

**VANDERBURGH COUNTY
DRAINAGE BOARD
NOVEMBER 10, 2020**

The Vanderburgh County Drainage Board met in session this 10th day of November, 2020 at 3:20 p.m. in Exhibit Hall A of the Old National Events Plaza with President Cheryl Musgrave presiding.

Attendance Roll Call

President Musgrave: Madelyn, please call the roll.

Madelyn Grayson: Commissioner Shoulders?

Commissioner Shoulders: Here.

Madelyn Grayson: Commissioner Hatfield?

Commissioner Hatfield: I'm here.

Madelyn Grayson: President Musgrave?

President Musgrave: I'm here.

Pledge of Allegiance

President Musgrave: If everyone would please stand for the Pledge of Allegiance

Comments by President Musgrave

President Musgrave: I want to make note that we will be taking the agenda items in a slightly different order. Hunter Chase will be handled last on the agenda, after public comment, due to the conflict of Commissioner Hatfield, who will leave the room before we start that.

Approval of the October 27, 2020 Drainage Board Meeting Minutes
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President Musgrave: Mr. Mueller, would you now move to, well first let me get the approval of the minutes of the previous meeting. Is there a motion to approve?

Commissioner Hatfield: So moved.

Commissioner Shoulders: Second.

President Musgrave: We have a motion and a second. All those in favor, please say aye.

All Commissioners: Aye

President Musgrave: The motion carries.

(Motion approved 3-0)

Notification Requirements

President Musgrave: We move now to notification requirements. Mr. Mueller?

Jeff Mueller: Can you hear me? There's been quite a bit of confusion over notification requirements regarding drainage plans over the last couple of years. And what I'm going to do is kind of go on record and explain this. And especially since I'm not going to be here anymore, but you all will be here for two years or longer. And so, so that if this comes up again. When I took office and we had major subdivisions come about, we'd have people come in with the preliminary drainage plan, say, you know, the last week of

November, and then the preliminary, the preliminary plat would go to, or the primary plat would then go to APC the following week. When the notices were sent out for the APC meeting that, you know, with the deadline a week or 10 days sometimes on those notices, that would also say that the drainage plan would be approved on a certain Drainage Board meeting. Now, the problem with that was we had people coming in saying, well, I just found out about this drainage plan. And, you know, I just got my notice today. Well, at the time, there was no requirement to let people know that a drainage plan even had to be notified. It was just more of a courtesy. So, as you might be aware in the last eight years, I've made two major changes to the drainage code, which contained a number of issues. But one of those was we went from this, oh letting people know through the APC process, maybe, or maybe not, to a requirement for notification of drainage plans. Now that requirement does not state that all drainage plans that you have to notify, only certain ones. And those ones are, if it's a major subdivision, if it's a minor subdivision with a zoning of a C-0 through M-3, or if it's a single parcel commercial or industrial parcel that's of two acres or greater, then at that point, you have to notify the adjoining land owners, only for those situations. And the idea was subdivisions, hey, I live next to a subdivision, maybe the retention pond is going to be next to my property. I need to know that. A commercial, if it's a commercial lot and next to a bunch of other commercial lots, then notification isn't required. But if it's a commercial lot out in the middle of nowhere, for example, Petersburg Road and Boonville-New Harmony where they're going to build a new gas station, then the notification goes out, because we've got Ag and Residential there. But that requirement has only been in since we changed the code. The requirement works different than the APC. You can send it out with the APC notice on a subdivision if you want, but you have to meet both deadlines. So, if our meeting is first, you've got to meet the seven-day notification deadline. Also, we don't require green cards. We require a notification process. You can go and do a certificate of mailing, which is much cheaper. And also, as we will find, and I think you'll find, and we really ought to think about this County wide for everything, people don't like certified mail. They get the note, the card. I don't want to run to the Post Office. I haven't got time to run to the Post Office. So, you send out all these cards by green card and half of them come back undeliverable. So, it is something to think about, but it's something that we did in our process to, there's no guarantee that they got that letter, but there is a guarantee that the Post Office got the letter and it's up to them to deliver it. So at least there is some proof of some intent to notify people.

President Musgrave: I'm just going to make a note here. Both you and Commissioner Hatfield are members of the Area Plan Commission. You can make a motion to do that at the Area Plan. Just letting you know.

Jeff Mueller: Okay. So anyway, just so that when we have people come in, in the future on anything, and say, well I didn't get a notice, it may not have been. Now, one other thing is, you as a Board, can require a notice, if you feel it's important to, for any other reason. Now, in my own personal opinion, when we have a subdivision being developed, we've already sold lots off and that the developer wants to change where the ditch is in my backyard, well, I think I should be notified of that. So, in those particular cases, when a notification or sign off is not only good practice, but I think, I think our lawyer might even tell us that would be or counsel, would tell us that, yeah, probably somebody needs to sign off when it's taking place in your back property. So, just kind of a little, you know, notification, I do this, or so you understand why I changed this. Like I said, I've made two changes to the code that took into account a lot of different things, but that was one of them that, and the reason I changed code, everybody says, well, Jeff, do you just sit around and change the code because you don't have anything better to do? No, we changed the code to try to keep updated and tried to address concerns. And this was a concern. So anyway, that's all I have on that topic.

President Musgrave: Thank you. And I think that your work to change those requirements and to add notifications has been a real public service. So, thank you for that.

Jeff Mueller: I do too, and I'm not trying to pat myself on the back, but what I have found is on many occasions, especially on subdivisions, when we tell somebody that it's on there and people call our office, or Jacob here, he's my computer whiz and puts stuff on the internet in no time on our website, we've had so many people come down and look at a drainage plan and go, oh, well, that doesn't affect me. Or, oh, that ditch is going to

take more water away from me. And we've actually, I believe, on the subdivision process, actually decreased the amount of people that were coming in here on drainage plans, because they have an opportunity to come to our office or get online and look at things and try to keep that out of this meeting where we're sitting here, unfolding maps in front of people going oh, here's your property. Oh, okay. Okay. So that's the whole basis behind it. And I do think it's helped things out. So anyway,

Review of Approved Claims

President Musgrave: We move now to the review of the approved claims

Jeff Mueller: Yes, I've given you a summary of claims. It is the typical spreadsheet. It is, let me find that. I'm sorry. The review of claims, I have signed, under the powers, under the emergency powers granted to me, seven claims within the last couple of weeks. The claims were for a total of \$7,460. They were to two vendors. All the claims were for the first 85% of the work done. All claims were for work previously approved by this Board.

President Musgrave: Is there a motion to approve the claims?

Commissioner Hatfield: So moved.

Commissioner Shoulders: Second.

President Musgrave: Okay. We have a motion and a second, all those in favor, please say.

All Commissioners: Aye.

President Musgrave: Motion carries.

(Motion approved 3-0)

Noll-Oak Hill Church of Christ Drainage Obstruction Petition Public Hearing
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President Musgrave: We move now to Noll vs. Oak Hill Church of Christ obstruction petition.

Jeff Mueller: Before we start that, I just want to note a couple of things. When I took office in 2013, we had what I considered a very successful transition, and that was due to two factors. One Bill Jeffers, my predecessor, getting with me and spending some time. We had a couple of off-site meetings and they went very good. And then the second was the fact that Linda Freeman, who's going to be your next County Surveyor was in the office, and, between the two of them, they helped me get things going pretty good. As you may realize, we had Jacob up here going through a drainage plan review for you all a meeting or two ago, and Jacob is going to be the lead person on this particular petition. So, he's going to be up here doing most of the speaking and handling it. I have looked over the petition paperwork that he submitted to you, and I fully agree with what he submitted to you. But at this time, I'd like to turn the mic over to Jacob Timmons.

President Musgrave: You, aren't leaving, are you, Jeff?

Jeff Mueller: No.

President Musgrave: Okay, then.

Craig Emig: If you are here for the Noll versus Oak Hill Church of Christ obstruction petition, please stand and raise your right hand. If you are here to present evidence on that petition, please stand and raise your right hand and repeat after me. I swear to affirm the truth, the whole truth and nothing but the truth, so help me, God. Do you agree?

Unidentified: I do.

Craig Emig: Okay. First, we would like to start with the petitioners in this. Is Mr. Noll here? If you would approach. Mr. Noll?

President Musgrave: Yeah. Let's let Mr. Timmons give us—

Jacob Timmons: Sorry. I was just going to introduce the petition real quick.

Craig Emig: I'm sorry?

Jacob Timmons: I was just going to introduce the petition real quick, if that's okay?

Craig Emig: Okay.

Jacob Timmons: Okay. So, we have an obstruction petition between William D. Noll of 3313 Aspen Drive, Evansville, Indiana 47711. The respondent for this petition is the Oak Hill Church of Christ, and they're at 4311 Oak Hill Road, Evansville, Indiana 47711. I will just say that the property is actually owned by Morgan Avenue Church of Christ, but they operate under Oak Hill Church of Christ. So that's what they'll be referred to as.

President Musgrave: Mr. Noll, please state your name and address for the record.

William Noll: William Noll. My address is 3313 Aspen Drive, 47711 in Evansville.

Commissioner Hatfield: Can I interrupt a minute? Is this the Oak Hill Church just north of—

William Noll: Lynch Road?

Commissioner Hatfield: --St. George?

William Noll: No. It's just north of Lynch.

Commissioner Hatfield: North of Lynch? Okay. Alright, go ahead.

William Noll: May I take off my mask? First of all, I would like to thank you for allowing me to present my drainage issue to you today. I would also like to thank the Surveyor's Office for their help and guidance in this process. I have a severe drainage problem on my property. As we said, located at 3313 Aspen Drive in Evansville, and I will be discussing that today. First of all, I'm not here to make any accusations, not here to blame anyone, my only purpose in being here is to resolve this issue in the most judicious manner possible. I will start by showing you a diagram to illustrate the problem. Sorry.

President Musgrave: I think he needs some help.

William Noll: Thank you. Okay, first of all, as we talked about, I live on Aspen Drive. So, it would be this quick diagram. Obviously, it's not professionally made, but it shows that Aspen Drive near my in a rectangle, 3313. Right below, or at the beginning versus Aspen Drive, there's this little square marked "sewer". And there is a sewer on Aspen Drive that drains the water (Inaudible) ground. That's why I have a dotted line, and it opens up (Inaudible) the other side of the drainage ditch on my property right at the southwest corner. So, I wanted to point out that there's three flows of water there involved in this discussion. The first one is coming through the sewer, and you can see where actually it exits on the pipe on my property, but then continues on onto the church's property and flows across the berm, which I'll talk in a minute about that, and there's a ditch on the other side of the berm. So, the flow of that water is north-south. There's a natural water flow coming through my neighbor's house myself, that's just on my, I mean, yeah, it's on my property, but it flows from east to west. You can see I've got it marked with blue lines there, right by the tree line. And then the third flow is the water that's accumulated on the side of the berm that protects it. There's a ditch there that goes down there all the way down to Oak Hill. So, we've got three flows of water that converge right at that one spot. So, what I'm going to do now is, I have a timeline, unfortunately I have to go back in time a little bit. It's like, I can't just show a picture, like a big rock sitting there. It's something that's developed over time, (Inaudible) timeline. I'll try to do it as quickly as possible. Okay. first of all, I moved to Evansville in 1983. And when I moved in, beside my property, behind it to the south was woods. Okay? Then about 1985 Oak Hill Church of Christ built their new building. They used to be down on Morgan Avenue, so they built that in 1985, which was wonderful. And then in 1988, they filed a petition to change the zoning from Ag to R-

3. That was in August of '88. The neighbors, all my neighbors and myself, we joined in, and homeowners got together and we hired a lawyer to object to the rezoning. That was in January of 1989. There was a meeting held between the church and the homeowner's association, and we had (Inaudible) and there were some changes made. The zoning petition was made at the Area Plan Commission meeting on April 4, 1989.

Craig Emig: Mr. Noll? I'm sorry, I appreciate the context, is there a way that we can get focused on the jurisdiction of this Board, which is to determine whether there was an obstruction, which is material placed in a natural surface water course or a drain?

William Noll: Yeah, I'll be getting to that in just a second, but I have to give a back context, because again, like I said, there's no rock sitting there. It's what this whole series of events that's occurred. I will try to go as fast as possible.

Craig Emig: Okay. Thank you.

William Noll: Okay. Okay. At the Planning Commission, the Area Plan Commission needed more recommendation on the petition, and then the Oak Hill Church of Christ withdrew their petition. Okay? Now, following that, the woods, which was on the south side of my property, is completely leveled. Okay? And there was a, because of his level, there is no longer woods there. We had a water problem. The water was flowing to all the neighbor's property, not just mine. Okay.? So, his response to that, the Oak Hill Church of Christ built a berm to protect the water from coming into the neighbor's yard. Okay? So, after that, there was no problem as far as I was concerned from that time, which has been 1990 to 1917. I'm sorry, 2017, I better try that again, yeah. So, basically for 27 years there was no problem. Okay? So, what happened then in 2017? Let's see if I can do this. Okay. The church filled in, there was on one side of the berm a ditch had developed through water flow and he filled it in with hay. This is on one picture that shows, this is looking from my property toward their property. You can see not only did they fill in the ditch, but they put hay bales to prevent the flow of water. Okay.? So, now I had a problem because my backyard was filling up with water. So, I'm just wanting to show that this was not a one-time occasion. Okay, this was in February of 2018, this was January, 2019, and this is looking at my property. This is what my backyard looks like. Okay?

Commissioner Hatfield: So that's your property?

William Noll: Yeah, you're looking out my back window, if you will, toward the tree line, which is the end of my property. And that's where the water is backed up on my property. Okay? And these are some more continuation of pictures of that area.

Craig Emig: Do you have any pictures of the alleged obstruction?

William Noll: Of the what? I'm sorry.

Craig Emig: Of the alleged obstruction?

William Noll: Well, what I have is, when they filled it in with dirt, and they put hay over it and hay bales on there to prevent, when I talked to, and I don't remember his last name, a Barry, he said that they filled it in because they wanted to come across the (Inaudible) berm to cut the grass. And so, he said he didn't think that that was a method of obstruction, but my backyard has been filling up with water every time it rains. Okay? So, the obstruction is that the ditch, for 27 years was adequately handling the water. Now, after that happened, now that they filled in the ditch, prevented the water from flowing. Again, this is water coming from three sources. I cannot do anything about the water coming from the sewer. I can't really do anything about this stuff coming around my backyard cause that's a natural water flow. And so, I have to get water over to that ditch. And that being the fact that the ditch was too small to handle the massive flow of water. That's the obstruction, which I don't have a (Inaudible) one picture that would cover all that.

President Musgrave: Alright, so I understand that the obstruction is the soil that was placed in the ditch. Okay. So that's your presentation?

William Noll: I'm sorry, say it again?

President Musgrave: Your presentation is to conclude that the obstruction is the soil that was placed in the ditch?

William Noll: The obstruction was when they filled in the ditch and planted grass (Inaudible).

President Musgrave: Okay.

William Noll: It made the ditch, if you look at it, you'll see there's a ditch there, Okay? That's not enough to let the water flow. I'll show you one more last thing here, a video that shows exactly what I'm talking about, you'll see. Now, this is the water. This is in my backyard now. Okay? On my side of the tree line. So, you can see when we get a heavy rain, look, my whole backyard is just filled with water because it cannot go down and join these other flows of water. You see how it's spread out my whole yard. Now, when we're coming up here just to the right that's where you'll see the second, the water coming out of the sewer pipe, Okay, do you see it right there, on the right-hand side? So that water., and then if you can see the water in the ditch on the other side of the berm is flowing down from the church property. You can see some rivulets coming down into the ditch and that's what all come from the whole neighborhood upstream there. So, if you just look at that water flow, it's so much water is in there, that the water won't exit from my property, and there's nothing I can do. I don't, you know, I'm not, I can't go dig a whole ditch, because that's not my property. And so, I've had several discussions with the church. And when I talked to him again, I'm sorry I don't know his last name, but Barry, he went and talked to the elders of the church and they came back and said that they were, they were not going to do anything, that they felt that they already had done something in the past. So, they were not willing to talk to me any further. And so—

President Musgrave: What is the date of this video?

William Noll: Of this video? It's a--

President Musgrave: The year would be fine.

William Noll: Well, it's a, I believe it's September 25th, 2020.

President Musgrave: So, you have had discussions with the elders of the neighboring church. When was, when were those discussions?

William Noll: Well, the first discussion I had was right after they filled it in with hay. And I've had a discussion with Barry.

President Musgrave: And when was that?

William Noll: That would have been, let's see that would be 2017.

President Musgrave: That subsequent discussion?

William Noll: That was October, 2017.

President Musgrave: And you've had subsequent discussions? Have you talked to them since then?

William Noll: Okay, Thank you, yes. First of all, there's a time lag now. What happened in 2017, unfortunately, I had an illness, I had open-heart surgery. So basically nothing, nothing happened between 2017 and 2020. Okay?

President Musgrave: Okay, so you have not recently attempted to speak to them?

William Noll: Yes, I have. I've talked to the Surveyor's Office and they came out and said, we highly recommend that you talk to the church, which I tried to do. And I called several times, I can document, I can get all of that stuff down here. And I wasn't able to do that. I finally did have a conversation with Barry and he said that he went and talked to the elders of the church and they said they were not going to do anything because they felt they had done enough in the past. And so, as you can see, we're not talking about a little bit of water, just laying there. We're talking about almost like a river. And so, I went to some contractors and asked what I could do to get the water off my back property. And they said, all three of them said the same thing, we could do all kinds of things. We could put a French ditch in the back to keep the water in one spot, but it's not going to do any good until you get this issue resolved by the water coming off your property. It's just makes any (Inaudible) we have a waste of money.

President Musgrave: Okay, thank you, Mr. Noll. Thank you very much for your presentation. I believe now we need to hear from the church. And, I'm sorry, I don't have the name of the person on my list. So, please tell me your name and address.

Larry Horn: Larry Horn.

President Musgrave: And speak directly into the microphone.

Larry Horn: Okay.

President Musgrave: Larry Horn?

Larry Horn: Larry Horn, yes.

President Musgrave: Okay. And your address?

Larry Horn: 13120 Woodland Lane.

President Musgrave: Do you have a presentation as well?

Larry Horn: Yes, I do, but I don't know that I'll go through the whole thing, It might be a little bit too long.

President Musgrave: Make sure you talk slowly and directly into the microphone.

Larry Horn: This is just a, a few pictures to show you the nature of the drainage area. This is the church property that slopes down to the swale that is the, is of concern to Mr. Noll. This is the swale, obviously under dry or dry conditions. And then you can see here, the swale that was designed to handle the drainage from the church property is on the right, as you look at this. And Mr. Noll's property is on the left, and there's a swale there divided by a berm, that at the neighbor's insistence to keep the water flowing off the church property from going on to their property. This is the, this is where the two swales to come together. The two drainage pieces come together and go into a into a single ditch. You can see in the background, that's a 12-inch drainage pipe that comes from the, comes from this street that drains down into this drainage conveyance. This is the drainage then that looks back towards where the two swales come together. And we have measured that, that's about 130 feet, and it drops 30 inches in that space. You can see the condition of it. It's about now what it has been. We did try to do some maintenance on that. And we did put some, put some dirt in that, and we did put some hay bales across that too, at one time to prevent erosion so that we could see that. But this is the condition. These pictures were taken last week, and this was the condition of the swale now. It goes on down towards Oak Hill Road, and at this point about 130 feet east of Mr. Noll's property, it takes on the nature of a ditch rather than a swale. And so that's what you're seeing there. It continues on down to Oak Hill Road, picks up, drains water from other neighbors, as you can see in this pipe. Not sure what the source of the water that comes out of that is, but it does enter into a conveyance system that goes under Oak Hill Road at the west end of this particular ditch. And again, this is what the ditch looks like. One thing that has changed that Mr. Noll didn't mention is that his neighbor to the east of him has built a substantial structure. And if you see that structure, the drainage from the roof of that comes down through downspouts. Two of those downspouts are underground. I don't know where they (Inaudible), but the one that is nearest to Mr. Noll's house, you can see the downspout comes down and drains directly onto the slope that then comes down to the area that is of greatest concern by Mr. Noll. And so, this is a, this has changed.

President Musgrave: Do you know when that was constructed?

Larry Horn: I beg your pardon?

President Musgrave: The construction date for that?

Larry Horn: No, I do not. It's been within the last five years, but I don't know the date of it. So, the (Inaudible) index has changed of the property, and the flow has been concentrated so that it comes right down in front of those trees, that's where the water collects on Mr. Noll's property. This again is the ditch, the swale on what is that heads west, from the point at which the swale joins the, where the two swales come together as two drainage ditches come together. And you can see what it is that we if, in fact during the past two

or three years, there was any interference that we caused by putting dirt in there, and then has subsequently gone away, because this is basically the way the ditch has been for some time.

President Musgrave: So, you maintain that the church has not harmed the drainage, and you maintain and you the point finger at a structure that was built within the last five years that might be contributing to this problem?

Larry Horn: Yes, that's correct.

President Musgrave: Okay. Do we now ask for the petitioner to respond to that?

Craig Emig: I think we should have the Surveyor, then have the petitioner—

President Musgrave: Okay.

Craig Emig: -- respond after that.

President Musgrave: Mr. Timmons, if you could please respond or come forward and give us the results of your examination.

Jacob Timmons: As we said, I'm Jacob Timmons with the Vanderburgh County Surveyor's Office, and I was the lead investigator on this obstruction petition. As we said, the petitioner is William Noll of 3313 Aspen Drive, which is more accurately described as Lot 13 in Aspen Ridge Subdivision, Section Eight. And the respondent is Morgan Avenue Church of Christ 4311 Oak Hill Road, Evansville, Indiana, more accurately described as part of the south half of the north half of the northwest quarter 11-6-10. This petition was filed by Mr. Noll on August 24, 2020. The petition was entered by the Board at a regular scheduled meeting dated August 25, 2020. Notifications of a hearing were sent by certified mail to both parties, with a return receipt that was received from Mr. Noll on October 19th. The United States Postal Service shows that the notice sent to the Oak Hill Church of Christ was not accepted, and that it would be returned to us, but on the 5th of November, a public hearing notice was hand-delivered by myself and the County Surveyor. So, just a little description of the properties and where they lie, if you guys can see that. Mr. Noll's property lies on Aspen Drive and is approximately 672 feet east of the center line of Oak Hill Road. The Oak Hill Church of Christ lies on Oak Hill Road, the address is 4311, and is approximately 1,470 feet north of Lynch Road. The two properties share approximately 100 feet of common border along the southern side of Mr. Noll's property. The ditch that is the subject of Mr. Noll's petition lies along this 100-foot stretch, but extends in both directions along the northern boundary of the Oak Hill Church of Christ. Based upon existing property pins that were located during our field visits, the ditch in question is located on the Oak Hill Church of Christ's property. And there you can see the same map, but with topographic features. We've got contour lines on there that just kind of indicate the natural flow of water in the area. So, the description of the obstruction in his petition, Mr. Noll cited an obstruction consisting of dirt and rock that exists within an existing watercourse that runs along the northern edge of the Oak Hill Church of Christ property. So, the Vanderburgh County Surveyor's Office has made several site visits to the location, including an initial meeting on July 9, 2020 to meet with Mr. Noll and discuss his concerns. At this meeting, the Vanderburgh County Surveyor's Office was represented by both Linda Freeman, Chief Deputy, and myself. The Chief, let's see, Mr. Noll explained that he had originally intended to file an obstruction petition in 2017, as he stated, but was unable to do so due to ongoing health issues. Mr. Noll also advised us at that time that Oak Hill Church of Christ had reworked the swale that lies on the church's property. He believed that in doing so, the Oak Hill Church of Christ had raised the elevation of the ditch in relation to the southwestern corner of his property, which is where water discharges into the ditch. Mr. Noll believes that this is causing water to back up onto his property. Mr. Noll provided the County Surveyor's Office with pictures, showing the ditch reconstruction from 2017, and stated that he did not have the issue until the reconstruction of the ditch took place. Unfortunately, there is not any data from 2017 that would indicate that the profile or elevation of the ditch had been changed. Another site visit was made by myself and County Surveyor Mueller to meet with Barry Wildwood, who is the lead maintenance worker and groundskeeper for Oak Hill Church of Christ, as well as two of the church elders, Paul Wunderlich, and Larry Horn. At the meeting we discussed their efforts and intentions with the reconstruction of the drain, as

well as their interactions with Mr. Noll. A third site visit was made by myself on October 29th, and I'm going to back up for just a second. We can look at these pictures real quick. The July 9th site visit, you can kind of see on the left there, we've just got the swale looking south towards Oak Hill Road, or looking west, I'm sorry, towards Oak Hill Road, and then the pipe that carries storm sewer runoff from Aspen Drive in the southwest corner of Mr. Noll's property. And there you can see there's some sedimentation and some rock inside of that channel. And this was a picture, there were several that Mr. Noll had sent us that were taken in June of 2020. They were all kind of relatively at the same area. So, I just threw one on there. And then these are his pictures that you saw earlier that show the ditch reconstruction effort from 2017. So, on October 29th, I made a site visit, and this was at the end of a type two storm that was a 10-year storm. So, it took place, you know, from the evening of one day into the morning of the next, and in that time, we had about 4.73 inches of rain, and that was what was recorded at Evansville Regional Airport at the NOAA weather station. During this visit, I took several photographs and videos that show significant flow of water through the ditch in question. The video will show water flowing as designed from the pipe that collects from storm sewer runoff from Aspen Drive, and discharges water at the southwest corner of Mr. Noll's property, as well as water running off of Mr. Noll's property into the ditch in question. In the video you will see visible standing water, but that's not unusual given the significance of this rainfall. So, there we can see just a couple more pictures of water standing in the ditch, and on the left side there, you can see some water standing in Mr. Noll's yard. So, we've got just a couple of videos here. How do I get that to share up there? If we can get it. It's not. It's a Google drive link.

Scot Brown: It's not wanting to go?

Jacob Timmons: No, it is not.

Scot Brown: Is it sitting on the drive by any chance?

Jacob Timmons: No. It was too big and it wouldn't play off the file type.

Scot Brown: It may be having the same issue.

Jacob Timmons: Okay.

Scot Brown: Try it again, maybe one more time.

Jacob Timmons: Yeah, I'll give it a shot. Yeah, if you guys want to give us just a second, I've got to download this video. It will not play through the way it's embedded. Yeah, no, okay, it's not going to play. Outstanding. Okay, well, that's not going to work apparently. Alright, well, in those videos, like you can see a significant amount of runoff coming, both from the storm sewer pipe, as well as from Mr. Noll's property. Both are flowing into that ditch, but the important thing with those videos is that the water is flowing. So, while it may not be draining at a desired rate, it is moving.

Craig Emig: Mr. Timmons, and who took those videos?

Jacob Timmons: I did.

Craig Emig: Okay, so, you were there to personally observe this?

Jacob Timmons: Yes. I was the only one on that site visit and I did take those videos. I do have them and they worked when I created the presentation, but for whatever reason, I can't get Google track videos to play on here. So, if anyone needs them after the fact or anything like that, I can certainly provide them. So, let's see, a final site visit was made by Linda Freeman, myself and Jeff Mueller. During the site visit the Surveyor's Office. GPS equipment was utilized to record elevation data at the storm sewer pipe invert, as well as along the flow line of the ditch in question, and on several monuments in the area. A GIS map containing these elevations is included as part of this report, and you can see that there. It's probably really hard to see the flow line elevations that are on there, but they do indicate the pipe invert. Let's see, the pipe invert is at 405.4, and just south of the pipe invert, the ditch that's still on Mr. Noll's property does rise up slightly, and then it goes back down as it goes on to the Oak Hill Church of Christ property, and it continues ...go ahead.

President Musgrave: Let me just ask a question.

Jacob Timmons: Sure.

President Musgrave: I'm going to point to the map and ask if the videos that Mr. Noll showed us of the water flowing across his property was in this particular place.

Jacob Timmons: Okay. Yes, that would be in that area.

President Musgrave: I asked earlier when the garage was built and I've looked it up on the—

Jacob Timmons: I do have that information.

President Musgrave: 2016.

Jacob Timmons: It shows up on the 2016 imagery. The building permit was pulled in December of 2015. So, it was, yeah, right at the end of 2015 or at the beginning of 2016, just before that imagery was flowing.

President Musgrave: That large garage right there on the far right was built in 2015. You have to turn your mic on.

Commissioner Hatfield: I just want to say a couple of things and maybe you can confirm this or not.

Jacob Timmons: Sure.

Commissioner Hatfield: But the video that I saw of Mr. Noll's, it's my opinion, that that would not be caused by that garage. I guess, I know that we get more rain than we ever did, and you know, the amount of rain that falls in short periods of time, that's increased.

Jacob Timmons: Right.

Commissioner Hatfield: Looking at the elevations, it's clear that it's not a lot of fall down through there. You know, you got a foot or so—

Jacob Timmons: I mean, across a hundred or 150 feet.

Commissioner Hatfield: Yeah.

Jacob Timmons: There's, I mean, a foot of drop at least.

Commissioner Hatfield: That's right.

Jacob Timmons: Yeah.

Commissioner Hatfield: And so, is it, so I have a couple of things. I don't believe that the garage is what caused the amount of water I saw in that video.

President Musgrave: It's a substantial amount of water, definitely.

Commissioner Hatfield: Yeah. I know, but a garage roof, even if it's a large garage, that's not going to add that much water.

Jeff Mueller: Yeah.

Commissioner Hatfield: There's gotta be another reason if we're going to go on the assumption that prior to 2017, there wasn't as much water traveling down through this ditch. And so, I want to hear from somebody to tell me either (a) yes and since 2017. We get that much water in this man's backyard, or, hey, it's been that way for several years prior to this. You know, what is your professional opinion about that claim?

Jacob Timmons: Okay, and I'll get to that. It's coming pretty soon.

Commissioner Hatfield: Okay.

Jacob Timmons: There, I think that there are several contributing factors, and I'll cover that. And I'll just add, just to the end of this site visit from November 5th, we did speak with

the pastor, which is who we had delivered the notice to, and he didn't have much to add other than what we had already heard from the church elders, except they brought up the garage construction. So, I can move on to my findings now. But I will show there's just a couple of other pictures from that November 5th site visit that show the swale. So, for objects and materials constituting the alleged obstruction, Mr. Noll cited in his filed petition that the alleged obstruction consisted of dirt and rock placed in the drain as a result of maintenance completed by Oak Hill Church of Christ. Silt, sedimentation, and rock was found to be present in the pipe and open drain on Mr. Noll's property. So, does the impacted area meet the statutory definition of a natural surface water course? The area that was alleged to be obstructed is an area of surface of the ground over which water from falling rain and melting snow occasionally and temporarily flows in a definable direction and channel. The drainage from the area flows west towards Oak Hill within this definable channel and along the northern boundary of Oak Hill Church of Christ. The water is then carried under Oak Hill Road where it continues and eventually discharges into Sonntag Steven's legal drain. Though it does eventually reach a legal drain, that portion of the drain in question is not a legal drain. The drain is a natural surface water course that has been channelized. The natural surface water course has shown on topographic mapping dated March, 1990 and said topographic mapping is available for viewing in the County Surveyor's Office. It does also appear on a site plan for the Oak Hill Church of Christ from 1989. So, as far as the quantity of stormwater runoff anticipated to flow through the drain, the drain in question carries sheet flow runoff from several properties to the east of Mr. Noll's property on Aspen Drive, as well as flow from the eastern portion of the Oak Hill Church of Christ lot. The drain is also carrying the flow from the 15-inch storm sewer pipe that discharges at the southwest corner of Mr. Noll's property. The pipe is tied to a curb inlet on Aspen Drive, and the pipe is located in a 12-foot public utility easement of which six feet is located on Mr. Noll's property. County Surveyor's finding of an obstruction at the site as alleged. The County Surveyor's instructions found, or investigation found siltation and sedimentation as well as gravel, both in the storm sewer pipe and the drain on Mr. Noll's property. This is consistent with naturally occurring buildup in pipes and open drains that occurs over time. The silt sedimentation and rock are particularly consistent with buildup that occurs in pipes and drains that handle storm water runoff from a roadway. This pipe is of course, connected to the inlet on Aspen Drive. The reconstruction of the drain by Oak Hill Church of Christ in an effort to stabilize the channel and make it easier to maintain, may have altered the slope of the drain. A reduction in slope would have caused a lower rate of storm water conveyance, which can lead to water backing up. However, there is nothing that shows the slope capacity or cross-section of the ditch prior to this reconstruction. Oak Hill Church of Christ efforts to reconstruct this drain in 2017 do not appear to have created an obstruction as defined by applicable statute in IC 36-9-27 44, which defines an obstruction as used in this chapter, obstruction means a condition that exists within or near a drain, prevents or significantly impedes the flow of water through the drain. The term includes the following; the presence of one or more objects inside or near a drain, a quantity of materials inside or near a drain, or damage to a drain that prevents or significantly impedes the flow of water through the drain. So, as far as the summary and recommendations, the County Surveyor is of the opinion that the alleged obstruction does not exist and that no conditions exist on the Oak Hill Church of Christ property that would significantly impede the flow of water from Mr. Noll's property. Furthermore, the County Surveyor's Office has not found any evidence of damage. The County Surveyor would suggest that both parties work to keep the channel free of debris so that the drain will perform at its maximum efficiency, that Mr. Noll works to improve the drainage on his property to prevent pooling during heavy water, pooling of water during heavy rainfall events, and that it would be of benefit to both parties if the depth of the channel were increased by approximately one foot to create additional capacity for the conveyance of storm water runoff.

President Musgrave: So, you're recommending that they come together and take a foot out of the channel to see if that will help?

Jacob Timmons: That that would be a suggestion from our office, yeah.

President Musgrave: But you do not find any obstruction as defined by Indiana State statute?

Jacob Timmons: That's correct.

President Musgrave: Okay.

Commissioner Hatfield: You know, earlier I wanted to hear from somebody about what the conditions were prior to 2017, or at least a professional guess.

Jacob Timmons: Right.

Commissioner Hatfield: What is your professional guess?

Jacob Timmons: Well, like I said, the efforts that they did in 2017 to reconstruct this drain may have altered the slope, and when the slope gets altered, it can cause a slower rate of storm water conveyance, and when that happens, you can have pooling upstream.

Commissioner Hatfield: And you also stated in this slide, a couple previous, that to help with maintaining what they had.

Jacob Timmons: Right?

Commissioner Hatfield: And so, when you put those two together, those two comments together, you're signaling to me that Mr. Noll's case was correct. That, prior to this, he didn't have this type of problem, but when they redid the pipe to help them maintain what they had, you just stated that that could have caused this water to slow down.

Jacob Timmons: It can, but as far as dirt and rock being placed in there, I don't think that there's something that created an intentional obstruction. I think that in the reconstruction of the swale, it may have altered the slope of it, but I don't know that that's could be defined as an obstruction by Indiana code.

Commissioner Hatfield: I know, but, we hear complaints like this more often than we want to, and it's always something or another.

Jacob Timmons: Right.

Commissioner Hatfield: It doesn't have to be that we're laying logs across the swale and damning things up. It doesn't have to be that, right?

Jacob Timmons: Right. I mean, as it's defined, it has to be something that's placed or something that's, let me back up to the definition, a condition that exists within ordinary drain that prevents or significantly impedes the flow of water through a drain. The term includes the following; the presence of one or more objects inside or near a drain, the quantity of materials placed inside or near a drain, and damage to a drain that prevents or significantly impedes the flow of water through the drain.

President Musgrave: (Inaudible) is the operative clause. Is that right, Mr. Hatfield?
Commissioner Hatfield?

Commissioner Hatfield: Well, (Inaudible) we had a case, I don't know how long ago this year, on the north of Mohr Road, Kneer Road, and those folks were complaining about a very similar situation. And, you know, I guess what I'm getting at is, how you define an obstruction is telling part of the story of what potentially could cause someone harm. You know, we've narrowly defined this to a point where you almost do have to throw something in a drain swale to somehow appear before us.

Jacob Timmons: Right.

Commissioner Hatfield: But in essence, when we do work on our ditches and our swales in our neighborhoods, you just told me that you don't have to necessarily throw logs across the ditch to cause somebody problems. Right?

Jacob Timmons: I mean, I've got what's defined in Indiana code.

Commissioner Hatfield: I understand.

Jacob Timmons: Yeah.

Commissioner Hatfield: No, I'm not arguing with you, I'm not blaming you.

Jacob Timmons: No, I understand.

Commissioner Hatfield: I'm just saying that the way we've written this rule—

Jacob Timmons: Right.

Commissioner Hatfield: We basically can't resolve this, while you're recommending to us that they get together to solve it themselves.

Jacob Timmons: Correct.

Commissioner Hatfield: That's basically what you're saying.

Jacob Timmons: Well, and when this process started and Mr. Noll came to us with the petition, we told him we didn't think there was an obstruction to start the process.

Commissioner Hatfield: Right.

Jacob Timmons: And he wanted to proceed, because he felt like this was the only way to convey to you guys, to the Drainage Board.

Commissioner Hatfield: Well, so it's an impossible situation for this gentleman.

Jacob Timmons: Yeah.

Commissioner Hatfield: (Inaudible).

Jacob Timmons: I don't know what the process is, but this isn't the process to solve this issue.

Commissioner Hatfield: Okay. So, I have a question.

Craig Emig: Sorry, let me jump in here before we keep going down this path. The definition of obstructions does include obstructions that are created intentionally and occur naturally, or are created unintentionally.

Commissioner Hatfield: Okay, well—

Craig Emig: You can have a naturally occurring obstruction.

Commissioner Hatfield: --I would like to talk to a representative of the church at this point.

Jacob Timmons: Sure.

President Musgrave: Mr. Horn, if you'd please come forward.

Commissioner Hatfield: So, do you have any evidence that this situation that we're seeing up here on the water was like that prior to 2017?

Larry Horn: I don't have anything that, it would be purely anecdotal, and so, I, no I don't.

President Musgrave: If you're going to address the Board, please state your name and your address.

Paul Wunderlich: My name is Paul Wunderlich, 6300 Lindenhurst Drive, Newburgh. I was present at the meeting that Mr. Noll spoke about between the neighbors and the church and the lawyer. At that meeting we agreed to maintain that ditch line. I have been instrumental in maintaining that ditch line. Here's the contour that you see is the original contour of the ditch that was approved back when we developed the lots behind the church. So, we have done nothing there but fill the ruts that occur over time. We have not changed the contour of that ditch one bit in the last 30 years.

Commissioner Hatfield: Well the Surveyor's Office said that when you redid the pipe, you slowed the water down, which somehow is causing there to be more water.

Paul Wunderlich: We didn't do anything with the pipe. All we do anything with is, in the bottom of the swale, where we get rutting over time, we put a little dirt back in that and a little grass seed on it so that we can—

Commissioner Hatfield: Okay.

Paul Wunderlich: -- we can mow it.

Commissioner Hatfield: Now they're recommending that it be lowered.

Paul Wunderlich: Well, that's different than what we were told to do 30 years ago. So, what I'm, what I am telling you is that what is there today is what was approved 30 years ago and has not changed, and we haven't changed it. So, you know, if I don't know, the increased water could be rain cycles, could be building up in the neighborhood, more people adding water to it. A lot of things could cause that. I'm not an expert on that. But the reason I came up here was to tell you that that ditch has not changed in shape in the last 30 years.

President Musgrave: Are you willing to follow the recommendation of the Surveyor and take a foot out of the bottom of that?

Paul Wunderlich: Well, I don't know that that's the Surveyor's recommendation from what I've heard at this point, but I think that taking a foot out of the bottom of that ditch, that makes it less maintainable. I, you know, we, the problem we run into, if we can't mow it, then we get a lot of erosion in it. And so, whatever happens there, it's, it would be important to me that that ditch be able to be mowed, because we did agree in that meeting to maintain that ditch.

Commissioner Hatfield: I mean, there's other ways to maintain a ditch other than be able to sit on a mower and mow it.

Paul Wunderlich: I understand that, but understand that we have volunteer, you know, we don't, we don't pay to have our services done. It's all volunteer. And so, we come out and, and in an effort, there's a lot of acres there that we mow and that we maintain, and we've gotten, quite frankly, the neighbors, even down that side of the property line have complimented the church on the condition that they keep their grounds. That becomes more and more difficult. And our volunteer basis, you try and make that as easy as possible. I know that from experience because the ditch behind my house was changed, it had a foot taken out of the bottom of it and I couldn't mow it anymore. I mean, it's just it, it becomes a weekly pain to, to be able to do something like that.

President Musgrave: I would like the Surveyor's representative to address whether or not it's a recommendation.

Jacob Timmons: Yeah, I was just going to say two things. One, I don't know that the slope of the ditch was changed. I'm just suggesting that it's a possibility that in the reconstruction that it may have been. I don't know that for a fact, because like I said, we don't have any data from 2017 that would indicate what the previous slope or profile of that ditch was. That's number one, number two, we had suggested as a possibility to alleviate some (Inaudible) that a foot could be taken out of that ditch, and that would only (Inaudible).

Commissioner Hatfield: (Inaudible)

Jacob Timmons: It would just be taken out to increase the capacity of the ditch, to help alleviate some of the problems.

President Musgrave: At this point—

Commissioner Hatfield: I'm sorry, go ahead. After that, the reason, there's a couple of things here, I thought it was mentioned earlier that there was a pipe that was changed in that.

Jacob Timmons: There was no pipe that was changed.

Commissioner Hatfield: What was—

Jacob Timmons: It's only an open drain.

Commissioner Hatfield: Okay.

Jacob Timmons: There is a pipe that's on Mr. Noll's property that carries stormwater runoff from Aspen Drive.

Commissioner Hatfield: Okay.

Jacob Timmons: That pipe is entirely on his property, north of their property.

Commissioner Hatfield: And so, to be clear though, was the adding of the dirt in the ditch to allow it to be mowed, has that added to this problem?

Jacob Timmons: I can show you guys the video. I have it on my phone that I tried to show up here. It shows a significant amount of water being able to flow through that ditch. And I don't think that there is an obstruction that exists there now. It shows water draining both from the area that's north of the berm, on Mr. Noll's property. The water that's coming out of that storm sewer pipe and the water that's coming from the east in that drain. I got, like I said, I've got it on my phone and I can show all three of those areas draining.

Commissioner Hatfield: So, the complaint is that more water is standing in his yard longer after a 10-year rain?

Jacob Timmons: Yes. I would say that is correct. It is not draining. It may not be draining as fast as it once did.

Commissioner Hatfield: And why do you think that is?

Jacob Timmons: Like I said, it's probably a combination of things. You do have an additional, oh, it's about 850 square feet of impervious surface just to the east with the addition of the garage, and there's a concrete apron. And like they said, there are downspouts that discharge directly towards this property. You have that, you have more increased rainfall and there, you know, more significant rainfall events. So, they're coming, you've got rainfall, that's occurring more rapidly. And so, because of that, there's a lot more standing water everywhere. You can see that. I mean, I have, you know, four or five inches of water that stands in the swale in the back of my yard for quite some time, until it can, you know, run downstream and eventually drain out. It's just taking time.

President Musgrave: Does that answer your question?

Commissioner Hatfield: Yeah. Thank you.

Jacob Timmons: Anything else?

President Musgrave: Are you ready to make a motion? Or would you like to take a five-minute break? Commissioner Hatfield, would you like to take a break? I would be happy to do that, but I'd like to know if you would be willing to take a break as well?

Commissioner Hatfield: I'm willing to make a motion to adopt the Surveyor's recommendation, and hopefully that the church and the neighbors will come together and try to come to something that will help each other out. At first, I truly thought that the church might have been responsible for directing more water in the area than before, but after more questioning and more answers, I agree with the Surveyor's Office, that it's kind of a perfect situation of added things over time, specifically more rainfall and an increased rainfall every time it does rain. But so, I'm only willing to make a motion to encourage the parties to try to work together and help each other out. I'm not willing to make a motion in any other way than that.

President Musgrave: So, your motion is essentially to deny the petition and to encourage the parties to work together?

Commissioner Hatfield: Yes.

President Musgrave: Commissioner Shoulders, do you second that motion?

Commissioner Shoulders: I will second that motion in hopes that they can, in fact, facilitate and, you know, in resolving this.

President Musgrave: Mr. Noll, did you have a comment that you wanted to make?

William Noll: I did want to make a comment. (Inaudible) to the area, so that is yes. In 2000, 2006, the neighbors to my left leveled their backyards so that they would have more drainage off of their property. And so that has increased a lot of water. Water is water, it only comes, and so is it going to come down that ditch on my property? Yes, but there's nothing I could do. It was a natural water flow. I can't build a dam to keep their water up on your property. The garage was built in 2015, again it's the same amount of water coming down. Off of that garage there's a drain pipe that comes that's pointed toward my property. But again, what can I do? I can't block a natural water flow. And so, I'm stuck if the water did increase, the water hasn't increased. It's just the way it's being spread out. I can't do anything about that. I can't prevent that water and I can't get anybody to do anything about it. They said, it's not going to go anywhere. It's going to land on my property. These are professional contractors saying that. So, I'm kind of stuck and there's damage being done on my property. I didn't bring any pictures with me, but that water, I used to be able to cut grass all the way to the back of my property. Now I have no grass there for at least 10 feet into my property as an erosion ditch wearing in there.

President Musgrave: Okay, thank you. I think we understand that now. We have a motion and a second, I'm going to ask Madelyn to please call the roll.

Madelyn Grayson: Commissioner Shoulders?

Commissioner Shoulders: Yes.

Madelyn Grayson: Commissioner Hatfield?

Commissioner Hatfield: Yes.

Madelyn Grayson: President Musgrave?

President Musgrave: Yes.

(Motion approved 3-0)

President Musgrave: And that concludes the Noll vs. Oak Hill Church of Christ obstruction petition.

Other Business

Jeff Mueller: I know Mr. Hatfield is going to recuse himself in a minute. So, I just have a couple of comments while the three Board Members are here, if I may. As you may be aware or I made you aware, this will be my last meeting. There is one more Drainage Board meeting this year, but Surveyor Elect, Linda Freeman, is going to be handling that meeting, as she will be the next four years. So, with that said I did want to make a couple of comments. First of all, I've enjoyed working with you Board Members, as well as all the other Board Members that I've had the pleasure to work with over the years. I know that maybe we haven't always agreed on things, but when we've disagreed, it's always been in a professional manner, and I appreciate that. We are all professionals and it's good to be able to do that. I do appreciate that you have respected my opinions, even though you're probably getting tired of me telling you how many times I've worked in the coal mine. But with that said, I'm trying to find some notes, so I'll apologize here, as soon as I can find them. With that said, there's a few other things, Vanderburgh County and the city, we are very fortunate to have a technical team that works together. I know sometimes the Commissioners say, can you and John Stoll maybe find some time to go out and look at things. Well, John and I, he's on the phone there, John and I go out a lot, and we converse a lot. He's been very helpful in helping me and I hope that I've helped him in some things that bring some knowledge in that I've had in the past. But also, it's been nice to be able to go across to Ron London in the APC office and work with them. We're hooked together with the City Engineer's office, the City Engineer's staff, and especially Assistant City Engineer, Chris Weil, you know, we've got to work with legal drains in the city and things like that, and they've been very good at working with us on those issues. There's a lot of other people, but those are some of the main ones, but also, I want to point out that when I first took office, it seemed like it took us forever to get the ditch rates to the Auditor's Office. We sat down with the County Auditor at that time, Joe Gries and my people from my office, and Joe's office worked together. We're knocking those ditch rates out a lot faster, which helps in the tax billing. Another person, that gal right over

there, you don't realize what, or maybe you do, what an asset she is. I go down and see her every Tuesday before the meetings, we go through everything, everything's smooth. She gives you pieces of paper to sign. That's all because of a working relationship we have, but also in being able to file, and the minutes I get back, the minutes, I know I'll throw some words at her every now and then she has to call me and say, what did you say? But I mean, it's amazing that she can sit there and take the words out and go through those things. With that said, the other thing is, I'm not going to, oh, I did find them. The other thing is, we've got a lot of problems in subdivisions and I think we've worked through a lot. Blue Heron when I first took office was a mess. I'd like to say it's a poster child for fantastic looking drainage in it now, because of what we were able to accomplish there, but not without a lot of hair pulling. We've been able to do that with some other ones. We've got some they're still outstanding. One of the things, or two of the things I've tried to do as County Surveyor is, number one, try to keep the County out of trouble, especially with the Corps of Engineers and IDEM, constantly trying to look over our shoulders. And number two, while I know it's probably been some of the developers or especially some of the engineers would probably say, God, what a pain he is to deal with. I've tried to make the drainage plans when they submit them, and the feedback that we give back to them in a manner that is understandable, and then when we have it done, and I gave you the summary of the drainage plan, there is a history of how we reviewed the plan, what issues came up and how those issues were addressed, so that in the future, someone can look through a file and say, oh, I see what they did. I will tell you though that one of the things that I want to bring up or concerns me is that we've made a couple of major changes to the drainage code, but they do need a lot more changes. I do have some changes that I've proposed that could be moved forward now. Some of those at the request of SIBA, and some other ones are some bookkeeping and some others are a few other things, but in the long run, eventually the County needs to look at getting ready, getting rid of using the rationale methodology, except on small plots. Engineering firms now have the ability to use hydrographs. That's in auto CAD. It's in all these different programs, and really, we need to be starting to look at using synthetic methods to design, especially subdivisions and stuff like that. We'll get better analysis and we'll get better numbers that people can understand. So, that's mainly what I have to say. Like I said, I'm going to kind of be slowly thinning out of office. I do want to tell you one other thing, there's a lady here that's going to be your next County Surveyor. And so, where those of you that don't realize it, eight years ago we ran against each other. And afterwards I took her on as my Chief Deputy. Why? Two reasons, one, when we ran against each other, we were nice to each other. We got up, I said, who I am or what I am. She said, here's who I am and what I am. And in the end, though, yes, I came out with more votes. But in the end, the way I looked at it was the two best people running for the County Surveyor's office were on that ballot this year, and why should I push her out of office? She brought things to the office and I brought things to the office, and between the two of us, I think we made a good team, and we left politics out of it, and my predecessor and her previous boss, Bill Jeffers, we pushed politics aside. And I hope that that made for a good transition. And I hope it made for some improvements in this office. We're going to have a wonderful gal to work with. I think she's been a wonderful gal for me to work with, and I wish you all the best of luck with working with her in the coming years. And the other thing is that young man right there, Jacob Timmons, we brought onto our staff three, four years ago. He is my computer wizard. I can't tell you how many times, Jacob, come in here, I've got something wrong. Come push the button for me. But he's learning and he's going to be a good asset. And we've got a couple other people in our office, Frank and Kevin, who've been there for a while. They know how to do their jobs, you don't have to come in and tell them what to do, and Charlie is going to be retiring shortly. But we've run our office on less people, and I think we've been pretty good at it. We've got a little more to do and Linda has her work cut out for her. So that's all I had to say.

President Musgrave: Well, I want to say how much I've appreciated serving with you as County Surveyor. You have been methodical, clear and fair, and I wish you well in your well-deserved retirement, but, gosh, I'm gonna miss you.

Jeff Mueller: Thank you. I will be doing some consulting work on a part-time basis, but I'm thinking (Inaudible) basis.

Commissioner Hatfield: I'm gonna agree with everything Commissioner Musgrave just stated. In the two years I've been here, you've been a top notch professional and just

totally wonderful to work with, but not only you, but your staff like you've stated. I believe everything you just said, because it shows in the professionalism of your staff, and when we need anything, they get right on it. And I firmly believe that Linda will be a wonderful Surveyor. I have every expectation of that. And it speaks well of both of you, to win race and then immediately go to work together, and then, you know, eight years later, you know, she succeeds you. It's, you know, a rare story, and you should both be commended for that, but thank you for your service.

Jeff Mueller: Thank you.

Commissioner Shoulders: And I want to echo both my fellow Commissioners as well. You know, Jeff, the last four years since I've served with you, I have learned more about drainage than I think I ever could in my entire life from you. And I don't say that jokingly though. I think one of those four years, I think it was 2018, I was president of the Drainage Board, and I really got to know you on a personal level. I think we met at least monthly, if not, sometimes more than that, and I really appreciate your knowledge and your service. Linda's going to do a great job, but I'm going to be honest, she's got some big shoes to fill, because you've done a great job. So, kudos to you, take a bow and looking forward to serving with Linda and getting to know her as well.

Recessing & Reconvening of Meeting

President Musgrave: At this time, I know we're all very anxious to get to Hunter's Chase, but we are going to take a short break, and Commissioner Hatfield is recusing himself. So, everyone be patient a few minutes longer and we'll get to the next agenda item.

(The meeting was recessed at 4:40 & reconvened at 4:44 p.m.)

Hunter Chase

President Musgrave: Alright, we're ready to reconvene. Surveyor Mueller, would you please bring us up to date on Hunter Chase.

Jeff Mueller: Okay, I'm going to keep this, in my opinion, fairly simple. I gave you in your handouts, and then I sent you electronically the inspection report from August, or October 2nd of 2020. If you remember what we were saying previously was everything was essentially done except for the punch list. So that was the punch list. So, I'm going to go through the punch list and discuss it for a few minutes. I'd like to skip item one for a minute and come back to it. Just so you know, the comments I'm going to make are in regards to items that I saw today. We went out and did a quick inspection, popped out of the truck and looked at these items and these items only. Okay, so item two, which was swale 18, it appears that this has been repaired and seeded. Now, I can't tell you whether it's going to drain or not, because I haven't been out there when it's rained, but it does appear that dirt was removed and it was reseeded, and so hopefully it'll have a better chance of draining. On item three, same thing, you can see some repair work being done, you could see where the swale had been slightly extended to the road. Again, so hopefully it will work. Item four, you will see two pictures on that that were the previous pictures, the erosion and everything that you see appears to have been repaired, it's been seeded. There's probably a little bit of vegetation that still needs to be done on the east side of that lake. I'm not sure how much of that is just due to the fact that it's shaded, because I knew how they re-vegetated it before. I'm pretty sure, but anyway it might just be more a matter of how good can we get grass to grow under a green tree? Item five, the swale out front that goes from Chase Drive to the basin, that swale has been reconstructed, it was reseeded. There was some straw matting and everything. It actually looked pretty good. Item six, the high spot where swale 11 discharges into swale one, could not see that high spot anymore. So apparently it had been repaired. There had been some seeding work and some straw work down there. Item seven, additional vegetation required in the location, especially on 20 B, that area had been reseeded. It doesn't have an item number, and swale 1A, the recent work you can, again, there's evidence of flow there. So, we could not, I could not determine that, from what I could tell it looked to me like water would go downhill. Okay? So, the only other thing would be on item one. I did not walk all the swales. A lot of the swales they've greened up quite a bit. To say that there might not be a little erosion in the very bottom. I can't, you know, there might still be some

out there because I didn't look at every one of them, but if you want my opinion of where we're at on this thing, I mean, to me we're there. I mean, yes, there are a few places that there might be some additional grass, there might be some other things, but as far as this Board is concerned, I think we're there.

President Musgrave: To confirm and to clarify, you feel that you're ready to accept the as-builts?

Jeff Mueller: What's that? I'm sorry?

President Musgrave: Are you ready to accept the as-builts?

Jeff Mueller: Okay, let me go one further step. The only thing that we don't have is the paperwork for the drainage plan revision. And my understanding was, that one of the owners was in a nursing home or a rest home or something, and couldn't sign. I don't know where we're at on that one. So, we don't have that one piece of paperwork. But as far as field work, we could beat this one to death. I mean, it's just, you know, do you want a putting green out there, or do you want... the drainage plan went over and above on the interior, it's draining. Yeah, maybe somebody's not going to like a dry spot in your yard or something, but I think that this Board and myself and John, and John's on the phone I see, but although he did not have the opportunity to go out today, I mean, things are working. Are they perfect? I won't know until it rains.

President Musgrave: So, you recommend that the Drainage Board conclude this matter. That it is complete except for one signature, and we could accept the as-builts contingent upon the receipt of that signature within a certain amount of time.?

Jeff Mueller: Yes.

President Musgrave: Alright. Is there anyone who would like to, I know I have some people who have signed in. I'd like to hear from the developer, I believe. Is the developer or his representative available? Remember to state your name and address for the record?

Shannon Frank: Shannon Frank, Kahn Dees Donovan and Khan, here on behalf of the developer Dauby Properties. Mr. Dauby, on behalf of Dauby Properties has stepped outside to meet with a representative of the homeowner's board. So, did you want to speak to Mr. Dauby specifically? Okay, because he is here for questions. I did want to make one final or one correction. I had misunderstood before that there was one signature needed. There are actually two, which Mr. Schmitt had provided to me today, that I didn't get until late afternoon, that I had forwarded to Mrs., to you, Commissioner Musgrave, and Commissioner Shoulders, as well as Mr. Mueller, who I know he probably, none of you had the chance to receive that. Just less than five minutes ago, I also want to note that Mr. Schmitt has handed me a letter with additional complaints of his clients. This apparently was also emailed today to all of you. He didn't hand it to me until five minutes ago. So, I have not had a chance to review this. The only thing I know is that what I have been emailing Mr. Mueller on a daily basis, since the last Drainage Board meeting, and also to correct with regard to needing the second signature with regard to the rip rap.

President Musgrave: Okay, thank you. Mr. Schmitt? I will confirm that Commissioner Shoulders is on the line.

Commissioner Shoulders: I'm here.

President Musgrave: Thank you. Mr. Schmitt, if you could wait just one moment.

Shannon Frank: Thank you, and thank you, Reed. Ron said he just spoke with Mr., with Alan, I'm sorry, I don't know his last name, excuse me, who is a representative of the board, and he said there were a couple of areas that they wanted additional seeding to be done. Is that correct? Additional seeding to be done. So, Mr. Dauby will look at that tomorrow. So, I just wanted to bring that up.

President Musgrave: Now, Mr. Schmitt, you can approach as soon as they prepare the podium.

Reed Schmitt: Good afternoon, Reed Schmitt for the Hunter Chase Estate's owner's association. Ms. Musgrave, Mr. Shoulders, Mr. Emig, we provided, by email a copy of our November 10 letter, which included 29 photographs that were taken yesterday, which make, which represent the status of the development, as of yesterday. I'll be brief. I think the document speaks for itself. The attempt was to address each one of the 10 separate checklist items that Ashley Hollen had prepared for the October 26, 2020 meeting. And so, in our November 10 letter, that you received a hard copy of immediately before this meeting, and you received an email of after lunchtime sometime today, each one of those pictures' addresses, by reference to Ms. Hollen's 10-point checklist, and each picture also has, is enumerated as referencing what swale or where the picture is located within the development. We do not believe that the 10 items have been completed as they were supposed to. I've enjoyed working with Jeff Mueller. He's been a bulldog on this, but we're at the point where we need to have something a hundred percent complete, and it isn't a hundred percent complete. The pictures, you know, a picture is worth a thousand words. So, you've got 29,000 words in front of you in those pictures. Mr. Mueller said, in addressing what he believed was the checklist to be complete, he used the phrase, hopefully it will work. Well, hopefully it will work doesn't resolve the issues for 105-unit owners in Hunter Chase. We were here a year ago, October 29th of 2019. I've included a copy of those meeting minutes in the November 10 letter, and within those minutes, although there's been more completed in a year, we're still not a hundred percent complete, and that's a year after. Our major concern, which was reiterated at the October 29, 2019 meeting, is that there's no vegetation. We're way beyond the grass growing season. And our concerns are again, like they were a year ago, that we will not have a complete working drainage plan come the spring. In addressing the issue relating to signatures, we do have signatures of the board members and owners of the affected area. However, in having a discussion with Mr. Mark Miller, Ms. Brien had a discussion with him at the last meeting, I have had a discussion with him relating to the implementation of part of the drainage plan, which has affected his client's neighboring farmland. That's Mr. Kendall. we have some concerns relating to the implementation of the rip rap that was done, and so, I will be revising the language relating to the consent to or approval of that portion of the drainage plan.

President Musgrave: Thank you. Is there, I know that, Mr. Miller, you are here to address the Board, and I want to make sure you understand that the only points that I will allow testimony on are the Surveyor's points here, and not something that is a matter of civil jurisdiction.

Mark Miller: I'll make a lawyer's promise, Commissioner Musgrave, that I will do my best

President Musgrave: Okay,

Mark Miller: And if I've crossed the line, I'm sure you will let me know. But, I do thank you for allowing me to speak. And I'd like to begin to address the very question that you raised about the limits of what Mr. Kendall's interests may be, and turn that around and say what Mr. Kendall's interests are according to the Drainage Board ordinance, the drainage ordinance of Vanderburgh County. And what that ordinance says is that, just among other things, that the drainage plan must meet the criteria of Indiana law, including that the plan must maintain the amount of drainage to the tract that existed when the tract was created, the plan may not change the locations where surface water enters the tract and exit the tract from the locations that existed when the tract was created. Water that sheds off a new structure, especially when the new structure is elevated, where near a property line, or both, must exit the tract in the same location where it did when the tract was created. Our issues are with that purpose of the ordinance. Our issues are that the plan that was revised in 2019, or actually let me back up, there was a preliminary plan filed at some point, but it was short on detail. It's about five pages in actual or three pages in actual content, and then calculations. There was nothing else filed, and I won't get into the lengthy history of this, but there was nothing else filed until 2018, and then thereafter in June of 2019, there was an approved final plan. Although Mr. Kendall was provided notice as an adjoining landowner, in the original proceeding, and was aware of it and involved, he was given no notice, going back to Mr. Mueller's comments of the proceedings last in 2018 and 2019. So, what we believe is happening is that the drainage plan is either, one, improperly designed and it is causing these problems to Mr. Kendall, his property, which I'll very briefly describe in a minute, or that they have not built the

drainage facilities structures to the plan. One of the reasons Mr. Kendall, before I ever got involved, had been coming in and trying to explain to the Board what his issues were, he was also asking to be allowed to participate in the meetings with the County Surveyor and County Engineer and others, so that he could understand how this was built and could show them how these facilities are damaging his property. He's here to verify all of this, but I will say that I believe he's already said this, that these, all these problems did not exist at the time that this originally was proposed, or the plan was approved in 2019.

President Musgrave: Those all may be true, but those are outside the scope of this particular agenda item.

Mark Miller: I don't see how that is, Commissioner. The issue here, as I understood it, as you were discussing with Mr. Mueller, is to approve the plan as built. We are objecting, as an adjoining landowner, that the plan has not been, it's either not been designed properly or not been built properly, because it's causing damage to my client's adjoining real estate. He adjoins the property on two of the four sides, the entire southern edge of the subject property and the entire eastern edge. In the packet that you have, there's a picture of a lake, that lake or pond, that didn't exist before Mr. Dauby started this work.

President Musgrave: Okay.

Mark Miller: That was caused by the work of the plan, and that is not consistent with the purposes of a drainage plan. And similarly, there's erosion of a road that Mr. Kendall put in, that's clearly being caused by the water that's being, according to the plan--

Craig Emig: Mr. Miller, we have, we'll note your objections to this.

Mark Miller: Okay.

Craig Emig: And, we'll note your objections based on the claims that you've made here today, and based on your alleged lack of notice. And with that, we will again, as, President Musgrave has said, we're going to keep this contained to that the issues that are germane to today's hearing, not every issue that has come up at any time during this drainage plan process.

Mark Miller: And I would just respond by saying I object to not being allowed to finish my presentation.

President Musgrave: Mr. Mueller, have you heard anything which would change your position?

Jeff Mueller: No, I don't. I respectfully disagree with some of the things the counselor said, but this is not the proper time or place to bring those up, and we'll just leave it at that.

President Musgrave: Mr. Shoulders, you've heard the testimony. Are you ready to make a motion?

Commissioner Shoulders: I will say that, as I've said before about this, you know, we've been working on this, with this, in conjunction with this, as related to this for three years, something like that. And I'll mention, reiterate this again, that Mr. Mueller, I believe stated, earlier prior to some of the legal folks that came before this Board, that he was satisfied with the plan in terms of this related agenda item. And so, I would make the motion on that, but I do ask that Mr. Kendall's item be continued to be discussed and remedied, at some point. But in terms of your asking of this motion, I will make the motion.

President Musgrave: Thank you, and I will ask if your motion is contingent upon receipt of the last two signatures within the next month?

Commissioner Shoulders: Yes. Yes, that is contingent on that.

President Musgrave: I will second the motion. Is there any further discussion hearing? Hearing none. Madelyn, would you please call the roll?

Madelyn Grayson: Commissioner Shoulders?

Commissioner Shoulders: Yes.

Madelyn Grayson: President Musgrave?

President Musgrave: Yes.

(Motion approved 2-0. Commissioner Hatfield recused himself.)

President Musgrave: That concludes any Hunter Chase discussion.

Adjournment

President Musgrave: I believe that’s the end or our agenda. Commissioner, Ms. Frank, I’m sorry. Is there a motion to adjourn? Commissioner Shoulders?

Commissioner Shoulders: So moved. Yes.

President Musgrave: And, I’ll second. We are adjourned.

(The meeting was adjourned at 5:06 p.m.)

Those in Attendance:

Cheryl Musgrave	Ben Shoulders	Jeff Hatfield
Jeff Mueller	Craig Emig	Madelyn Grayson
William Noll	Larry Horn	Jacob Timmons
Paul Wunderlich	Shannon Frank	Reed Schmitt
Mark Miller	Others Unidentified	Members of Media

**VANDERBURGH COUNTY
DRAINAGE BOARD**

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Ben Shoulders, Vice President

Jeff Hatfield, Member

(Recorded and transcribed by Madelyn Grayson.)