

**ALLEN COUNTY DRAINAGE BOARD MINUTES  
REGULAR HEARING  
OBSTRUCTION HEARING  
GEPHART**

January 25, 2007

9:00 a.m.

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PRESENT: DB: NELSON PETERS, BILL BROWN, ALLAN D. FRISINGER; ACSO: LARRY WEBER, CHERYL ZURBRUGG. SEE SIGN-IN SHEET FOR OTHERS PRESENT

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**Call to Order:**

Chairman, Bill Brown opens meeting Linda Bloom was absent from meeting.

Nelson asked if there were any minutes to approve and was told not at this time.

**Approval of Petitions:**

1. **Doc. #06-290, Crawford Drain located in Aboite Twp. Sec. 5.** Petitioner Greg Buckel. Petition for encroachment for the construction and installation of houses, drives, utilities and detention pond, and for the relocation of the Crawford Tile. For the development of 'The Villas of Chestnut Cove.

*ADF recommended approval as submitted. Nelson made a motion to approve, seconded by Bill. Motion voted on and passed.*

2. **Doc. #06-291**, Request from Dickmeyer and Associates for the approval of their Stormwater Management Plan for 'The Villas of Chestnut Cove.'

*ADF recommended approval subject to the following conditions: The Crawford Drain relocation and reconstruction, that it establishes a forty-foot Urban Drain Status, and drain encroachment approval and future pipe extension approval on the west side of Hamilton Road and future alignment is taken care of with regards to blocking that area. The developer is responsible for achieving all the proper structural back bone in the proposed pond fill area where the construction takes place. Nelson made a motion for conditional approval, seconded by Bill. Motion voted on and passed.*

3. **Doc. #07-005, Graham McCulloch Br. #6 Drain located in Wayne Twp. Sec. 29/32.** Petitioner Bruce Rowley, Operations Manager Hanson Aggregates Midwest, Inc. Petition for the relocation of the Graham McCulloch Branch #6 to 550 feet south of current location. Moving ditch allows owner to better utilize their property without having to cross the ditch.

*ADF showed map of the watershed and relocation plans to the Board. There are a couple things that we are going to need prior to release from my office. The watershed is greater than one mile square requiring approval from DNR along with IDEM and the Corp of Engineers. We will look at their erosion control altitudes and how they are going to maintain that side bank, there is a requirement for bonding on the reconstruction itself. He recommended to the Board approval subject to all the appropriate permits and details being received and he would release through his office. Nelson made a motion to approve subject to receipt of the appropriate permits and approved by the ACSO, seconded by Bill Brown. Motion voted on and passed.*

**OBSTRUCTION HEARING:**

*Nelson Peters made a motion to open the Obstruction Hearing on Doc. #06-297, seconded by Bill Brown. Motion voted on and passed.*

**Doc. #06-297 Tim & Teresa Gephart** - Mutual Drain Obstruction Hearing. Allen County Drainage Board Findings of fact and order on petition to remove Obstruction pursuant to I.C. 36-9-27-4-1 through 25, attached.

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*ADF read the Surveyor's report into the records (Doc. #07-006). After reading the report, he gave the Board copies of the site.*

*Nelson asked ADF to elaborate on what is being asked for and then what needs to be done.*

*ADF explained the problem to them. The area of fill is highlighted in red baselessly done for the expansion of the pond which now obstructs the flow of water to the southeast to the Paul Freeman Drain. If proven correct, would need to be reconstructed to allow for the flow of the natural surface watercourse.*

*Nelson: the obstruction that we are seeing then is what is being asked to remove? He was told yes.*

*Nelson asked what would happen if the obstruction is not removed.*

*ADF told him that there would continue to be ponding water on the adjacent property.*

*Steve Scheckel from the ACSO told the Board that it was an establish swale and the water was going through there find and then what they did (respondent). They increase the sized of their pond and moved the dirt up here blocking the water.*

*Bill Brown asked for comments from the Petitioner.*

*Tim Gephart 16935 Painter Road, Leo, Indiana*

*Mr. Gephart told the Board that the flowed across the property before he built there. When they (neighbor) expanded their pond, they made the obstruction. He has a basement and is concerned about flooding.*

*The Board didn't have any questions for Mr. Gephart.*

*Bill asked if the Respondent would like to speak.*

*Carol Mills 16807 Painter Road, Leo, Indiana.*

*She told the Board that the dirt was originally placed in her front yard. The dirt was moved from that area to this area. She is new to the county and didn't know everything. But the reason she presented a paper where it says that one may not collect or concentrate surface water and cast it, in a body, upon his neighbor. Below that it says 'Nuisance Law' that there isn't any rule where pursuant to whatever code it is if it causes obstruction to free the property, to essentially to interfere with the comfortable enjoyment of life of property, or is a nuisance, and the subject of an action. She told the Board that she can not use her property because it is constantly flooded. She has retained a lawyer but she couldn't be here today. She also has pictures which show the drain from their pond is baselessly on her property line.*

*Nelson asked to see them. She gave them to the Board*

*ADF asked her if the outfall from the pond is on her property.*

*Ms Mills said that it was not on her property but this far (put up hands to illustrate distance) from her property.*

*Ms Mills said that she would be happy to remove the dirt she would be happy to pay for half of a drain that could solve both problems. They are draining onto her property. She is trying to get proof that their (Gephart) Geo-Thermal is flooding her property.*

ADF: . . . The county does not have an ordinance relative to pond construction that would make those determinations of offsite easements.

Nelson: 2 issues: One is the obstruction and the other the outfall from their pond. Ms Mills already suggested that she would be willing to remove that obstruction which I think gets us to where we need to be with respect to the mutual drain obstruction hearing. It sounds like there is an issue above and beyond that. Is there a way that they can get what they need, and she can get what she wants too? . . . It sounds like at least in that area the outfall that is coming from the Gephart's pond is causing some issues. Is there an engineering way that we could mutually take care of those issues?

ADF: The first thing is that the swale area that goes through the Mills property - When you look at obstruction her contractor or herself through contracting with the contractor has made a determination that the water she is accepting is now going to be dam up over here. . . . The issue of its being wet because of their pond discharge isn't something that we necessary as the Drainage Board deal with. He asked Ms Mills if she has a culvert under her driveway. He was told yes, but not at the road. He told her that the culvert indicated that the flow of water actually went through there and when her contractor moved the dirt into the area he knowingly blocked off that flow of water.

ADF asked her if she agreed that there is an obstruction and she admitted that there is dirt over there. He asked her if she would agree to regrading that area.

Ms Mills said that she could smooth the dirt out.

ADF told her that she would have to regrade it so that there would be some type of a swale through there.

Ms Mills told him that she was not going to expense into putting a drain in when there is extra water being dump that shouldn't being dump on my property. Until that is resolve then I will do that and I do plan interrupted by ADF.

ADF told her that the Board is here to make a determination of obstruction. You said that there is an obstruction and now they need to go through and make determination of what you need to do resolve that. Regardless of whether there additional water coming at you or not. . . . He asked her if a field tile that might have gotten broken during construction.

Ms Mills told him that she didn't think so because she has two that under repair towards the front area. . . .

Ms Mills asked if she has the rights to legally fight any determination by the Drainage Board.

ADF told her that she has the option to do whatever you like to do legally, but he thought that the Board makes a determination of obstruction and the fix of that obstruction you can contest the proceeding that they were not held in accordance with statue beyond that . . . interrupted by Ms Mills (inaudible).

Ms Mills asked if she could file her own complaint

Nelson – Lets do obstruction first then we can take a few minutes and talk about your wet land.

Brown: Findings of Fact and Order on Petition to remove Obstruction Pursuant to I.C. 36-9-27, 4-1 through 25. Copy attached with minutes.

1. Nelson and Bill said yes obstruction does exist.

2. Nelson and Bill said yes removal will promote better drainage.
3. Nelson and Bill said yes the obstruction will not cause unreasonable damage to the land of the respondents.
4. Nelson and Bill said yes the obstruction was created intentionally.
5. Nelson made a motion that the respondents remove the obstruction at their expense, seconded by Bill.

ADF the work that would need to be done to recreate a swale on the respondent's property is done in a fashion that is acceptable to the Board. He suggested that when that work is done they go out and make an inspection or review of their site to insure the water does have adequate flow across the respondent's property.

Tim Gephart told the Board that he is willing to get rid of the Geo Thermal and pay for half the drain.

A couple of conversations took place away from the recorder at the same time.

Nelson called for the question. Motion voted on and passed.

ADF: If the petitioner and respondent are agreeable to making restoration efforts together, that is great.

Nelson asked ADF if he would be overseeing not only the restoration but what they are talking about.

ADF: If they're making an actual interconnection on the regulated drain system with a pipe system, yes. With regards to the initial action that said, "Ms Mills would be recreating a swale area; we would be overseeing that work." It sounds like the two parties are willing to get together and resolves the issue so that the Board action has been taken so if for whatever reason there is a breakdown of communication the Board action would come back and Ms Mills would have to recreate the swale.

Ms Mills: She understood removing the obstruction, but she didn't feel that she should have to do anything but remove it. She didn't think that they should be able to force her to do anything other than to put it back the way it was.

ADF told her that they weren't.

Ms Mills: You are saying to recreate a swale, she would rather do it different.

ADF told her that it is between the parties that is a private issue.

Nelson adjourned the meeting.

**ALLEN COUNTY DRAINAGE BOARD**

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Linda K. Bloom, Chairperson

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Wm. E. Brown, Vice-Chairperson

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Nelson Peters, Secretary

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Allan D. Frisinger, County Surveyor

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Date

Allen County does not discriminate because of disability in the admission to, treatment or employment in, its programs or activities. The Human Resources Director has been designated to coordinate compliance with nondiscrimination requirements contained in Section 35.107 of the Department of Justice regulations. Information concerning the provisions of the Americans with Disabilities Act, and the rights provided thereafter, and Allen County's ADA Policy, are available from the ADA Coordinator. Requests for assistance or suggestions on how the County can better meet the needs of those persons with disabilities may be submitted to the ADA Coordinator at: Human Resources Department, Room 208, 1 East Main Street, Fort Wayne, Indiana 46802, or by telephone at 260-449-7217, TDD 260-44-7881.