

**ALLEN COUNTY DRAINAGE BOARD MINUTES
REGULAR HEARING
PUBLIC HEARING
BRAUN DRAIN**

April 23, 2009

9:00 a.m.

PRESENT: DB: LINDA K. BLOOM, WM E. BROWN, NELSON PETERS, ALLAN D. FRISINGER; DB ATTY: CATHY SERRANO; ACSO: LARRY WEBER;
DB SEC: SHARMAN BULTEMEIER; SEE SIGN-IN SHEET FOR OTHERS PRESENT

The Allen County Drainage Board convened on Thursday April 23rd, 2009. Following introductory remarks Ms Bloom opened the Braun Drain Hearing.

Public Hearing Reconstruction of the Braun Drain.

(The following reflects a synopsis of action taken by the Allen County Drainage Board during the Public Hearing. Actual tape recordings of the proceedings are available upon request.)

- A. Surveyor's Report: Doc. #09-040.
Mr. Frisinger read the report into the records (copy attached).
- B. Attorneys for Proponents:
None present
- C. Attorneys for Opponents:
None present
- D. Objections on File:
No written objections.
- E. Comments in Favor:
Mr. Richard Knappenberger address: 3411 Bass Road. Owns two of the lots that are going to be involved.
He had the following questions:
 - 1. Are the easements you got for the – that are not going to be utilized with this system, are they going to be abandoned?

Mr. Frisinger told him that the easements currently in place are statutory in nature. The reconstructed element of the drain itself would then require board action to release those particular easements. Once the drain is reconstructed that portion of the will be taken out of services.

- 2. Are you going along on the west side which is parallel to the existing sanitary and that becomes very close to the existing property line and I am going to – I am my neighbors are going to lose two hickory trees and possible another maple tree in that area. He was curious about the depth of the thing, because running right along side of the sanitary, thought it might be deferential to the construction people because you are digging beside an existing ditch. If anything was done about possible running down the Middle of the road. He realized that it would cost more for backfill, but it might utilize better construction.

Mr. Frisinger told him that the City was comfortable with the location relative to the sanitary.

- 3. He had a large area that flood and asked if there any consideration regarding it.

Mr. Frisinger told him that he any interconnection is possible that he could put a separate drain tied to this drain at his cost and the action would require a permit.

4. Mr. Knappenberger asked if the easement becomes abandoned and if he could build on it.

Mr. Frisinger told him that it is not abandoned, but relocated by board action.

No one else spoke in favor.

F. Comments in Opposition:

No one was present to speak in opposition.

G. Close Hearing:

Ms Bloom asked if anyone would like to speak, hearing none she asked for a motion to close the hearing.

Mr. Peters made a motion to close, second by Mr. Brown. Motion carried.

H. Board Finding and Order:

Mr. Brown made a motion to approve the improvement to the Braun Main Drain number 07-15-700, second by Mr. Peters. Motion voted on and carried.

Mr. Frisinger introduced Anne Marie Smrchek, Stormwater Program Manager, City Utilities, to the Board.

Regular Hearing

Call to Order: Chairwoman, Linda K. Bloom

Approval of Petitions:

(The following reflects a synopsis of action taken by the Allen County Drainage Board. Actual tape recordings of the proceedings are available upon request.)

1. **Doc. #09-034, Fuelling Drain located in Maumee twp. Sec. 5.** Petitioner is David C. Lofing. Petition for encroachment within the drainage easement for the installation of a perimeter drain tile. Private septic system.

Mr. Frisinger recommended approval subject to submittal and approval of engineering's details and inspection of ditch installation. Mr. Peters made a motion to approve petition subject to Surveyor's requirements, second by Mr. Brown. Motion carried.

2. **Doc. #09-035, Willow Creek Main Drain located in Perry Twp. Sc.18.** Petitioner – Northern Indiana Fuel & Light Co. Petition for encroachment for the installation of a four inch plastic natural gas main that is proposed to be directionally bored under the Willow Creek Main Drain. The proposed depth at the center of the drain is a minimum distance of ten feet between the top of the proposed main and the bottom of the drain bed. The

attached drawing shows the proposed bore entry and exit locations and a detailed depth chart. Requesting that the \$250.00 fee for a utility crossing a drain be waived. NIF&L currently has an existing four inch main.

Mr. Frisinger recommended deferring petition. He explained that they had charged our contractor for \$1,297.60 in the reconstruction of the Lima-Shoaff Drain adjacent to this bridge and the upstream area. They had incorrectly located the gas line and then held our contractor feet to the fire saying, "If you don't pay now, we are going to take you to court." He asked the Board to hold up on a decision so that he could negotiate with them. Nelson made a motion to defer petition, second by Mr. Brown. Motion carried.

3. **Doc. #09-037, Willow Creek Main Drain located in Perry Twp. Sec. 18.** Petitioner - Allen County Highway Department. Petition for encroachment for the construction of Replacement Bridge #52 on Lima Road. Asking that the fee be waived since this is an Allen County Funded Bridge project.

Following comments and general discussion by the Board, Mr. Frisinger recommended approval as submitted. Mr. Peters made a motion for approval, second by Mr. Brown. Motion carried.

4. **Doc. #09-036, Bobay Br. #1 Drain located in Washington Twp Sec. 4.** Petitioner – Lighthouse Free Methodist Church. Petition for encroachment for the installation of a 12-inch diameter outfall pipe.

Following comments and general discussion by the Board, Mr. Frisinger recommended approval subject to receipt of recorded offsite easement. Mr. Brown made a motion to approve petition subject to receipt of the offsite easement, second by Mr. Peters. Motion carried.

5. **Doc. #09-038.** Request from Williams Creek for the approval of the Stormwater Management Plan for Parkview North Campus Expansion – North Drainage System located in Perry Twp. Sec. 26, 35

Following comments and general discussion by the Board, Mr. Frisinger recommended approval as submitted. Mr. Peters made a motion to approve petition as submitted, second by Mr. Brown. Motion carried.

6. **Doc. #09-039.** Request from Civil Engineering Services for approval of the Stormwater Management Plan for Harlan United Methodist Church located in Springfield Twp. Sec. 32.

Following comments and general discussion by the Board, Mr. Frisinger recommended approval as submitted. Mr. Peters made a motion to approve petition as submitted, second by Mr. Brown. Motion carried.

7. Doc. #09-007, Signature approving Board findings of fact and order on petition to remove obstruction pursuant to I.C. 36-9-27, 4-1 through 25.

Mr. Brown made a motion to approve the Board findings of fact and order for Doc. #09-007, second by Mr. Peters.

Ms Bloom: "Before we do this, I think all three of us maybe didn't quite understand the significant to the owner of the property that is going to have to- the first property there is as I remember is going to have to do all this construction on his all property now. Am I correct?"

Mr. Frisinger: Yes. Not only that, but also the sheriff and the adjacent property and the implications that are left outstanding relative to future rulings of this nature. – The ruling as it stands was not what he would expect. The proposals that were set forth – there were a lot of testimony that was untrue.

Ms Bloom: Ask, how would the Drainage Board know that the information being submitted was untrue?

Mr. Frisinger: Explained to the Board that his report was cleared with issue and the element of proposals that the respondent made. There is clearly is only one property owner who made the obstruction and the other homes are affected but were not part of the respondent's issue. We raised some interesting points when we know that the downstream property owners now have blocked flow on the property owner to the north and built a septic system inside a public right-of-way and have admitted to the fact that they did it. The respondent themselves admitted to an obstruction and that they did it intentionally to harm the upstream property owner. Their claim of the Common Enemy Doctrine is somewhat a fallacy. You have the right to wall in, wall out as long as it doesn't create a problem with someone else. If that's the case then we end up with this being the total way that we are going to do busy in around Allen County. And everybody will do this. Are rulings are such that we did to have water be transfer through property based on the developers whether it is a single home or a hundred homes or a factory. They have to look at how they are going to control water on their site, not individually say, "Well I am here now so –" He thought it went the wrong way. He had written up a memo to this affect and he had every intention of giving it to the Board. - If they had the money to build a wall, why didn't they build an outfall system?

Mr. Brown: Explained that when they get information from folks, they got to rely on them coming back and forth. He didn't recall the O'Neals' rebutting the thousands of fish. As far as the heat pump and how much water it produces, Mr. O'Neal didn't know. He had not check. The Board needs to understand what does unreasonable means to us. We need to understand for future what does that word means to us. What is the definition of unreasonable? Also the neighbors had made an offer to the O'Neals to allow them to run a pipe and they were going to work together to dissipate that water prior to the obstruction being built. Whether they made the right decision or not, it was the decision that was made. He thought putting that into the conversation was important. He didn't think that the O'Neals were willing to spend a penny to work with the neighbors. It was more or less that is their tough luck.

Mr. Peters: He asked that when the system appears to be as rigid as it is the questionnaires and the points that they need to address, how do you side step that. When you talk about that third question – He had asked what kind of damage and the respond was – basement flooding, septic problems – to him that seem like unreasonable damage.

Mr. Frisinger told him that it was not to the land. There was no claim that there would be basement damage to the land of the respondent other than they would have some driveway stones washing out and they didn't like that water coming across. The two downstream property owners built in too low and in the flow path of the water. Their damage is theirs. They were not the respondents. The respondent is the guy who built the wall. When he looks at the development of land the responsibly of the transfer of water becomes your's, not the guy upstream. You don't go to him and say, "Well I

bought this now you pay to take care of what I see water coming at me." If you buy down hill, you got to take care of that water. That is what we tell every developer that comes in. –

Mr. Peters: He asked isn't it true that part of their function is too try and protect as many as we can. If that obstruction had been taken down, there would had been more people suffer than not suffer in that particular area.

Mr. Frisinger: He didn't think he would use the word suffer –

Mr. Peters: Harmed.

Mr. Frisinger: They would have to come up with a resolution. There is a resolution – they have to do it.

Ms Bloom: He was the first one there and he was maintaining his own water – then all of a sudden this developer comes in –

Mr. Brown: Any time a heat pump is involved they need to know that they need to do a little analysis to be accurate – when you are talking a million gallon or more – granted over time the rise and fall of the pond – and not knowing how that overflow drains out and what the level was – having pictures showing water over their driveway. He would like to find out from the others on the board about understanding what unreasonable means.

Ms Sorrano: She couldn't talk about the facts of that case because she was involved in the litigation but from the legal stand point – when you are going through that itemize check list and you get to that unreasonable, what Al is talking about is if the respondent is order to remove that obstruction that they have put on their property what damages will it do to the land on their land property or other land right around that. The only evidence that she remember hearing at the hearing was the evident with regards to erosion off of the septic tank that would be consider damage too that land. The other issues about the economic damages you are entitled to hear and weigh according as the Board but the unreasonableness of the damage that Al is referring to on that check list refers to the damage to the land and structures there on the property. If they have to remove that obstruction what damage will removing that obstruction do to that real estate?

Mr. Peters: Basements, septic systems, driveway.

Mr. Frisinger: They didn't have any.

Ms Sorrano: No. The respondent didn't have any. Those other people were interested parties downstream.

Mr. Frisinger: They by their own testimony built in an area that should never been built in. They knew that they built their pond too high and their basement too low; they obstructed the flow of water from the north to the south - for some reason somebody got it into their mind just in that particular issue that it was okay to block that water flood this field even though there is a four and half feet of fall from here down to here. Again it goes back to the developer, who was just trying to market something out there and go on. –

Mr. Weber: Sited the following example: Eggeman Road Obstruction – The Board ruled the obstruction and yes they had built a pond and they had built houses, and yes that took out the pipe and the flow path. You might had ruled that it is unreasonable for this guy to take out his pond and it is unreasonable to move his house, but what you order was that the Surveyor's Office to develop a storm pipe plan and bid and construct and they will probably spend twenty-five thousand dollars. – Now we didn't say that you have to tear down your house and remove your pond, but you did say, they blocked the drain and it might have been unreasonable to move all of their infrastructure but as an alternative you said well the Drainage Board and the Surveyor's Office develop a storm

plan for a reroute of that drain. We could had done that with this site – before you remove the obstruction come up with a new plan a storm pipe plan that carries that flow around their septic system that they built on the path and around the house and open those flow paths up. –

Mr. Frisinger: He explained that was on lands that was not part of the petition. All we could say was that there was a wall that was built and by testimony of the respondents they are saying that yes we did this intentionally to cause harm to that guy. That was their testimony. –

Mr. Peters asked if they can have a redo. He was told no. He then asked if the Highway can do something to help fix the problem. He was told no.

Mr. Weber explained that someone could petition for a drain improvement.

Following additional comments (tape available for review) the Board decided to defer action.

Mr. Brown made a motion to withdraw and defer for action in two weeks at the next Drainage Board meeting, second by Mr. Peters. Motion carried.

Other Business:

Request from Huntington County for a W.G. Griffith Joint Drainage Board Hearing.

Mr. Frisinger explained to Mr. Brown that he had been elected President of the Little River Joint Drainage Board.

Mr. Frisinger explained to the Board that Huntington is asking for someone to sit on this new Board. Mr. Brown agreed to attend the meeting.

Joe Sturm discussion regarding his property located on the Flatrock Drain.
(The following reflects a synopsis discussion between the Board and Mr. Sturm. Actual tape recordings of the proceedings are available upon request.)

Joseph Sturm – address: 9905 St. Rd. 101, Monroeville, IN.

Mr. Sturm explained to the Board that he is losing his property to erosion of the Flatrock Creek Drain that runs through his property.

Mr. Frisinger explained that Mr. Sturm never received permission from Drainage Board for encroachment within the drainage easement for the driveway, also the watershed would have to pay for any work performed on Mr. Sturm's property. He also explained that this ditch will hopefully be going to hearing for reconstruction and relocation. The relocation of the ditch will take care of their problem as the ditch will no longer exist in its present location on the Sturm's property.

Mr. Brown asked for a time table for reimbursement from the state for the reconstruction and relocation.

Mr. Frisinger told him that there would need to be a public hearing, a commitment from the state that they will pay for the work and the Board will have to make a determination on how to deal with Mr. Sorg.

Following comments the Board made the recommendation that the Surveyor accelerated the process.

Mr. Frisinger told them that they would not have to go to hearing, if they could get an agreement from INDOT and the affected property owner, Mr. Sorg.

Mr. Brown instructed the Surveyor's to send Mr. Sorg an offer for(x) amount of acreages based on the Purdue value of real estate.

Mr. Frisinger told the Board that he would contact INDOT again and ask for written confirmation of financial obligation to the Allen County Drainage Board.

Mr. Brown told Mr. Sturm that if he can come through the Drainage Board at the time of construction of his house he would had been informed that building within the drainage easement of a ditch would be at his own risk.

Mr. Weber explained that for the bank stabilization of the Sturms' property would take four to five years worth of maintenance.

Ms Bloom asked if there was any other business that needed to be discussed.

Mr. Frisinger informed the Board that they would be having another ditch Relocation project – the Huguenard Drain from Till Road south.

Meeting adjourned.

ALLEN COUNTY DRAINAGE BOARD

Linda K. Bloom, Chairperson

Wm. E. Brown, Vice-Chairperson

Nelson Peters, Secretary

Allan D. Frisinger, Surveyor

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.