to what we have. We're going to go ahead and do the process and then we will go ahead and bill her back.

Commissioner Nix: Is that a motion?

President Tornatta: That's, your motion.

Linda Phillips: That's not right.

President Tornatta: You're making the motion.

Linda Phillips: You're all (Inaudible).

President Tornatta: Because you have to make the motion.

Linda Phillips: If either one of you are running again—

Commissioner Nix: I make that motion.

President Tornatta: I make a second.

Linda Phillips: —(Inaudible) doing it.

President Tornatta: So ordered.

Linda Phillips: You're a crook. I hope you lose that election.

President Tornatta: Motion to adjourn?

Commissioner Nix: Motion to adjourn.

Linda Phillips: I'll do everything I can—

President Tornatta: Second.

Linda Phillips: —to get people not to vote for you.

(The meeting was adjourned at 7:15 p.m.)

Those in Attendance:

Troy Tornatta

Bill Jeffers

Linda Phillips

Bill Nix

Ted C. Ziemer, Jr.

Others Unidentified

Jeff Korb

Madelyn Grayson

Members of Media

**VANDERBURGH COUNTY
DRAINAGE BOARD**

Troy Tornatta, President

Bill Nix, Vice President

Jeff Korb, Member

(Recorded and transcribed by Madelyn Grayson.)

**VANDEBURGH COUNTY
SPECIAL DRAINAGE BOARD
OCTOBER 28, 2008**

The Vanderburgh County Drainage Board met in special session this 28th day of October, 2008 at 4:00 p.m. in room 301 of the Civic Center Complex with President Troy Tornatta presiding, for the sole purpose of approving ditch maintenance claims.

Call to Order

President Tornatta: Good afternoon, it's a little bit after 4:00, and we are here at a special Drainage meeting, October 28, 2008.

Approval of Ditch Maintenance Claims

President Tornatta: Do we have anything to approve minutes wise?

Madelyn Grayson: No.

President Tornatta: I'm just going to open it up for approving any of our–

Bill Jeffers: Yeah, I would just like to ask that you approve the claims that are on your table. They all are on the proper form and have the inspection information attached. I have signed those and recommend approval of...they're all mowing, ditch mowing, spraying, those type of claims. Some of them are for the last 15 percent, some of them are for up to 85 percent.

Commissioner Nix: Move approval.

Commissioner Korb: Second.

President Tornatta: So ordered. Anything else?

Bill Jeffers: No, sir.

Commissioner Nix: Move adjournment.

Commissioner Korb: Second.

President Tornatta: So ordered.

(The meeting was adjourned at 4:02 p.m.)

Those in Attendance:

Troy Tornatta	Bill Nix	Jeff Korb
Bill Jeffers	Madelyn Grayson	

**VANDERBURGH COUNTY
DRAINAGE BOARD**

Troy Tornatta, President

Bill Nix, Vice President

Jeff Korb, Member

(Recorded and transcribed by Madelyn Grayson.)

**VANDEBURGH COUNTY
DRAINAGE BOARD
NOVEMBER 11, 2008**

The Vanderburgh County Drainage Board met in session this 11th day of November, 2008 at 5:35 p.m. in room 301 of the Civic Center Complex with President Troy Tornatta presiding.

Call to Order

President Tornatta: Good evening, Linda, serving for Bill Jeffers.

Linda Freeman: Yes, a proxy.

President Tornatta: Yes, amen, 5:35 on a Tuesday, November 11, 2008. Welcome to our Drainage Board meeting of Vanderburgh County.

**Approval of the October 21, 2008 Drainage Board Meeting Minutes &
Approval of the October 28, 2008 Special Drainage Board Meeting
Minutes**

President Tornatta: Approval of the previous meetings minutes?

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered.

Hamilton Creek Subdivision: Preliminary Drainage Plan

President Tornatta: We're going to go to the Phillips-Esche petition, I see.

Linda Freeman: Oh, well, let's go ahead and do our, let's go in order.

President Tornatta: Okay, you want to go in order.

Linda Freeman: Yeah.

President Tornatta: That was on the big board.

Linda Freeman: I was just getting ready.

President Tornatta: Okay, Hamilton Creek Subdivision, preliminary plan.

Linda Freeman: Yes, and this was a previously approved plan for condos. It complies with the drainage ordinance for preliminary approval, and we recommend approval on a preliminary basis, at this time, for Hamilton Creek.

Commissioner Nix: And this is just a preliminary plan?

Linda Freeman: Yes.

Commissioner Nix: This will come back to us again?

Linda Freeman: Yes.

Commissioner Nix: Move approval.

Commissioner Korb: Second.

President Tornatta: So ordered.

**Receive Joe Nickolick Petition for Drainage Obstruction:
North of Holiday Inn at Hwy 41 & Lynch Road**

Linda Freeman: And then we have a Joe Nickolick petition for an obstruction approval that Madelyn has all of the paperwork on. We're just receiving that petition.

President Tornatta: I need a motion to accept the petition.

Commissioner Korb: So moved.

Commissioner Nix: Second.

President Tornatta: So ordered.

Phillips-Esche Obstruction Petition Update

President Tornatta: Now, the big board.

Linda Freeman: Yeah, we have the pretty pictures from the—

Unidentified: Excuse me, is there any discussion about the Hamilton Creek project?

Linda Freeman: This is just preliminary.

Unidentified: Okay.

Linda Freeman: So, they'll have to come back for their final.

Unidentified: And when is that?

President Tornatta: I'll tell you what, give us a minute to go through this and we'll ask for public comment.

Unidentified: Okay.

Commissioner Nix: But, once again, it's my understanding with a preliminary there's really nothing we can act on. There's nothing that will be acted on today. Correct me if I'm wrong, Commissioner, but, we can hear you're opinion, but there's no action to be taken today.

Unidentified: Well, you know, what we got was that, in these papers it says that the Drainage Board hearing is today, and that's why we're here.

Justin Schoffstall: As the Project Engineer, I would be more than happy to hear any public comments so we can address those (Inaudible).

President Tornatta: Okay, I tell you what, let's go through this and I'll ask for public comment. Okay?

Linda Freeman: Alright, the Phillips-Esche petition. We received four quotes for the job, and Martin Woodward Backhoe was the lowest bidder at \$2,150, not the \$22,000 that Bill sent in an e-mail. Which I'm sure gave you heart failure.

Commissioner Korb: This is not the same company she's had all these issue with, is it?

Linda Freeman: I don't know.

Commissioner Korb: I pray not.

President Tornatta: Well, it's done.

Linda Freeman: It's a done deal.

Commissioner Korb: Okay.

Linda Freeman: It was finished yesterday afternoon.

Commissioner Korb: Great.

Linda Freeman: So, here's some before pictures, what the conditions were prior to the start of the job yesterday morning. You can see it was, I can understand why the gentleman had a problem with this. If you need me, I mean, if you want to stop or slow down on any of them, please just say so. That's looking down between Paul Esche and Linda Phillips, that's looking down through there, how nice it looks compared to what her area looked like.

President Korb: And the after pictures?

Linda Freeman: They are coming. Oh, just to let you know that we didn't make a mess, the street was cleaned, Jerry said the sidewalk was swept and all that sort of thing. So, we didn't leave a mess behind. This is the actual work going on, getting the erosion control mats down. We went with erosion control matting instead of the sod, because the different sod people were saying that they couldn't guarantee the sod. So, we're hopeful—

Commissioner Nix: Because of the time of the year, Linda?

Linda Freeman: Yeah. The erosion control mat and seeding, and you can see that the erosion control mat is stapled down around, and this is, the portion that you see there is kind of, under that gentleman's feet is the flared end section that's carrying the water under the road. That's her down spout, one of her down spout pipes coming in. So, they made sure that was nice and neat. Overall all it just looks really nice.

Commissioner Nix: I'm just curious, do you know how much dirt was taken out? How many loads?

Linda Freeman: No, honestly, I don't.

Commissioner Nix: It's not important.

Linda Freeman: It was a quick job.

Commissioner Nix: Yeah.

Linda Freeman: They accomplished it all from approximately 7:30 to maybe 12:30-1:00.

Commissioner Nix: So, about four hours?

Linda Freeman: Quick job.

Commissioner Nix: Thank you.

Linda Freeman: I don't know if there was any of those pictures that you wanted to see more of.

President Tornatta: Thanks for putting that together. I mean, it does give us a little look at it, especially as much time as we've spent on this project.

Linda Freeman: Right, you can see how bad the side on her side looks, and then the Paul Esche side is not looking too healthy there either. Then, the after product looks wonderful. So, with the rains and things we should have a good grass stand coming, hopefully. Maybe we'll get a few more warm days and maybe we can put this one behind us.

President Tornatta: Ted, I've got a question. If we have an officer out there, is that something that can be done on an off time basis and then put into this contract, if we have this happen again?

Ted C. Ziemer, Jr.: You mean an officer (Inaudible)?

President Tornatta: Yeah, we actually had an officer out there on site.

Linda Freeman: I did contact Eric Williams on Friday prior to the start of the job, when Bill informed me that he had contacted Martin Woodward to work on it?

Ted C. Ziemer, Jr.: Was it an on duty person?

Linda Freeman: Uh-huh, it was on duty, so just in case—

President Tornatta: I guess, what I'm suggesting is would we ever, or could we get an off duty officer to serve, and then put that in the contract, if there's some contentious—

Ted C. Ziemer, Jr.: Sure, absolutely.

President Tornatta: Because, I mean, we don't, I don't see any need why the county needs to take somebody out of the mix of protecting and serving on that side of town, especially when we want to have as many people out there as possible. Then, when we pull them to essentially be the watchdog on a matter like this.

Ted C. Ziemer, Jr.: Sure, we could.

President Tornatta: Okay, we might think about it next time if we think that somebody—

Linda Freeman: If we get another contentious type.

President Tornatta: —is potentially going to bug a vendor—

Linda Freeman: Yeah.

President Tornatta: —then we need to address that.

Linda Freeman: Basically, the arrangements we made were that an officer arrive on the scene prior to the contractor arriving, and once everybody arrived, and if there was no problems then he left and just knew what the situation was. So, I don't think he was there the entire day, or, you know, the entire morning that time. He kind of was just there, a preventative measure, I suppose.

President Tornatta: We might just think about that in the future, if we do that, and just bill that back as well.

Ditch Maintenance Claims

Linda Freeman: We don't have any claims.

Other Business

Linda Freeman: I don't know of any other business.

Public Comment

Linda Freeman: Possibly public comment?

President Tornatta: Okay, I'll ask for that. Thank you. You did a fine job, Linda.

Linda Freeman: I wish I was in Florida though.

President Tornatta: We'll ask for public comment. Gentlemen? State your name and address if you would please.

Robert Gossman: It's Robert Gossman. I live at 545 Pleasantview. This is concerning the Hamilton Creek. First, for your information, I'm not trying to do anything to prevent building there. I just have certain things that are a concern to me. I attended the original meetings when that subdivision was put in, and, again, I didn't have any objections to that, but on the original drainage hearing, the commitment was that, you know, I asked the question, drainage, because we live at the toe of that slope. We were assured no problem with drainage, it will be better than it's ever been before. Well, I didn't have any problems with drainage off of that, it was all heavily wooded. They started building houses in there, I immediately had a problem, contacted them, they came out, they put up a silt dam and couple of bales of straw and said, you know, the problem is that, you know, this has just been stripped away for construction, the time of year and that sort of thing. You know, when we get everything established it will be fine.

Commissioner Nix: How long ago was that, sir?

Robert Gossman: It's been, what, three years ago, four years ago when the originals were put in? It's continually gotten worse, to the point now if we have just a moderate rain I have a river coming down off of here, down across my side yard and backyard to the point to where it floods the crawl space of my house. The drainage off of the slope comes, obviously, it moves north off of that slope and then east. I'm kind of at the northeast corner of this. So, it all moves toward me. Mr. Vogler is here, he lives next door to me, so they get part of that also. The original drainage, they put in a retention pond, but it moved everything west. The natural drainage off of that, it doesn't go west, it comes east. I would like to see in this plan something that some sort of positive means, whether that's a ditch at the toe of this slope, or some sort of a berm barrier or something across there so that when, if there is a drainage problem off of there, that it takes it on east and across the road instead of flooding my house.

President Tornatta: Okay. Let's maybe put you in contact with the architect, or the engineer, depending on who's, you?

Justin Shoffstall: I would rather go ahead and have the public comment, if we could, and that way, I think, I can address everybody's concerns all in one final statement.

President Tornatta: Okay. If you have any more questions, if you would get in contact with him, and then what we can do is, if you don't feel that your problem is resolved, then we can have Linda Freeman or Bill Jeffers go out there and take a look at the problem, see if we can address it from a hands on point of view.

Robert Gossman: Okay. I don't know if there are any other comments, but thank you.

President Tornatta: Okay. Thank you.

Ron Talley: I was here just to see what was happening. I think what I have could be settled by, you know, just talking to someone (Inaudible) this meeting.

President Tornatta: Okay.

Ron Talley: (Inaudible) preliminary thing. I would just like to talk to them.

President Tornatta: Okay.

Ron Talley: It's your call.

President Tornatta: We'll let this gentleman come up here and talk, and then if you have any other questions, maybe he can address those.

Ron Talley: Okay, and I hadn't (Inaudible).

President Tornatta: Okay, thank you.

Justin Shoffstall: Justin Shoffstall with Easley Engineering. Just to give you a brief synopsis, the original drainage plan and the original rezoning work was done back in 1999 under the original owners. Several years ago they, for whatever reasons, went through bankruptcy, went defunct, the property was sold at a Sheriff's tax sale several years ago, was purchased by an Indianapolis Developer called Pramco, and

within just the past two and half months Esquire Properties, LLC, one of the major partners on that being Bruce Miller, who has done developments in southern Indiana, Warrick County, Vanderburgh County, has purchased this property to take this over. Because, originally, in '99, we were following the same drainage plan that was filed and approved back in 1999. With Mr. Gossman's and Mr. Vogler's comments, Mr. Gossman is here on the very corner of Petersburg and Greendale, and it is correct that pretty much all of this property is draining down this direction. Most of it is being collected by the storm water detention basin, but the original plans did call for, and still call for today, that the reshape and revegetation of the existing ditch to capture storm water and channel the existing 36 inch RCP. That's along this entire joint property line on Greenbriar Hills, which is that lower end subdivision, and directing it here, because we do have enough fall to direct that water here to the 36 inch pipe, that goes into Greenbriar Hills, Pleasantview, and then slowly gets it way towards Little Pigeon Creek. We are, one of the benefits on this as far as the rezoning that you'll be hearing next week, if we are granted primary approval this Thursday by the Area Plan Commission, the Commissioners will hear this for rezoning as well, because we are rezoning it from the current R-3 with a UDC to amend the UDC to allow for single family residential homes, not to exceed that original count that was in the UDC rezoning of 45 condominiums or more. With a subdivision, one of the things as you may or may not be aware, with a subdivision all the drainage plan improvements have to have a letter of credit to ensure those are constructed before it's accepted for maintenance by the county. Unlike, with the condos, they can say they can do it, and if they don't do it, it will be one of those things that then the property owners will have to come forward, petition through the Vanderburgh County Surveyor's office, come before you as the Commissioners to have the problem corrected. With this it's the developer is forced to put the money forward, construct the ditch, and put in the drainage systems as required.

Commissioner Korb: So, what does that do to resolve this situation that these two gentleman have come forward with?

Justin Schoffstall: As far as they are downhill, we would be intercepting this water and channeling it away from their rear yards, because they are on the toe of the slope quite a bit. If nothing was ever built here, they would still have some sort of drainage problem, unless this ditch was put in, because just the natural slope and the flow of the land itself is approximately 60 plus acres that is just heading directly into these backyards. The backyards themselves slope down towards the homes, on the majority of these.

Commissioner Korb: But, essentially, what they've told us is, prior to construction of new development, they did not have any issues or problems.

Justin Shoffstall: It probably was not as prominent, because it was the majority woodlands and everything else. Once you start doing development with the hard surface improvements—

Commissioner Korb: Okay.

Justin Shoffstall: —you are going to see more hard surface water runoff.

Commissioner Korb: Sure.

Justin Shoffstall: If the original owner and developer had installed the ditch, you probably wouldn't have this situation arising today. If they had installed it correctly

as per the original plans. Unfortunately, they did not.

Commissioner Korb: So, the new owners of the property are willing to come in and correct the situation?

Justin Shoffstall: That is correct, and it is shown on the preliminary plan for the primary approval. One of the things we were hoping to have, at least by this time, was final street and drainage plans, there's just a few other issues, and the reason why we held that back was because I know Ted's had a lot on his plate, and since, oh, June or so there was a few items regarding street plans, regarding encroachments and hold harmless agreements that we want to get addressed in regards to the existing boulevard entrance and a retaining wall around one of the cul-de-sacs.

Commissioner Korb: Are they willing to put those assurances in writing as part of their plan?

Justin Shoffstall: Um.

Commissioner Korb: To address the drainage issue here?

Justin Shoffstall: Yeah, I mean, it's shown on the plans itself. It's part of the plan in general.

Commissioner Nix: Just curious, is there a way, and, I guess, the developer is not here today, so, you're speaking on behalf of them, that you could meet these gentlemen out there and basically walk them through what that plan is?

Justin Shoffstall: Yeah, that's not a problem.

Commissioner Nix: I think, you know, drawings are, they are what they are—

Justin Shoffstall: Right.

Commissioner Nix: —but, I mean, if you could kind of map out what you're planning on doing, then, of course, you'll have to adhere to that, you know, when this is installed. I don't know if that would help you guys at all, as far as actually meeting with you all out there and just kind of walking through what basically the interpretation of that plan is, as to what you're going to do there.

Commissioner Korb: Yeah, and I don't mean to be offensive when I say this, but I'm not impressed with the drawing. You know, these guys have been suffering through quite a bit of issues for the past several years, I would need to see something in writing before I would be able to vote yes at the rezoning. So, I'm just letting you know that right up front.

Commissioner Nix: I guess, we've got two issues, one is the drainage, which is what we're addressing here, and then rezoning issues.

Commissioner Korb: Yep.

Justin Shoffstall: The rezoning would be next week, as far as with what you hear.

Commissioner Nix: But, the drainage isn't coming until after, sometime after that, the final drainage plan?

Justin Shoffstall: Yeah, because what this has been filed as is a joint rezoning and subdivision, because right now if the rezoning, for your information, the rezoning is denied, simply because of the drainage, then we can go ahead and continue to build as condos with the existing drainage plan and without having it as a subdivision—

Commissioner Nix: Well—

Justin Shoffstall: —because subdivision would depend upon—

Commissioner Nix: —I don't want to make it hard up here, but, I mean, we always try to keep those two items completely separate, whether it's a rezoning issue or a drainage issue, and address each one of them individually. I've never been one to say I'm not going to allow this to happen because I'm not happy with the drainage, because we have the opportunity to address that when it comes up.

Justin Shoffstall: Right, and as far as, I mean, we do have it in writing as far as where these issues will have to be addressed, as far as to ensure that that off site water is not just sheet flowing onto them and is part of the preliminary plan that is before you for approval, and stating that this water would have to be collected and channeled away from these homes. So, even with that, with the approval, if it's not constructed that way, which I really, sincerely do not believe that that would be the case, because I know the developer and the projects that he's done here in Vanderburgh County and Warrick County for over 20 years.

President Tornatta: Of course, if he does have a problem, then they can always come back and talk to the Surveyor, and get something else done about it.

Commissioner Korb: My biggest issue is, I just want it fixed. I'm not trying to be a jerk, but, you know, boy, every time a small person comes up against government or something else, it's a chore. It really is. Something like this, if it's been on-going, they try to make appeals, and they've fallen on deaf ears, I'm thrilled you're excited about your developer, I hope it really works out and has a Disney ending, but if it doesn't then, you know, it's something that we have to address.

Justin Shoffstall: I would like to reiterate too that my client—

Commissioner Korb: Happy ending.

Justin Shoffstall:— my client, the current owner who has just purchased this within the past two months—

Commissioner Korb: Sure.

Justin Shoffstall: — just closed on the property, did not create these problems.

Commissioner Korb: Right.

Justin Shoffstall: He is purchasing something that has already been started, and will be finishing it out in order to provide the type of product that has typically, that he has put out. These type of situations are not something that he encounters, creates, and has not been the case.

Commissioner Nix: I just think there's some peace of mind if they can actually see what you're going to do.

Justin Shoffstall: Right.

Commissioner Nix: It's on the drawings, and it gets put in that way—

Commissioner Korb: It's worth a lot.

Linda Freeman: And, now that that's been brought to our attention too, then I'll make sure that Bill's aware of it, and see that we communicate with these gentlemen also.

Commissioner Korb: That would be great. Thanks.

Justin Shoffstall: That was part of the original communications that we had with Mr. Jeffers, dating all the way back to May and June, whenever we first started working on this, when our client was doing his due diligence prior to closing on the property.

Commissioner Korb: Sure.

Ted C. Ziemer, Jr.: Justin, you mentioned my plate, I'm unaware of any specific assignment we have, or document we have to review specifically with regard to this subdivision. If I am mistaken, you need to refresh my recollection, and you call me tomorrow and tell me. Because, generally, the more I have on my plate, the quicker I get things done.

Justin Shoffstall: And I was talking to John Stoll about that too. So, he mentioned that he would probably do a reminder e-mail as well.

Commissioner Korb: Super. Thank you.

Justin Shoffstall: Thank you.

President Tornatta: Any other public comment?

Commissioner Korb: Motion to adjourn.

Commissioner Nix: Second.

President Tornatta: So ordered.

Those in Attendance:

Troy Tornatta
Linda Freeman

Ron Gossman
Others Unidentified

Bill Nix
Ted C. Ziemer, Jr.
Ron Talley
Members of Media

Jeff Korb
Madelyn Grayson
Justin Shoffstall

**VANDERBURGH COUNTY
DRAINAGE BOARD**

Troy Tornatta, President

Bill Nix, Vice President

Jeff Korb, Member

(Recorded and transcribed by Madelyn Grayson.)

**VANDEBURGH COUNTY
DRAINAGE BOARD
NOVEMBER 18, 2008**

The Vanderburgh County Drainage Board met in session this 18th day of November, 2008 at 5:33 p.m. in room 301 of the Civic Center Complex with President Troy Tornatta presiding.

Call to Order

President Tornatta: Continuing on. Tuesday, November 18th's agenda for the Vanderburgh County Drainage Board meeting will commence. It is 5:33 p.m.

Approval of the November 11, 2008 Drainage Board Meeting Minutes

President Tornatta: I need a motion to approve the previous meetings minutes.

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered.

Windemere Farms Sections 4 & 5: Amended Final Drainage Plan

President Tornatta: Mr. Jeffers?

Bill Jeffers: Good evening. The first drainage plan is Windemere Farms, sections four and five, amended final drainage plan, reprised. We went back and tweaked it just a little bit since the last time we presented it to you. It still conforms to the drainage code and the recommendation is still to approve. This is a formality. They made some additional repairs that improved the situation and this is a new as-built.

President Tornatta: I need a motion.

Commissioner Korb: So moved.

Commissioner Nix: Second.

President Tornatta: So ordered.

Stonegate Estates: Amended Final Drainage Plan

Bill Jeffers: Stonegate Estates, same situation. It's a finished subdivision. They moved the spillway of the lake over to the southeast side of the discharge pipes because that was a more practical area for the emergency spillway. It followed the natural watercourse into the creek. There's a few other very minor cosmetic changes that were made with some flagstones, etcetera inside drainage easements. This is another as-built, and we're billing it as an amended final drainage plan with a recommendation to approve.

Commissioner Korb: So moved.

Commissioner Nix: Second.

President Tornatta: So ordered.

Ditch Maintenance Claims

Bill Jeffers: Claims from ditch contractors, I have laid on your desk in front of Madelyn. It's quite a few because it's getting towards the end of the year. These are mostly maintenance contracts, mowing, sprayings, annual maintenance, along with a claim to Structure Pointe Engineers for approximately half of their plan to reconstruct East Side Urban at that weir to discharge more water north to Pigeon Creek. The recommendation, all of the paperwork is there and the recommendation is to approve the claims.

Commissioner Nix: Move approval.

Commissioner Korb: Second.

President Tornatta: So ordered.

Other Business

Bill Jeffers: Under other business, I'm going to skip the first bullet point.

Commissioner Nix: Thank you.

Bill Jeffers: The second bullet point, Hamilton Creek, you just approved that plan, and basically I wanted to clarify some comments that were made during the Drainage Board meeting of last week. Justin Shofstall would like to make some improvements within the easement in Hamilton Creek and also within the easement for Greenbriar Subdivision. I'm directing him to get permission from each of the property owners to do that across the line. I'm not saying it's not doable, I'm just saying that we can't automatically grant him the right to go onto another subdivision and make those improvements. However, if his plan works out, it will be for the better. If it doesn't work out, all the improvements will have to be made on the Hamilton Creek side. I believe I sent you an e-mail with more details to that effect. As a courtesy, I included the next bullet point, Pigeon Creek clearing project. A newly elected official from Warrick County, Mr. Mosbey, Tim Mosbey, came over this morning and showed me a plan for clearing log jams out of Pigeon Creek between Stevensons Station Road and the Vanderburgh County line. They've already let that contract, and he was wondering if the Vanderburgh County Drainage Board would be interested in participating. I said we didn't have funds set up at the current time for that. We would be interested in participating. There may be some funds come from the federal government as part of the economic stimulus package. We might want to look into that. He said something to the effect that what if they loaned us some money ahead. I said we need to convene a joint Drainage Board meeting between the two counties and discuss that. So, as a courtesy I brought that information to you tonight.

President Tornatta: I talked to Commissioner Elect Mosbey, and it seems like we have roughly a mile that we need to do, and they have quite a few miles to do, starting at Highway 68.

Bill Jeffers: Correct.

President Tornatta: So, if we were to do this, our, their bid was for \$117,000, or something along those lines. Ours would be considerably less.

Bill Jeffers: Correct.

President Tornatta: If we were to do that. The outfit that they had was their lowest bidder and very reasonable, after looking at what he had bid.

Bill Jeffers: It was Mr. Bigge—

President Tornatta: Yeah.

Bill Jeffers: —from Posey County, who does excellent work. He and his son are now, I guess, have a partnership. They do wonderful work. The bid was dirt cheap.

President Tornatta: Yeah.

Commissioner Nix: Don't tell Mr. Bigge that.

President Tornatta: Yeah, well.

Bill Jeffers: Hey, the contract's been accepted.

President Tornatta: Anyway, that's what—

Commissioner Nix: Wasn't there one other issue we were talking about at one time about maybe talking to them about?

President Tornatta: Pigeon Creek.

Commissioner Nix: Along, yeah, Pigeon Creek there?

Bill Jeffers: There was some Build Indiana funds, but, I believe those were all withdrawn by the Governor back around 2000 or so.

Commissioner Nix: No, this was just maybe three or four months ago.

President Tornatta: Nova Conner.

Bill Jeffers: Oh, there was another issue on Williams Ditch.

Commissioner Nix: I don't know if it was on Williams Ditch. This was further down, just north of the Lloyd. It seemed like there was an issue that both counties were involved with.

Bill Jeffers: Right.

President Tornatta: This was Pigeon Creek as it goes to the river. However—

Bill Jeffers: Oh, yeah, that one too.

Commissioner Nix: It comes back around. I didn't know if maybe we could discuss that at the same time.

Bill Jeffers: I think you all should just have a joint Drainage Board meeting between Vanderburgh and Warrick and hash several of these issues out.

President Tornatta: I'll meet with Commissioner Elect Mosbey, and we'll see if we can address that.

Bill Jeffers: Okay. Good deal. That concludes anything I have for you tonight, unless you have something else.

President Tornatta: Okay. Welcome back.

Bill Jeffers: We did approve the minutes, didn't we?

President Tornatta: We did.

Public Comment

President Tornatta: Any public comment on drainage? If not, I would entertain a motion to adjourn.

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered. Thank you.

(The meeting was adjourned at 5:40 p.m.)

Those in Attendance:

Troy Tornatta

Bill Jeffers

Others Unidentified

Bill Nix

Kathryn Schymik

Members of Media

Jeff Korb

Madelyn Grayson

**VANDERBURGH COUNTY
DRAINAGE BOARD**

Troy Tornatta, President

Bill Nix, Vice President

Jeff Korb, Member

(Recorded and transcribed by Madelyn Grayson.)

**VANDEBURGH COUNTY
DRAINAGE BOARD
DECEMBER 16, 2008**

The Vanderburgh County Drainage Board met in session this 16th day of December, 2008 at 5:45 p.m. in room 301 of the Civic Center Complex with President Troy Tornatta presiding.

Call to Order

President Tornatta: Okay, we're going to open the, oh, hello, we're going to open the Drainage Board meeting, Tuesday, December 16, 2008. It is 15 till six.

Approval of the November 18, 2008 Drainage Board Meeting Minutes

President Tornatta: Motion to approve the previous meetings minutes.

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered.

Cambridge Section 2A: Final Drainage Plan

President Tornatta: Mr. Jeffers?

Bill Jeffers: Yes, we have one drainage plan before you this morning, or this evening. It's a final plan for Cambridge Section 2A. It's the portion of the previous Section 2, inside the yellow, what do they call those? Trapezoids? Yeah—

Commissioner Korb: I had to look up to see what that was.

Bill Jeffers: Inside the yellor lines. Basically, they just reconfigured some lots to meet the current market demand for lot size, and then readjusted the drainage easements and facilities to match the new lot lines. Everything comports with the drainage code and the recommendation is to approve the final drainage plan for Cambridge Section 2A. The engineer is here, and are there any remonstrators? Or comments?

President Tornatta: Seeing none. Do I have a motion?

Commissioner Nix: So moved.

Commissioner Korb: Second.

President Tornatta: So ordered.

Discussion of Pigeon Creek Improvements

Bill Jeffers: The next item is a discussion of Pigeon Creek improvements. A few weeks ago a fellow named Tim Mosbey from Chandler, Indiana, who's a newly elected Commissioner, previously a County Councilman in Warrick County, came in and gave me some information on what the Warrick County Drainage Board is currently doing to improve Pigeon Creek, I believe from Indiana 68, maybe.

President Tornatta: 68.

Bill Jeffers: 68, oh, you've talked with him too?

President Tornatta: Uh-huh.

Bill Jeffers: Great, down to the Warrick County line there, east of I-164. Funds committed by Warrick County for 80,000 feet, from State Road 68 to the west Warrick County line, \$136,170. Then an extension, they have some more money in here, \$17,282, and then some different things like that. Anyway, this all came, originally, from a project that we've discussed where Warrick County-Vanderburgh County enjoy a joint Drainage Board that was formed, I believe, during the previous administration around 2000, for the purpose of working on Pigeon Creek. At that time there was some money available from the state for log jam removal between Stevenson Station Road and Green River Road, but those funds were pulled back to help balance the state budget, and we've never pursued it again. Tim Mosbey is interested in reactivating that project next year and seeing to what extent the Vanderburgh County Drainage Board would like to participate. Tonight there is an advocate here for Pigeon Creek, former Senator Paul Bitz, and he would like to address the issue briefly. We have an aerial photograph of the area up there, either side of Green River Road, in case anybody wants to make reference to that.

Paul Bitz: Good evening, Commissioners.

President Tornatta: Good evening.

Paul Bitz: I would just like to say that you people that are going out of office, you can consider yourself having a good term of office, because I was never down before you. So, you had good luck. But, anyway, don't give up, just keep fighting, some day you may return and still stay connected to the community, which I know you all will.

Commissioner Nix: Thank you.

Paul Bitz: I would like to say about Pigeon Creek, when I was a young boy, years ago, I'm not going to tell you how many years ago, but when I was, I always, we used to go to Pigeon Creek, and, believe it or not, we would swim in it, even though there wasn't much to swim in, and we really enjoyed having a time. Back in those days, the kids, you didn't have anything. Today they've got everything. Their parents give them everything they want. If they cry, they get a little more. But, anyway, what I would like to see done on Pigeon Creek is eventually, in conjunction with the other county, that when they start the infrastructure money, which will be coming out sometime in April, from the new Obama administration, that that could be a good project. My understanding, and I don't know whether you know it or not, but I have a few people in Washington that I work with. My son was Deputy Under Secretary of Defense, Financial Division, for years, and he just retired. Anyway, he's been working on some stuff as well on that, so, he, I've discussed it with him, I think that would be a great project for the Commissioners to recommend and have ready to go. I'm disappointed that the city isn't doing anything toward getting some project going. I understand Carpentier Creek is about ready, all you need is the money, and I think that would qualify. What we would have to be careful is, when that money comes into the state, you know, there's going to be somebody allocate where that money goes. If your project's not ready, they're going to pass you up and give it to somebody else. I talked to the members of the Indiana General Assembly, and I've asked them that they should put in an advisory board that would have some strength

to see that the Governor, and not necessarily because he is a Republican, if it would be a Democrat he would be doing the same thing, but see that when that money is allocated that it's put out equally, and it's put out for the projects that are asked for, and the projects that get the money are done. That's what I would like to say. I would like to see the Commissioners, and I think, Troy, I heard somebody tell behind the scenes, I hadn't talked to you about it, that you had been thinking about a wish list when that money starts coming in, and my understanding you have to have it, the design and everything ready and be ready to go out for bids within 30 or 40 days, because the idea is to get people back to work. They're not going to wait six months or a year. That's all I have to say, and I appreciate you letting me come down and talk to you about it. Thank you very much.

President Tornatta: Thank you.

Commissioner Nix: Thank you.

Commissioner Korb: Thanks, Paul.

Bill Jeffers: Basically, what Paul's referring to is a study that was done on Carpentier Creek 2000-2002, has some recommendations for immediate work that can be done. That consultant was Structurepoint, American Structurepoint, and they could prepare plans that would be ready to go, ready to bid in a matter of 30 days. On Pigeon Creek, we would have to work at a little bit greater speed to bring ourselves up to snuff, to put together some log jam removal and other green improvements. I believe that the first wave of money that will be coming from the federal government, as a stimulus package, will be hard infrastructure improvements; bridges, roads, that type of thing, and the second wave will be green stuff. We definitely want to be ready for some of that green infrastructure improvement money.

President Tornatta: Mr. Jeffers, one of the issues I think we keep coming back to is how does the Ohio River flux have to do with Green River Road, or even Carpentier Creek? It always seems like we come back to, once the flood stage is of a level, it doesn't matter what improvements we've done, we're still going to have flooding in some of those areas.

Bill Jeffers: Oh, that's absolutely true. What we would be looking to improve are the seasonal floodings that occur every year, or every two or three years, where we have a local heavy storm system come through, and have local deluges that just affect Pigeon Creek. Then, that's where the log jam removal and the channel improvements, that type of thing would be of benefit. But, you're right, once the river gets up to 44-48 feet, then if you have a regional rain storm that, the entire watershed all the way up to Princeton, Indiana is hit by a series of heavy rainstorm cells, like what happened, I believe, in 2006, you can blame it on development, you can blame it on any number, log jams, or any number of things, but I'm going to tell you when we went out and measured the high water for that last event that flooded Green River Road and everyone had to sandbag up through there, we got the identical, I mean, within an inch of the same elevations as what we got in 1983, before all the development occurred. When you have that type of event, where the river is up, and then you have a regional deluge, it has absolutely nothing to do with anything but sheer intensity and longevity of the rainfall, and then the runoff cannot get out into the river, because the river is standing at a height.

Commissioner Nix: And what you just said, Mr. Jeffers, is a testimony to the work that you've done with the Drainage Board over the years, as far as making sure that

people comply with the law. I mean, you've put in a bunch of hard surfaces and roofs and stuff and you don't have any more change than that, I mean, that tells us the system is working.

Bill Jeffers: Yeah, that and the grace of God.

Commissioner Korb: You've done a great job of getting everything to comport together, and I commend you for that.

Bill Jeffers: Well, I appreciate that, Jeff. Comport, yeah, you got me there. I'll try not to use the word comport again in this meeting.

President Tornatta: In this meeting.

Commissioner Nix: Are we over? Because that won't happen often.

Bill Jeffers: Okay, so, I just want to, just a heads up to Commissioner Tornatta and the incoming Commissioners, we will be bringing you proposals for work that may qualify for the stimulus package money. Forthcoming, we hope.

Update on Setting of Hearing Date for Joe Nickolick Obstruction Hearing

Bill Jeffers: We need to set a date, I thought we needed to set a date for the Joe Nickolick obstruction hearing, but since I put this on the agenda, some representatives of the two entities that are to clean out the drain, hopefully, have said that they're progressing towards that. So, I sent back a letter telling them that I would come to you the first meeting of January and have you set that date for the second meeting of January, or the first meeting of February. You still have time within the 90 days to have two meetings. One at the end of January, and one at the beginning of February. So, we can skip that.

Ditch Maintenance Claims

Bill Jeffers: We need to pay the ditch contractors. I have the end of the year claims on the desk. I recommend approval of all those. (Cell phone ringing.) I think that's one of them calling me now. Yes, we're going to pay your claims. Thank you.

President Tornatta: Are we that far behind, Ted? Ted, I mean, Bill?

Bill Jeffers: So, I'm asking you to pay those claims.

Commissioner Nix: Move approval.

President Tornatta: Second, oh, you're second.

Commissioner Korb: Second.

President Tornatta: It's a Christmas show, ladies and gentlemen.

Bill Jeffers: That was my daughter. I just cut her off.

President Tornatta: Motion approved.

Discussion of Linda Phillips Project Payment

Bill Jeffers: Okay, on the Linda Phillips project, I'm just asking for a brief determination, possibly just a comment by your attorney as to when we would be able to pay the contractor for that. We've had the discussion, via e-mail, I just want to get it on the public record so that I can send a copy of the minutes to the contractor letting him know when he can expect payment for that. That's where we were running through the ordinance, because it was a code violation—

Ted C. Ziemer, Jr.: I don't have that with me today, but you and I talked about it on the phone, and we said—

Bill Jeffers: 90 days.

Ted C. Ziemer, Jr.: —90 days. Yeah.

Bill Jeffers: The code says we have to give Mrs. Phillips 90 days to pay the contractor, after which we can pay him out of funds we hold for that subdivision.

Commissioner Nix: Was the contractor made aware that his payment could be up to 90 days after completion?

Bill Jeffers: He was not aware of that when I contracted with him, because I was not aware of it. That was an oversight on my part, the way I read the statute.

Commissioner Nix: I guess, in all fairness to him, is there some other place we could draw money out of, and then—

Ted C. Ziemer, Jr.: We would have to ask Bill Fluty. I don't know.

Commissioner Nix: You know—

President Tornatta: Well, yeah, I mean—

Ted C. Ziemer, Jr.: How far are we on the 90 days?

Bill Jeffers: December 1st was the 30th day, after, I got a green card, I sent the bill to Mrs. Phillips, registered mail return receipt requested, on December 1st, and received the green card back that she had received it on December 2nd. No, excuse me, November 2nd.

Commissioner Korb: Yep.

President Tornatta: Could we end up paying this out of Infrastructure money and reimbursing that account?

Ted C. Ziemer, Jr.: I'm not sure. I would want to talk to the Auditor about that.

President Tornatta: Hold on, we've got a meeting on the 23rd—

Ted C. Ziemer, Jr.: Well—

President Tornatta: No?

Ted C. Ziemer, Jr.: Sure, but we just keep adding agenda items to that. What, have you talked to the contractor?

Bill Jeffers: He just wants a letter that he can put in his files saying that he has to wait 90 days, in case anything comes up in his business where someone's asking him why he's, I guess, with his accountant. I didn't go into particulars with him, and I wouldn't announce it at the meeting.

Ted C. Ziemer, Jr.: So, he's not—

Bill Jeffers: He's a little disappointed, but he just needs a statement that he has to wait 90 days.

Commissioner Nix: Personally, I would just as soon, if there's a way we could work it out to get the money in a timely manner.

President Tornatta: I agree.

Commissioner Nix: I mean, 90 days is—

Bill Jeffers: I agree. I hope to have, next year I hope to bring this back and get that code changed to 60 days or less.

Commissioner Nix: Bill, do you want to talk to Bill? Or do you want me to talk to him?

President Tornatta: Yeah, I mean, we can ask Auditor Fluty, and then, if we need to, if we have to put it on the 23rd's agenda, we're going to have to. I mean—

Bill Jeffers: We can talk to Bill Fluty.

President Tornatta: I would rather get him paid (Inaudible).

Bill Jeffers: We could take it out of Ditch General, you know, if the State Board of Accounts is okay with it. They are usually okay with us taking money out of Ditch General, as long as it gets back into the proper account.

President Tornatta: Well, I mean—

Bill Jeffers: Within a certain period of time.

President Tornatta: —all we have to do is work that out with—

Bill Jeffers: Right.

President Tornatta: —Bill to put that back in there. We can write a letter to that effect.

Bill Jeffers: This could all be done the first meeting of January, which I think is January 6th?

Commissioner Nix: And he could have a check just a few days after that, or something?

Bill Jeffers: Right. Is that okay?

President Tornatta: That's fine.

Bill Jeffers: So, we'll talk, I'll talk to Mr. Fluty. I'll communicate with you individually, by e-mail, I'll send a copy to Mr. Ziemer, and then you can make your decision together on January 6th. Is that okay?

President Tornatta: That's fine.

Bill Jeffers: Thank you.

Other Business

Bill Jeffers: I don't have any other business, except to say that I've truly enjoyed working with Commissioner Korb. You always keep me on my feet, on my toes. I think you've got a good heart. Your heart is in the right place. Sometimes we don't agree, our heads aren't in the same place, but I wish you and your family all a Merry Christmas and very prosperous New Year.

Commissioner Korb: Thank you.

Bill Jeffers: I'll miss ya.

Commissioner Korb: Me too.

Bill Jeffers: Hope to see you again. Bill Nix, there's not a whole lot I can say, other than you're the best Commissioner I've ever worked with when it comes to public works projects. You're it.

Commissioner Nix: Thank you very much.

Bill Jeffers: There's none better. Ted, you're the best.

Ted C. Ziemer, Jr.: Thanks.

Bill Jeffers: Truly. You know, I can send an e-mail to Ted Ziemer, and within a half an hour get a response. If he's in his office, he picks his phone up. This is really unusual for a County Attorney, and I'm going to really miss that. He's the best. Troy, I look forward to working with you, and I know the two Commissioners that have been elected are going to be a pleasure to work with, both of them. I know both of them, they'll be great. So, I hope it's a seamless transition in that respect, and we move forward serving the public.

Commissioner Nix: Bill, thank you very much. It's been a pleasure working with you too. I'm sure we'll cross paths soon, down the road.

Bill Jeffers: Great.

Commissioner Nix: Not in this position though.

Bill Jeffers: Well, I hope you bring some development plans forward for approval.

Commissioner Nix: I'm working on it.

Bill Jeffers: I'm done.

President Tornatta: No, that's fine.

Public Comment

President Tornatta: Public comment?

Bill Jeffers: Oh, I'm sorry.

Antionetta Carter: (Inaudible).

President Tornatta: You'll have to come up to the microphone if you want to speak.

Antionetta Carter: I apologize. This is something new to me, and, I, like I said before, I wasn't aware of the forum and the Board, and I'm not aware of the proper procedures as to addressing you all. But, the gentleman he made some really good points about Green River Road being flooded in certain areas and things like that, but I also wanted to include the inner city, like the Bellemeade-Bayard Park streets, they have been flooding for years and years. He was talking about Pigeon Creek being, you know, cleaning it out and keeping it safe and so forth and so on, but you made a valid point when you said what about the Ohio River, when it rises? What I've noticed is, that we're not only growing and expanding on the east side of town, we're also growing and expanding to the north, I mean, to the west side of town, with our college students, with that area a lot of development is going to be going on as far as housing for the students and so forth and so on. Then, also, like in Cambridge, which I love that subdivision, one day, hopefully, God will bless me to live there, but, anyway, but what I, me personally as an individual and as a taxpayer, I see the need in this city for another water filtration system. Because, if we don't do something about just having the downtown area and all the waste running through the entire city of Evansville, going through the inner city, and once it becomes over capacitated, it stops right there where my home is and where my business is. I have to call the Water Department to have them to come blow out the drains, because there's toxic waste coming in through the drains. All they do, they blow it down to the next block, you know, because there's really no place for it to go. Once it's full, it's full, you know. I'm sitting here thinking that we as the City of Evansville, we're trying to grow our city and make our city more aggressive and more pleasurable for people to come in and want to bring businesses here, want to bring industrial and people to relocate here and actually stay, but how could we do that without, when we have a stench, just like Terre Haute.

President Tornatta: Right.

Antionetta Carter: You know, I mean, if we don't, and then, not only that, I think that also plays a part on the high cancer rate. You know, if we're drinking water that is not being filtrated properly, then there goes, you know, it causes illness.

President Tornatta: Antionetta, let me just—

Antionetta Carter: Okay, stop me.

President Tornatta: –no, just to tell you that these would be City Council issues, addressed to either the Mayor or the City Council. Where this is a county Drainage Board. Even though it's Vanderburgh County–

Antionetta Carter: Yeah, that's–

President Tornatta: –and the city is in the county, it does not deal with those issues with regard to water filtration systems and sediment systems inside the city.

Antionetta Carter: Okay, so, what you're dealing with is the ditches around the I-165 area?

President Tornatta: Well, outside the city incorporated.

Commissioner Nix: We have no jurisdiction over any sanitary sewers.

Antionetta Carter: Okay, so, since I live off of Burkhardt Road, the side, I live on the Vanderburgh County side, but right across the street from me is the–

President Tornatta: There could be a city-county division in that area.

Antionetta Carter: Yeah, right there. Okay.

President Tornatta: Where you live.

Antionetta Carter: Yes.

President Tornatta: And, because of the city having sanitary sewers, that's their jurisdiction.

Antionetta Carter: Okay.

President Tornatta: So, that doesn't necessarily deal with the county.

Antionetta Carter: Okay, I understand.

President Tornatta: So, not to–

Antionetta Carter: I understand, so, not cover it all.

Commissioner Nix: Point well taken though, really.

President Tornatta: I'm not saying that.

Antionetta Carter: Huh?

Commissioner Nix: Point well taken though. I mean, it's–

President Tornatta: It is, I just want you to know that you are going to have a better audience–

Antionetta Carter: Okay.

President Tornatta: –in possibly City Council or dealing with the Mayor.

Antionetta Carter: Okay, that's true.

President Tornatta: Okay?

Antionetta Carter: Okay, well, I apologize—

President Tornatta: That's okay.

Antionetta Carter: – for taking up your valuable time.

President Tornatta: No, that's okay.

Antionetta Carter: I want to wish you all a happy holiday.

Commissioner Nix: Thank you.

Antionetta Carter: Now that I know—

President Tornatta: But, don't be afraid to ask questions, especially when you go down to the Assessor's office, the Auditor's office, the Recorder's office, ask them those, not the questions on the sewage and drainage—

Antionetta Carter: Uh-huh.

President Tornatta: –but any questions you have about your house, you need to ask them those specific questions. Don't feel like there's a stupid question out there—

Antionetta Carter: Yeah.

President Tornatta: –because it might be something that's going to help solve your problem, and I'm sure they've been asked many times before, and it might be old hat for them, but if you're going to find out the information you need, you need to be able to ask any question, and that's what they're there for.

Antionetta Carter: Okay, then. Okay, well, thank you so, so much, and everybody have a safe and happy holiday.

Commissioner Nix: Thank you.

Antionetta Carter: I'm sorry that I didn't get more involved before you guys are all leaving.

Commissioner Nix: The door, I'm sure, will always be open.

President Tornatta: It will be.

Antionetta Carter: God bless.

Commissioner Nix: Thank you.

President Tornatta: Okay, thank you.

Commissioner Korb: I move for adjournment.

Commissioner Nix: Second.

President Tornatta: So ordered. Thanks guys.

(The meeting was adjourned at 6:10 p.m.)

Those in Attendance:

Troy Tornatta	Bill Nix	Jeff Korb
Bill Jeffers	Ted C. Ziemer, Jr.	Madelyn Grayson
Paul Bitz	Antionetta Carter	Others Unidentified
Members of Media		

**VANDEBURGH COUNTY
DRAINAGE BOARD**

Troy Tornatta, President

(Not in office when approved.)
Bill Nix, Vice President

(Not in office when approved.)
Jeff Korb, Member

(Recorded and transcribed by Madelyn Grayson.)