

**ALLEN COUNTY DRAINAGE BOARD MINUTES
REGULAR HEARING
OBSTRUCTION HEARING
CHARLES O'NEAL**

April 9, 2009

9:00 a.m.

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

The Allen County Drainage Board convened on Thursday April 9th, 2009. Following introductory remarks Ms Bloom asked for approval of the March 26th, 2009 minutes. Mr. Peters moved for approval of the minutes as they were prepared, second by Mr. Brown. Motion carried.

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. #09-028, Grover #2 Drain located in Jefferson Twp. Sec. 1.** Petitioner is Wayne Doty. Petition for encroachment for the installation of a 6-foot by 30-foot long culvert for access to his land.

Mr. Frisinger recommended approval with the following conditions: Culvert needs to be upgraded to 6.5, sumped and the installation of the pipe will require inspection as the work is being done with 24 hours advance notice. Mr. Peters made a motion to approve a 6.5 foot sumped culvert with 24 hours notice, second by Mr. Brown. Motion carried.

2. **Doc. #09-030, Duglay Drain located in Eel River Twp. Sec. 7.** Petitioner is Doyle Rhodes. Petition for the installation of a perimeter drain tile. Private Septic System.

Mr. Frisinger recommended approval with the following conditions: Rigid Pipe extended to the center of the drain above the normal water level and rip rap installed on the side of the work. Mr. Brown made a motion to approve the petition as specified by the Surveyor, second by Mr. Peters. Motion carried.

3. **Doc. #09-031,** Petition from Mark R. Loebert for the Establishment of a New Regulated Drain located in Lafayette Twp. Sec. 33. Motion to proceed.

Mr. Frisinger recommended a motion to proceed for evaluation of the proposal itself. Mr. Peters made a motion to proceed for evaluation of the proposal on Doc. #09-031, second by Mr. Brown. Motion carried.

4. **Doc. #09-033, Martin #1 Drain located in Perry Twp. Sec. 36.** Petitioner is INDOT. Petition for the encroachment for the replacement of 110 LFT of existing 72" CMP with 146 LFT of new 26' x 8' 3 sided concrete box culvert. The existing culvert will be replaced with a new culvert for the SR 1 added travel lanes project.

Mr. Frisinger explained to the Board that the Martin #1 ends at the road. The Board can approve it and he would advise them that this is not a regulated drain. Mr. Peters made a motion to approve petition, second by Mr. Brown. Motion carried.

Other Business:

Mr. Frisinger asked for approval for a petition from the Highway Department for Amstutz Road, he recommended a motion to proceed for evaluation. Mr. Peters made a motion to proceed, second by Mr. Brown. Motion carried.

No other business meeting closed.

Obstruction Hearing
Charles O'Neal

Petition to remove obstruction in a mutual drain or natural surface water course.

Petitioner Charles O'Neal address 4606 Hollopeter Rd, Leo, Indiana
Respondent Cynthia A. Hogan Pin Number 02-02-12-300-009.000-057
Surveyor's Report:

Letters from Jimmy & Shelia Marley and Kathleen S. Polston.

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.

Linda Bloom opens Obstruction Hearing

The Drainage Board attorney Kathy Serrano reclused herself from the hearing as the attorney for the Drainage Board because she in private practice represented the Hogans. She informed the Board that they could reach former Drainage Board Attorney Bill Frisinger by phone.

Allan Frisinger County Surveyor

We have a petition from Charles O'Neal we have set forward the appropriate time frames for scheduling the hearing and holding it at this time. I can go ahead with the actual report or as we have several letters or pieces of communication that have been received from property owners in favor of and asking for the hearing to be delayed or rescheduled. I will read that first.

Dear Board Members: I received a call from a woman from your office regarding the above hearing prior to receiving the notice for the hearing. She informed me that it would be reset for May 14, 2009. As a follow-up for preparing for the hearing we thought was reset for May 14, 2009 and to verify the number of copies needed for our exhibits, I was informed that the hearing was still on the calendar for April 9, 2009. Please be advised that we cannot attend the hearing on April 9, 2009 as we will be out of the state on said date. The date for May 14, 2009 is still available on my calendar. Should this date not be convenient on your schedule, please contact me immediately. I will expect a call or written confirmation in the next day or so that the hearing has been reset in order for our necessary attendance.

That was from Cynthia Hogan, Esq. one of the property owners. It was sent on March 30th, 2009. Obviously I couldn't respond because it is under Indiana Code the availability to reschedule the hearing is the Board's. You have a ninety day period in which to schedule the hearing and then if the Board chooses to reschedule in the interest of fairness or but the Board can choose to do or you can move forward with the hearing at this time.

Linda Bloom: So this is Cynthia Hogan that can't be here?

Allan Frisinger: Right

Cynthia Hogan: Excuse me, I am here. We had changed our plans in order to attend.
(Unintelligible)

Allan Frisinger: Oh Okay.

Allan Frisinger: Right and so we end up with that letter being non-void I guess.

I will move right along with the other letters.

Dear Sir/Madam: This letter is in response to your Notice dated March 13, 2009 regarding property parcel numbers: 02-02-12-300-014.000-057 located at 4606 Hollopeter Road and 02-02-12-300-009.000-057 located at 4516 Hollopeter Road.

Please be advised that we object to the removal of the obstruction located at 4516 Hollopeter Road. This objection is based on the fact that water from the Claimant's pond overflowed haphazardly flows over the 4516 property which pools onto our property. We are not objecting to the natural runoff of rain water. Feel free to contact us if you need any further information. Thank you. Sincerely, Jimmy L. Marley, Jr. and Shelia K. Marley.

Dear Sir/Madam: this letter is in response to your Notice dated March 13, 2009 regarding property parcel numbers: 02-02-12-300-014-000-057 located at 4606 Hollopeter Road (Claimant) and 02-02-12-300-009.000-057 located at 4516 Hollopeter Road (Defendant).

Please be advised that we object to the removal of the obstruction located at 4516 Hollopeter Road. This objection is based on the fact that water from the Claimant's pond overflow which consists of not only natural runoff but also consists of a Geothermal discharge into the Claimant's pond, does spill over to 4516 property which ultimately pools onto our neighbor's property (4510 – Marley's) and our property. This overflow of the Claimant's water has been eroding our land and in the past did cause our pond to severely over flow its banks. This obstruction on the Defendant's property has protected us from yard erosion along with preventing our pond to be in a severe overflow position.

Should you need any further information please contact us anytime at home after 5pm.

Thank you.

Sincerely, Walter J. Polston and Kathleen S. Polston

Allan Frisinger: That is all of the communication I have. – The Surveyor's Report for the Drainage Obstruction.

BACKGROUND:

- Residential metes and bounds parcels have been developed in NE ¼ of SW ¼ of Section 12 of Perry Township, T32N-R12E, Allen County, bounded on west by I-69 and north by Hollopeter Road. Watershed contains approximately 13.5 acres.
- Allen County GIS 1999 contours (NAVD88) indicate a natural surface watercourse existed on west side of Petitioner O'Neal property, identified by PIN 02-02-12-300-014.000-057, outfalling to Respondent Hogan property, identified by PIN 02-02-12-300-009.000-057, crossing two additional parcels west of Respondent, outfalling to a shared pond with two 12-inch HDPE outfall pipes, outfalling to Rinehold Drain, outfalling to Cedar Creek N.D.
- Allen County's GIS aerials indicate Petitioner's house was constructed prior to April 1999. Respondent's house is not shown in 1999 aerial.
- In January 2001, parcel owner on west side of Respondent filed complaint with ACSO regarding stormwater inundation from Respondent's new culvert and Petitioner's pond.

PROBLEM:

Petitioner alleges 5-foot high by 600-foot long soil mound near his west property line is causing his yard to flood, endangering septic and power transformer.

An Allen County Surveyor's Office employee visited site February 8, 2009. Water inundation was observed on Petitioner and Respondent properties. A berm was observed on Respondent's property near common property line with Petitioner. Aerials, GIS contours, and photos suggest a berm was constructed near Respondent's east property line after April 1999.

Grass is established on most of berm. A portion of the berm; near a low in the natural flowpath; is bare soil covered with plastic, planks, and concrete blocks; suggesting fill was recently placed. Dual wheel tracks were observed terminating at bare soil near berm.

CONCLUSIONS:

The natural surface water has been restricted and obstructed. Obstruction at berm occurred after 1999 and is associated with earthmoving activities on Respondent's property. In addition to berm, Respondent's driveway and undersized culvert restrict overland stormwater flows from east to west. Driveway on property west of Respondent, identified by PIN 02-02-12-300-008.000-057 is raised and restricts flows from east to west. Area properties were developed independently, without a comprehensive stormwater management plan or regard to adjoining parcels. Lack of integrated stormwater control and increased impervious areas has resulted in stormwater ponding and flow obstructions.

Mr. Brown asked AI if he had a sketch –
AI Frisinger: You should have one

Linda Bloom: No we don't and I'm not following along well at all. I don't think my partners are either.

Al Frisinger: I am so sorry, I thought those were

Linda Bloom: No we didn't - Okay We didn't have any of this. That is why we were confused.

Mr. Brown: Getting the general drift of it, but –

Al Frisinger: If you look at your ortho photo you will see that the –

What you will see if you look at your ortho photo the petitioner is labeled Respondent area of obstructions is labeled and you can see it by contours the flow path illustrated by the black line from the Dupont area adjacent to the pole barn on the Petitioner's property so -

Mr. Brown: So you got water coming out – pumping out of the pond because it is a geothermal system. Is that correct?

Al Frisinger: No, it does not pump out.

Mr. Brown: It is filling the pond and then it draining out of the pond okay. So that water is supposed to flow but it is in fact –

Ms Bloom: I remember this (unintelligible)

Al Frisinger: There is a mound that has been constructed.

Mr. Brown: And this person the Respondent constructed the mound right?

Al Frisinger: That is my understanding.

Mr. Brown: And the respondent is who?

Al Frisinger: Mr. & Mrs. Hogan

Mr. Brown: So Charles O'Neal's property

Ms Bloom: Show me

Mr. Brown: Well -

Mr. Frisinger: Okay – Do you see the black line across your drawing:

Ms Bloom: yeah

Mr. Frisinger: That is the flow path. That's the way the water should go according to contours.

Ms Bloom: Okay

Mr. Frisinger: All right – This pond on the petitioner's property the mound went from north to south is across this area on the common property line.

Mr. Brown: It is on the common property line?

Mr. Frisinger: Well it is on the Hogan's real estate, but it is adjacent to the common property line. You have a mound that been built across this area.

Mr. Brown: So the Hogans built this mound?

Mr. Frisinger: Uh-huh (affirmative) Again I think so – That flow is also obstructed in this area by driveways, culverts, septic fields, and another pond that was constructed in here is obviously -

Mr. Brown: If this is supposed to flow in the black line (unintelligible)

Mr. Frisinger: Right – The natural flow of water and then the other thing in the report that I was trying to bring out is these are metes and bound parcels developed without benefit of planning or stormwater review that would had been done today. So the property owners were sum what left at the (unintelligible) were being left to make their own choices relative to the development of the parcel. So that is where we are at today. Any questions?

Mr. Brown: I understand what the circumstances are, I guess now (unintelligible).

Mr. Frisinger: Right

Mr. Brown: Do you guys understand

Mr. Peters: The blue line is what again?

Ms Bloom: Blue or black?

Mr. Peters: No I understand the black, the blue line is what – that is where it was supposed to go? The black is where it is going, the blue is

Mr. Frisinger: That's two proposals.

Mr. Peters: That is two proposals?

Mr. Frisinger: For rerouting the water

Mr. Peters: Okay, I got you. – So where is the water going?

Mr. Frisinger: The petitioner is stipulating that the water ponding on his septic field and adjacent to his pole barn and inundating their power facilities, their actual transformer.

Mr. Brown: (unintelligible)

Mr. Frisinger: That is on Mr. O'Neal's

Ms Bloom: Preexisting natural surface watercourse can't be reestablished without removing house at 4510 Hollopetter Road.

Conversation between Mr. Brown and Mr. Frisinger away from recorder.

Ms Bloom: So is this recommendation or is this because it looks like -

Mr. Frisinger: Okay on the back side, I didn't finish – Continuing on with the conclusions:

Pond overflow release, control and flowpath on Petitioner's property are inadequate, as is flowpath west to I-69 culvert. House on west side of Respondent is centered in stormwater flowpath where water is deflected south of house to shared pond outfalling through two 12-inch pipes on parcel identified by PIN 02-02-12-300-007.000-057 to I-69.

Preexisting natural surface watercourse can't be reestablished without removing house at 4510 Hollopetter Road. A swale could be constructed from Petitioner's pond, across Respondent's property to shared pond on east side of I-69. Swale and pond easements and maintenance agreements are needed to establish and clarify use and maintenance responsibilities.

To reduce likelihood of future stormwater inundation associated with Petitioner's pond, recommend diverting Petitioner stormwater south through swale constructed along common property line with Respondent. Swale would continue through wooded area in rear of Petitioner's lot, outfalling to N.D., outfalling to Rinehold Drain. Respondent could grade front yard to drain stormwater to new swale. Allen County Surveyor's Office can design swale and draft construction plans. Whichever solution is chosen, stormwater easements, maintenance agreements, and plan review and approval by ACSO are recommended.

Mr. Brown: Can we ask questions?

Mr. Frisinger: You can ask questions, or we can have the Petitioner come up and state their case if they like too. That would be my recommendation at this point.

Petitioner Charles O'Neal Address 4606 Hollopetter Road, Leo, IN 46765

Mr. O'Neal: Good morning how are you?

Ms Bloom: Good

Mr. Peters: Good morning.

Mr. Frisinger: What I would ask you to do is state the facts of your case, if there is anything that we missed or anything that you want to bring forward that is different from what we said in my report that is all fine. Wide open here.

Mr. O'Neal: Well, my house was constructed in 1995 at the time my house was constructed there were no houses to the west of me. It all built after the construction of my house all water remained going to the west as it did before the house was constructed. Since then the road has been added too, cul-de-sac been put in to block drainage going to the west and now this berm has been constructed along my west property line also too keep water from going to the west. If you have time this morning, I would like to show you pictures of what that construction have done. He presented pictures to the Board.

This first set of pictures is pictures of the dirt actually being put along the west property line.

Mr. Brown: When was that done?

Mr. O'Neal: This was done in August of 06.

Ms Bloom: Is this supposed to be the swale?

Mr. O'Neal: No.

Ms Bloom: What is this?

Mr. O'Neal: This is my west property line looking back towards the north. This is the Hogans' house here and this is the property fence here. There is the dirt being added.

Mr. Brown: That's the dirt (unintelligible) construction.

Mr. O'Neal: That is correct.

Ms Bloom: And why is this here?

Mr. O'Neal: Why is it there, I

Mr. Brown: To create a berm, they wanted to berm it

Ms Bloom: Yeh, but look at it here.

Mr. Brown: That was during the construction.

Mr. O'Neal: That was during the construction

Ms Bloom: I know, I understand. But where

Mr. Brown: It turned in to this (showed a picture to Ms Bloom). These are your trees Mr. O'Neal

Ms Bloom: Those are your trees maybe

Mr. O'Neal: Yes

Ms Bloom: Okay

Mr. Brown: So your water is being blocked

Mr. O'Neal: I got some pictures of the water – if I can find those, I will show them to you. I got some pictures taken in January while my pond was still frozen and there was a lot of water then obviously there is more water now that things have thaw and more water is going that way.

Mr. Brown: Before you said that it was coming from your pond and it was going on it merry way to the interstate.

Mr. O'Neal: Actually the drain is right over here (pointed to the drain location) and when I built my house in 1995 there was a ditch that ran down through here. (Pointed to the location of the ditch). Since my house was built, this road was extended, because the road ended right here at my drive. The road got extended and a cul-de-sac was put in here which block the drainage going this way. So now the water puddles here and obviously there is a lot of water that goes there. I got more pictures of that if you would like to see it.

Mr. Peters: Where is this tree line on here is that right?

Mr. O'Neal: That tree line is right there.

Ms Bloom: But your water can't go west?

Mr. O'Neal: No, none of my water can go west now.

Mr. Brown: What kind of volume does your heat pump put into that pond? Do you have any idea how many gallons per hour?

Mr. O'Neal: It is a two and half ton system. I tried to get that from the heating guy and they said well it just depends on how much it runs. It doesn't run a whole lot because my house is really well insulated. But it does run and it does pump into that pond.

Mr. Frisinger: How much (unintelligible) do you have on the pond?

Mr. Peter left the meeting for a few minutes.

Mr. Frisinger: From the pond elevation to the overflow, do you know?

Mr. O'Neal: It varies depending on the time of year. But a lot of time during the summer it is a foot or two below that drain line so obviously it is a little higher in the spring and the fall but

Mr. Frisinger: How big is your pond again?

Mr. O'Neal: an acre and a half.

Ms Bloom: That's your house?

Mr. O'Neal: No that is not my house.

Ms Bloom: That's not your tree line?

Mr. O'Neal: No there is another tree line just like mine on the next property over.

Mr. Brown: Oh, I see

Mr. O'Neal: These pictures were taken of the water while pond was still frozen. They were taken in January.

Mr. Brown: So we got excess water in January while the pond is frozen?

Mr. O'Neal: While it is still frozen so this water did not come off my pond.

Mr. Brown: Oh it did not come off your pond?

Mr. O'Neal: It did not come off my pond because the pond is frozen.

Mr. Brown: So doesn't leak out over the edge?

Mr. O'Neal: No it couldn't because it is still frozen.

Mr. Brown: Okay, I got you. So that is snow melt or something?

Mr. O'Neal: Right, we had a snow melt in January and the water tried to go that way and could not.

Mr. Brown: Okay. So I guess you are stating in your opinion (unintelligible)

Other people were speaking at the same time as Mr. Brown and Mr. O'Neal. Trouble understanding what was said.

Mr. O'Neal: If mine Geothermal (unintelligible) my property that water wouldn't go down in the weeks it doesn't rain. If it goes a whole week without raining that water goes down. If my furnace was putting it there then it wouldn't be going down.

Mr. Brown: Furnace or air conditioning in the summer time.

Mr. O'Neal: Correct. That pond would way lower in the summer if I didn't have that.

Mr. O'Neal: Here pictures in March, that's my power transformer that I am talking about. These are pictures heading north back towards the road. This is pictures of that same berm with sandbags piled on top because the water got so deep it was going over the top so they put sandbags on top to keep the water from going over it.

Mr. Brown: So the people who built the berm put sandbags on top of the berm – that actually created more water

Mr. O'Neal: That is correct.

Ms Bloom: Why, I am going to have to ask them, but why did those people put that berm there? To stop the water from coming over their way?

Mr. Peters: Without the berm, where would the water go?

Ms Bloom: Yes, where would it go?

Mr. O'Neal: All that water use to go all the way down towards I-69, but it can't now.

Ms Bloom: 69 is here?

Mr. Frisinger: What they are trying to illustrate there is the common flow path is that black line.

Mr. Brown: The new common flow path.

Mr. Frisinger: No, that is where it went.

Mr. Brown: I thought before he said, it went out on the street into a ditch. Isn't that what you said?

Mr. O'Neal: Yes, there used to be a ditch out front and some of that water went there and some of it went this way.

Mr. Frisinger: The contours you see on the drawing are predevelopment. Prior to these homes being built.

Mr. Brown: These contours?

Mr. Frisinger: Right.

Ms Bloom: But their home is clear down there, why is anything obstructing over here.

Mr. Frisinger: There is a berm here.

Ms Bloom: Yes, but why do they have that berm there, because the water was coming onto their property?

Mr. Frisinger: We will hear that when they testify.

Ms Bloom: We think we are kind of smart but this is. I know we are smart, we do these kind of things all the time but.

Mr. O'Neal: Here are some more pictures here. That's my back yard which obviously never flooded before. That water along . . . That's my power transformer that is almost under water. I had the power company out there wondering if I would have to get it shut off.

Ms Bloom: This is one of the primary reasons that we want to do plan development because like our surveyor, Al Frisinger, just said a few minutes ago, this stormwater problem is

Mr. O'Neal: He told me the exact same thing the first time he came out.

Ms Bloom: Because when you move there and the minute you have new construction then

Mr. O'Neal: This is March of 07 which is the spring after the berm was built this is what the road looked like out in front of my house. There was never any water on that road before and this is what it looks like. -

Mr. Peters: Now when you say the road are you talking this portion here, you're not talking Hollopeter Rd?

Mr. O'Neal: This is Hollopeter Rd right here.

Mr. Peters: Oh okay. Wow.

Mr. O'Neal: That is the ditch in front of my house.

Ms Bloom: But their house is down here?

Mr. O'Neal: That is the Hogans' house there correct.

Ms Bloom: Right, so why can't your water still flow over there.

Mr. Brown: Because they built the mound.

Ms Bloom: Yes, I hear you, because water was going their way.

Mr. O'Neal: The problem is, these houses down here were built in an area that was too low and this house here wasn't even there a year and they had flooding problems. This area where the septic is was actually a swamp. It was hardly ever dried. It should never been put there.

Ms Bloom: Oh we have a whole lot of that kind of development, that was built in flood areas and thank goodness we are smarter now. Because you are right that is heck of lot higher than that.

Mr. O'Neal: As soon they started having problems starting to flood that when I got blamed for all the water problems.

Ms. Bloom: But that isn't Hogans', that is.

Mr. O'Neal: The Hogans live there, the Marleys lives there and the Polstons lives there.

Ms Bloom: You are being blamed for this because your water is flooding there. Okay we will have to hear from everybody. Thank you. Thank you very much is there anything else.

Mr. O'Neal: I don't think so.

Ms Bloom: That's enough isn't it?

Mr. O'Neal: I think so. Actually it not only floods here, it even goes across the road and into this field over here now too. This field over here never had any water in.

Ms Bloom: But now it does?

Mr. O'Neal: Now it gets water in it all the time.

Mr. Frisinger: Your point is that everything west of you (unintelligible) has blocked some flow there also and is ponding (unintelligible).

Mr. O'Neal: It flooded big time. Actually that cul-de-sac used to flood when they put it in.

Mr. Frisinger: Okay

Mr. Brown: Who was the developer?

Mr. O'Neal: Steve Jahn was the developer.

Mr. Brown: Steve Jahn

Ms Bloom: Thank you we may call you back because the questions that I'm asking I guess may need more answers.

Ms Bloom: Anyone else to make us better understand the respondent

Mr. Frisinger: Do you want to ask if anybody else here representing the Petitioner or

Ms Bloom: Is there anyone else that would like to represent the Petitioner?

Sheriff Fries: Hopefully I can give you an historical analysis of what is going on out here. Kenneth Fries Sheriff of Allen County address is 4627 Hollopeter Rd. We own the property to the north of all this. We have 76 acres in Allen County and now we have several acres that flood every time it rains. In fact I was waiting for the cruise ship the other day to stop here. Back in 1987 is when we moved out there and Hollopeter Rd dead ended in our driveway. Eight hundreds and ninety feet of earth and roadway after that the interstate. The flow of water natural water ran along ditches along Hollopeter Rd towards the interstate. There is a drain down there towards the south of the properties. When Steve Jahn developed the three parcels of land over there they put in a cal-de-sac

Ms Bloom: Yeah, okay.

Sheriff Fries: We complained at the time that they were cutting the ditch and the flow of water. We contacted County Highway they could do nothing. Got hold of Tony Burrus because they were putting concrete chunks, stereo parts, and everything inside this cal-de-sac. Nothing could be done. They put a culvert from the west, I'm sorry from the south of the road to the north of the road. I (unintelligible) you can't do that because that, because that is going to flood my property. No we can do it. Nothing, we couldn't stop anything, we tried. They piled up the dirt they took from the cal-de-sac and piled it up at the end of the road at least the County Highway came out and pushed that out of the way and told them they couldn't do it. So from that point on, the flow of water to the west along the roadway got obstructed. Then the houses got built. Chuck my brother Built in 95 I guess the water continued to flow its natural way down towards the interstate. There is an area on the south side of Hollopeter that was swampy enough that there were cattails in it all the time because that's part of the reason why I didn't want to buy it, because you can't use it for farm ground because it is a swamp.

Mr. Brown: So those two properties you just reference they would be the ones next to the Hogans?

Sheriff Fries: No-

Ms Bloom: No, no the Hogans are down here. These are up here towards the north towards

-

Sheriff Fries: Kerry, my younger brother, is actually to the east of Chuck's. So it probably not on that photo. The three parcels that were developed by Steve Jahn were all to the west.

Mr. Brown: None of those were the ones you reference?

Ms Bloom: Yeah. That's the ones that had cattails right?

Sheriff Fries: Yeah. The Polstons' property - The Polstons' property and the Hogans' property not Hogan but the Marleys but where the pond is was a swamp area. Untillable and like I said cattails. And as the development occurred, of course the water kept backing up, backing up now I assumed because the berm the Hogans has our fields continually flooded, they can't be farmed. There is at least an acre that still has water standing in it at least a foot deep. That is because the flow of water now comes from the south to the north underneath the culvert onto our property.

Ms Bloom: Hmm (affirmative)

Sheriff Fries: So we have a big area that is full of water and part of the reason ours can't flow out is because the Polstons have built a dam along Hollopeter Road

Ms Bloom: This?

Sheriff Fries: Made it so that water will not flow back towards the south. (Unintelligible) My wife says that we haven't moved the first spoonful of dirt, yet our land floods. I am hoping that there is a resolution here today. If not, I guess I will have to order a bunch of dirt and build a bigger mound.

Mr. Brown: Yes.

Sheriff Fries: So that is the historic analysis of what going on.

Mr. Peters: It did not flood until that berm was built?

Sheriff Fries: Our property started flooding as soon as the cul-de-sac went in; it got worse after the berm came in.

Mr. Frisinger: So your contention is Sheriff that there been not only mounding on the west or the east line of the Hogans but also on the northern boundary or along the extended right-of-way of Hollopeter Road?

Sheriff Fries: Right. The mound is not nearly as tall maybe two feet.

Mr. Frisinger: Okay.

Sheriff Fries: (unintelligible) Polston's property.

Ms Bloom: So that is – when O'Neal was out there and the natural flow was going west?

Sheriff Fries: We farmed all of our property; we had no flooding down there. After the O'Neals, my brothers built their houses, we no flooding on our side, on the north side of Hollopeter.

Mr. Peters: Where does that flood – I can see your driveway, where does that flood with respect to your driveway? To the east or to the west.

Sheriff Fries: To the west – There is an area. Infact, if you look at the Polstons' property and I don't know if it has their barn or their brush on there now, but just to the north of their property, that whole area is flood.

Mr. Peters: And a course that in it, that's makes sense, because you are going 860 down to 853.

Sheriff Fries: It use to flow to the swamp area south of Hollopeter and drain from that (unintelligible)

Ms Bloom: But this flow this is definitely low here.

Mr. Peters: Well that is why this is some of the swamp area, which is now the septic area.

Ms Bloom: Yeah. Well here wow.

Mr. Peters: Yeah, which is 8-?

Ms Bloom: Well that one looks higher Nelson.

Mr. Peters: Yeah it does.

Ms Bloom: Thanks Sheriff any thing else?

Sheriff Fries: No.

Ms Bloom: Thank you.

Ms Bloom: Anyone else to speak with any information for the Petitioner. Hearing none we will start with the Respondent – Cynthia Hogan. Good morning.

Mrs. Hogan: Good morning. We do have a couple of neighbors here that needs to leave so they would like to speak first before we do.

Ms Bloom: All right, would you like to come forward and identify yourself and give us your address.

Jim Marley: Good morning. My name is Jim Marley, my wife and I reside at 4510 Hollopeter Road. And we begin by saying removing the house at 4510 is not an option.

Laughter

Ms Bloom: That isn't going to work huh?

Mr. Marley: I just want to clarify that. I am going to make this very brief. If you look at your maps, you are going to see that we are kind of caught right in the middle of all this stuff. Our property is adjacent to the Hogans okay. My wife and I do not have an issue with the natural water flow okay. We totally understand that our property is lower than the Hogans, the O'Neals who are to our east. So when it rains or snows thaws, we expect to have some run off. What we take issue with is though, during the entire year there is water flowing from the east okay. It can be the dried part of the year there is still water flowing. I take issue with that because as I look and I see the pond on the O'Neal's property is hazardously discharging water everywhere and why it does all year long, I can't understand that. I am not engineer, all I can figure out is somehow there is more water being put into that pond. Okay. That is what we take issue with. Uh, the Sheriff had mention that the property before we developed it there were cattails out there. There were cattails out there, which is where our pond is constructed now. We share the pond with the Polstons. We do have a pond back there; it is naturally going collect some water back there. I totally understand that. But I will say one more time, the issue I have is the water flowing through the entire year. That is my piece, if you have any questions for me?

Mr. Brown: So even with the frozen pond scenario you can still see the water coming out of it?

Mr. Marley: During winter, what will happen as that water still comes across the properties of Hogans' and our it will actually freeze on our property and it continue to build up and build up. We tried to address this problem when we first move out there. We were the first one to build of those three parcels back in 1999. Shortly after both the Polstons and Hogans built there properties, we had a little bit of a community meeting to start a little cul-de-sac down there at the Polstons' house. We tried to discuss with we tried to come to an agreement what we could possibly do putting in our own culvert using our own labor and our own time and our own money doing that. Well nothing ever came of that. So we did try to at least work with everyone. Now we are at a point of where what are we going to do. The Marleys had nothing to do with the construction of the berm on the Hogan's property. I want to make that very clear right now.

Ms Bloom: Okay.

Mr. Marley: Okay.

Mr. Frisinger: What did you say Jim, I'm sorry?

Mr. Marley: The Marleys had nothing with the berm being constructed on the Hogans' property. However, I will state this much, with that berm being constructed it has reduced our drainage across our property significantly. Okay. Do we still run off absolutely? We still get quite a bit of run off on large rains and thaws. But it has helped us. That's why I am on the Respondent side and not the Petitioner's.

Ms Bloom: Yeah

Mr. Brown: Will you please explain again what you said; through out the year hazardously water comes out of the pond. I am trying to get a handle on that.

Mr. Marley: Sure. Well again, I am not an engineer okay, but when you construct a pond you need to have – you need to be able to control your overflow of your waters, instead of just shooting it out! Okay. Basically that is what happens with this overflow. It shot out of there. Okay. During the course of the year, virtually anytime during the year, there is water that drains from that pond. You wouldn't think doing dry times that water would flow out of there. Okay. But it does, it does. I got the proof on my property.

Mr. Frisinger: So you are saying he has a pipe overflow that comes out of the pond:

Mr. Marley: Absolutely, hazardously – probably ten feet from Hollopeter Road.

Mr. Frisinger: okay.

Ms Bloom: Thank you.

Mr. Marley: You are very welcome.

Mr. Frisinger: Thank you.

Ms Bloom: And then there is another person for the Respondent? Good morning.

Kathleen Polston: Hi, I am Kathleen Polston 4414 Hollopeter Road. And my husband and I lives there and we are the end result of all this. We live next to the Marleys and the water overflows from the O'Neals, to the Hogans to the Marleys and to us. And the Marleys and we has the pond that was built. I am assuming to catch all of this overflow. We have had considerable amount of rain and water getting into the pond that we personally, my husband and I had pay for the pipes to be put in to carry that water out into a culvert on 69.

Ms Bloom: Okay.

Mrs. Polston: The sheriff is absolutely correct, in the fact that his area does collect a lot of water. A lot of that is because of a natural water flow that is coming through this downstream but also it is because of the I believe again I am not an engineer like Jim Marley says he isn't is the water flow that comes out of the area where the O'Neals lives and I don't if it is just(unintelligible), I can't say but goes it is suppose to go underneath Hollopeter Road over into the Sheriff's field and it does but sometime blocked up with lot of ice so there fore it has no place else to go but to go over into the cul-de-sac and then onto the Hogans' drive which is the downstream effect.

Ms Bloom: Why would it go that way?

Mrs. Polston: Because it is block off.

Ms Bloom: But why would it go to the north, why wouldn't it go to the west I wonder?

Mrs. Polston: Well there is some water – there is pipe that hopefully Cindy Hogan can explain it better. Again, I am a visual person but I see the pipe running beneath the road and it does go into the Sheriff's open field and then you can see water go down and then it builds up. We – I have some pictures that I would like to show you. We did have our basement flood twice because of all of this water. We did first put up a mound to stop the water flow from the Sheriff's uh we – there is a road – Hollopeter Road really goes to the end of 69 but it is just dirt and I think it is still county owned. We put up a berm to and I don't know south east or west but it is to the left of it to stop the flow we had to or we were going to get flooded out again. So I got some pictures I can show you. The water just builds up and this is before we put the pipes in. How the water just builds up inside the fields.

Ms Bloom: Yeah

Mr. Peters: That's his field?

Mrs. Polston: No this is the back of our house. This

Ms Bloom: You're here so this is where Hollopeter from here?

Mrs. Polston: It's clear up here. This is 69 so we had to put pipes in. We put the two culverts-

Ms Bloom: What 69?

Mrs. Polston: Right here. So we put the pipes in to carry the overflow.

Ms Bloom: Of course.

Mrs. Polston: Now those pipes can only do so much so if you got everybody coming in and throwing their water on our yard that ponds overflows and Marleys and us get back end of it because it just keeps filling up.

Ms Bloom: It is coming in your house.

Mrs. Polston: Yes. We had to do extensive landscaping to mound the yard so it would go out on the flat side so that it wouldn't come in back to the basement.

Ms Bloom: Of course.

Mrs. Polston: unfortunately I mean the Sheriff is and his wife is dealing with the water area uh I am hoping that the County can come up with a solution of putting in a culvert or something that will take it out to 69 rather then us having to deal with all this water.

Mr. Frisinger: Move along – laughter.

Ms Bloom: Okay then.

Mrs. Polston: And then I just want to make comments too, that the Hogans did it help us it stopped eroding our yard and now we can maintain the pond to a level that it doesn't back up into our home.

Ms Bloom: Thank you very much.

Mr. Frisinger: Anyone else to speak for the Respondent?

Ms Bloom: Good morning.

Cynthia Hogan: My name is Cynthia Hogan and this is my husband Patrick Hogan and we are the subject matter of today hearing, we reside at 4516 Hollopeter Road. Kathleen Polston says she is a visual person and so am I, so we prepared some visual aids for court today and I would apologize I am an attorney by trade so I don't understand what protocol is. But I have provided four packages for each one of you, so you can follow along. Mrs. Hogan presented the Board with a package that included the following: A background page with dates, conversations and complaints again Mr. O'Neal, copy of Letter of complaint sent to Mr. O'Neal regarding Surface Water Damage informing Mr. O'Neal that the overflow from his pond, illegally drains onto their properties and giving him thirty (30) days to correct his surface water problem, information regarding Lowell J. Peflum, Appellant-Plaintiff, vs Wayne County Board of Commissioners, Appellee-Defendant. No. 81A05-0712-CV-741 COURT OF APPEALS OF INDIANA, Donald & Shirley Trowbridge, and Larry & Beverly Hamilton, Appellants-Plaintiffs, vs Tom & Sara Torabi, Appellees-Defendants No. 64A03-9706-CV-221 Court of Appeals of Indiana, Third District, Thomas R. Romine and Margaret F. Romine, Appellants-Defendants, vs James W. Gagle, and Nancy S. Gagle, Appellees-Plaintiffs. No. 45A04-0202-CV-66 Court of Appeals of Indiana, Fourth District, Douglas and Beth Luhnnow, et al, Appellants-Plaintiffs, vs Eugene Horn, Donald R. Towne, Fulton County Surveyor, Steve Hartzler, Ron Jana and Art Showley, Commissioners, as Members of Fulton County Drainage Board, et al., Appellees-Defendants. No. 25A05-0106-CV-241, Court of Appeals of Indiana, Fifth District, Harlan Bakeries, Inc., Appellant-Plaintiff/Cross-Appellee, vs Kelly Lee Muncy, Kendra Marie Vondersaar, Karen Kay Muncy and Kim Sue Muncy, Appellees-Defendants/Cross-Appellants. No.32A01-0411-CV-469 Court of Appeals of Indiana, First District. The document also contained several pictures of the properties involved.

Ms Bloom: Thanks.

Mrs. Hogan: We would like to start with a little history regarding this issue. We bought our property in 1998. We bought our property from Steve Jahn. Around the same time that we bought our property, the Polstons bought theirs and the Marleys bought their property. Marley built first, Marley were out there in 1999. We broke ground the same time that the Polstons did in the year 2000. At the time that we moved there, there was a cul-de-sac already in place for the three homes that it services because it dead ends down there. When we started building out there with that cul-de-sac was already in the road had been extended down to the cul-de-sac across the north side of the O'Neals' property (unintelligible), is located there is a small divot is not really a ditch but water does drain in there. There is a culvert pipe underneath Hollopeter Road and it runs the excess water to the north and it does flow into Sheriff Fries' property which is a field right now. When we first moved out there, we began having problems not the first year that we were there because Mr. O'Neal's pond was not that full at that particular time. Since then the pond has filled substantially that pond is probably four or five feet higher then the actual road so he has built the side of the pond up so it sits higher then anything else.

Mr. Brown: Is that recently you think that he has built it up?

Mr. Hogan: This (unintelligible), I assume what happen is with most ponds when you dig it out you have excess dirt so the dirt stays on the outer banks and became the banks around the pond.

Mr. Hogan: It is at an elevated level to everything even immediately next to him which is our property at an elevated level to begin with. He was on the property to the south of us set lower.

Mrs. Hogan: Correct

Ms Bloom: Yeah

Mrs. Hogan: Mr. O'Neil as he said is on geothermal we also are on geothermal. Our geothermal system is an open end system we have pond to our south that our geothermal system dumps into. The Polstons also has geothermal, the Marleys do not. They are the only ones of the group that doesn't have geothermal. There is substantial amount water that does get dump out in the area. There is also my understanding that Kenny Fries's brother, Kerry Fries also has geothermal and he is living east of Mr. O'Neal. When we began having problems (unintelligible), in the year 2003 we had a list of chronological list of things that have happen since we have been out there and it is title, "In Re: The Matter of O'Neil – 4606 Hollopeter Road, Leo, In. Beginning in 2003 Kathy Polston talked about a meeting that all of

us had. Mr. O'Neil was there at the meeting, he was invited to discuss the water issues that were happening to all of us. At that particular time we had made some suggestions, the Polstons, the Hogans, and the Marleys had made some suggestions how to take care of this water issue. The suggestions that we had come up with was to run an additional culvert pipe underneath Hollopeter Road to the north and then run it west along the road in order to take that excess water out to I-69.

Mr. Hogan: And to keep it from going onto Mr. Fries's property.

Mrs. Hogan: Correct.

Mr. Hogan: Sheriff Fries's property.

Mrs. Hogan: Unfortunately Mr. Fries and his wife were out of town on that particular date that we all gather and so they were not in attendant at that meeting again. We are talking six years ago we tried to address this issue with Mr. O'Neal. The other suggestion that we gave him at that point. Ms Polston had talked about was that we had offer or it might have been Mr. Marley offered to even assist Mr. O'Neal in addressing this issue we suggested possibly drain tiles run along our properties' lines and we would actually have given him an easement to run (unintelligible), across our property and dumped his excess water from his pond into our pond. Because at that particular time we did not have any issues and still to this day do not have any issues with our pond.

Mr. Brown: That is a share pond that you are talking about.

Mrs. Hogan: This is not a pond that you have already seen pictures of. This is not the pond that the Polstons and Marleys actually shares. That is just on their property. Our pond is directly to the south of our property. It has nothing to do with O'Neal's pond or the Marley's pond.

Mr. Hogan: The one that sits behind our house actually overflows into an old dried creek bed south of us.

Mrs. Hogan: It is a part of the Preserves of Cedar Canyon. It is a very large pond it sits on three or four acres.

Ms Bloom: Yeah, you can see it.

Mr. Brown: (unintelligible),

Mrs. Hogan: That is correct. So we actually have our excess water dumping into that pond –

Ms Bloom: Yes, south

Mrs. Hogan: We are not adding any additional water or runoff. Mr. Polston and Mr. Marley indicated that we don't have a problem with natural surface water and natural runoff because all of us experience this (unintelligible), we have had a lot of flooding (unintelligible) that is not a problem. Our problem is that as Mr. Marley had mention is that Mr. O'Neal's pond is what is overflowing. His overflow when it comes out of the pond – talk about some of the pictures that we got. We got pictures in the back for your referent. What actually happens is that the overflow from his pond is lower then the top of his pond so when that overflow comes out he has tried to hide it in his trees so that you can't really see it. What's happens, is once that water comes out of his overflow it splits it goes south and it goes north. When it goes south it runs along our east west property lines and it flows into our property. And the rest of the water goes into the divot area in front of his pond and either goes under the culvert pipe into Kenny Fries's property, or it goes over the actual road itself. It has eroded the road substantially. There is a substantial amount of potholes in that road as a result of it. In the winter time that road will freeze because there is so much water coming out of that pond that the actual road will freeze and not only that, but water continues to build up just as Mr. Marley had talked about. In addition to Hollopeter Road the whole cul-de-sac will do that. There is a (unintelligible) amount of water. The problem that we had encountered because nothing was done with this despite us offering to help him. We offer our labor as long as he bought the drain tile. He just chose not to do it. He just blew us off and said I am not going to do anything. At that point we felt that we had to do something, but we were not in a financial position to bring in a lot of dirt. Once we got a letter from the Allen County Board of Health telling us that we no longer had enough dirt on our septic system. We are on a mound septic system. That if we didn't correct that problem immediately they were going to issue condemnation order on our property which means we are stuck we have a house and can't live in it at that point. Something had to be done. So we brought dirt in, we cover up we put additional coverage on the septic system. I don't know if Mr. Marley or the Polstons have a

problem with their septic, but I know the Polstons had, I don't know specifically whether or not the Marleys do. But the water does flow flows into their property and across their septic system. So in order to save our septic system we had to bring dirt in. At that point in time still nothing was done with the overflow that was coming out of the O'Neal's pond. The other problem that we encounter you will see as you go through this chronological history. In 2004, 2005, and 2006 in the spring we find fish in our property. Flopping around on our property, some of it water, some of it is not. The reason for that is because there is so much water in O'Neal's pond that the fish actually overflow. There is thousands of them most of them are three or four inches at the most some of them are just small minnows. Our son for three years in a row we have gone out there with buckets and done our best to try and save these fish but unfortunately there is so many of them that we can't. Once that starts drying up, of course the fish die and we all know how they smell when they die so we are dealing with the stench from dead fish that comes out of his overflow.

Mr. Brown: You are saying that there are thousands?

Mrs. Hogan: Thousands three years in a row.

Mr. Hogan: Over three years yes, our son was scooping up buckets full of them and pouring them into our pond.

Mrs. Hogan: Behind our property in order to save them, but unfortunately between the birds and I am assuming other wild animals at night they have gotten quite a bit of them, but the smell is horrible in the summer time.

Mr. Brown: (unintelligible) – the dirt you piled up was on your septic system because the Board of Health required more dirt?

Mrs. Hogan: Part of it was – well we actually done it (unintelligible) a couple of total stages we have done it. In 2006 when our pond was being dug out in the back we ended up taking the excess dirt and building a berm (unintelligible). The purpose for that is because there is so much water; it is not just surface water that we are dealing with. We are dealing with him collecting all this water in this pond and then forcing it out at a small area and it shoots across our property. (Unintelligible) – So anyway we ended up putting more dirt on our septic system in order to take care of that issue. In 2006 we built that berm and it wash away. In 2007 part of it wash away because there was a substantial amount of water coming across and Mr. O'Neal has chosen not do anything. He has ignore all of our requests– He has told us that he has re-routed his geothermal system because it is on an open-looped system he informed us at that meeting that we had in 2003 – It was some time after that, he had informed my husband that he had actually re-routed his geothermal system on an old drain tile and shot it back towards the woods. Well we are also on an open-looped geothermal system and you don't just re-route your water. You actually have to dig up the pipes and re-route those. He had lied to us about it. We didn't have any options at that point, we had to do something. Now if you refer back to the last section at the beginning of the photographs you will get a better idea of what actually - (unintelligible) – The first few couples of pages (unintelligible) – even when it is the middle of winter as the other people has testified too there is still water running. There is water running year round. It is not just when it rains. This is a substantial amount of water run constantly because of the geothermal system pumping water. We were told that we pump approximately 6 gallons per minute when our geothermal system is running.

Mr. Brown: How big is your system, do you know?

Mrs. Hogan: I couldn't tell you how big it is, I don't have any idea. I know that it pumps a substantial amount of water.

Mr. Brown: Is your house about the same size?

Mrs. Hogan: I believe it is close to the same size as Mr. O'Neal's.

Mr. Brown: How many gallons per minutes?

Mrs. Hogan: I thought they told us that it pumps about six gallons per minutes when it is running.

Mr. Hogan: Our house has six inch thick walls and double insulated foam and batted so our house is very well insulated but ours runs almost constantly in the winter months. When you have the subzero temperature that we got in January and into February, it runs and it runs pretty steady. It doesn't matter how insulated your house when we get those temperatures and that wind blows out there in the country your system runs at about six gallons a minutes

start doing the math how much – as you see these pictures you are going to see just how much water comes and continues to freeze and more comes on top and continues freeze.

Mrs. Hogan: Again that happens also during the summer because geothermal runs in the summer and an air-conditioner. So the first few pictures on here will show you – this is actually cul-de-sac and our property the first couple of pictures. (Unintelligible) the fence line and you can see where the snow is and where water continues to drain down thru there and it blocks the cul-de-sac and it actually the water runs on the ice constantly in the winter time.

Mr. Hogan: The mail carrier has complained about it and I have seen the newspaper people – the ice goes right up to where our mailbox is. I believe at one time it actually went right up to the mailbox at Marley's house too.

Mrs. Hogan: And they won't deliver

Mr. Brown: So what you are saying is

Mrs. Hogan: Okay if you look at the second page of the photographs – those two pages will show that these pond banks – this is what I was talking about earlier where he had built up around the pond.

Mr. Hogan: You can see that it sits higher, it is at a higher elevation then what the road is and the cul-de-sac is.

Mrs. Hogan: This is actually Hollopeter Road that I am standing in taking these photographs. The page on the bottom shows that even though there is ice and snow there, there is still water that runs along Hollopeter Road and that is – I'm not good at directions – that runs east and west.

Ms Bloom: Where is the cul-de-sac? The cul-de-sac would more to the east?

Mr. Hogan: It is towards the west.

Mrs. Hogan: If you go to the next page the bottom is looking northeast from Hollopeter cul-de-sac. That gives you a point of reference.

Ms Bloom: Okay, yeah.

Mrs. Hogan: Now the other problem that we had as a result of substantial amount of water running constantly on our property again (unintelligible) Mr. Marley and Polston were describing is get this wet and then it freezes and then more water comes and it continuing freezes. Looking at the third page of the photographs the top will show you exactly what happens with our driveway. This is a photograph that was one night when I was coming home from work, my husband had already gone through there – this is our driveway whether it looks like it or not this is our driveway. Unfortunately the driveway shortly after that completely froze over we continue to have water running again from the overflow from O'Neal's property and unfortunately it stop ingress and regress for our property so we actually had to park in the cul-de-sac and walk five hundred feet to our house in the dead of winter with groceries and everything else.

Mr. Hogan: That combination of ice and water at one time was over eighteen (18) inches deep on our driveway.

Mrs. Hogan: Yes, and this driveway if look it will actually be to your right is where the Marleys. Marleys has a driveway along there they have a driveway that runs parallel to ours that goes around to the back of their property, because they do have a building back there. They can't go through there in the winter time. It is completely blocked. The next page will show you what actually happen. This is looking from our driveway looking at the Marleys (unintelligible) – talking about how the water runs across their septic system and into their pond. So they can not use – this is their road.

Mr. Hogan: That's their drive and their back yard. You can see the pipe for part of their septic system right there. It completely floods out their back yard as it streams across their yard to goes to the pond.

Mr. Brown: They have a mound also.

Mr. & Mrs. Hogan: Both said no.

Mr. Hogan: They don't have a mound system.

Mrs. Hogan: I believe we do and the Polstons do. The next photographs were taken in 2006 this was the second time that we had repaired our septic system but the first time built the berm to stop the water from shooting over because we got constant complaints obviously from the Polstons and Marleys because they were being flooded and a lot of the water was actually running across our property. When we didn't have any other option there wasn't

nothing else we could do to protect our self at that point. So we did end up putting up a berm in order to try to protect both our septic system and our driveway in an obviously way to help assist the Marleys since Mr. O'Neal said that he didn't want to do anything. He didn't have any interest in taking us up on any offers that we gave him six years ago to help fix this problem. Basically he had blew us off and told us to deal with it ourselves and that is what we have been. So he will say it ended up causing because of our septic system and not being able to use our driveway in the winter time causes us to have to do something to take drastic majors and this is the only thing that we could do in order to stop the water from constantly flowing over to our property.

Mr. Brown: Were there any letters or anything like that?

Mrs. Hogan: Yes, actually there is a letter. If you go to the front there should be a letter. It was a letter dated February 12, 2007 to Mr. O'Neal addressing this specific issue. Again talking about the past that we talked to him about, the damages that encounter as the result of this overflow from his pond and the problems that we are having with the discharge regarding his Geothermal discharge that flows into his pond and towards our property, the Polstons and the Marleys. He has just blown us off and now comes here today and ask for your assisted in trying to fix his problem and the reason he now have finally got a good taste of what we have been dealing with for the last seven or eight years. And once we built this and you will see in these pictures I have also it's showing 2006. There when we built in 2006 there was no surface water, there was no rain as you can see from this it was dried. This is all the dirt that we had put down we had seeded and graded. We had graded everything and seeded.

Mr. Hogan: This was done in the fall right before winter.

Mrs. Hogan: There was absolutely no surface water issues because there was no rain. There was no problem with that. But you will see on here that within two weeks of building our berm, it already started overflowing because Mr. O'Neal's pond is overflowing. This is not just a surface water issue. This is Mr. O'Neal's pond that is overflowing and causing these problems. The next pictures were taken a couple weeks later and as you can see on here again. We talked about the sandbags. I know somebody had the question of why we put sandbags and the third time that we had fixed (unintelligible) is because the water is coming so fast over this it eroded our berm right down to nothing it was running across and we were having problems again with our driveway. The water had already overflow onto our driveway high enough that we were driving through water and we were concerned obviously that once that froze we no longer would be able drive across our driveway. (Unintelligible).

Mr. Hogan: It had already washed away some of the gravel. We actually have a culvert pipe where you see the tire's tracks in that frozen water in the early pictures there is actually a culvert pipe underneath there that takes the water to the side. That gives you an idea on just how much comes, freezes, comes, freezes, comes, freezes. It goes on throughout the whole winter. (Unintelligible)

Mrs. Hogan: Now Mr. O'Neal said that his pond doesn't run all the time and it freezes. That is absolutely not true because think about this. When you have water coming out of a geothermal system its hot water, you know our water is the first place its goes is into our hot water tanks. We have two fifty gallons hot water tanks. And our excess water firsts goes into a water tank. Our hot water tanks don't hold gets discharge into our pond in the back. That is warm water coming into this pond. There is no way that is freezing because ours doesn't freeze either. You can actually see an area where our discharge (unintelligible) comes into our pond and all winter long it never freezes, you may have little surface – ice on top of it, but it never completely freezes. (Unintelligible) So the next picture will show this is O'Neal's hidden pond overflow. We got a tree right in front of the overflow so you really can't see it. But we did take photographs and you can see the ice and the water coming out underneath a thin layer of ice on there. And that happens all year round. The next picture ugh these were taken on 3/2 of 09, again even his overflow most of that is not showing water coming out of there that fast. So we are not dealing with just a surface water issue from rain and melting snow. Ugh the next picture down below taken on 2/12 of 09 this shows – this is directly across this is on own property showing where his pond is overflowing from that tree for a point of reference and all along – this is right on the other side of our little berm that we have built. Our landscaping effort trying to keep the water off of our property. That water is already on our property coming across from his overflow. The next set of pictures will actually show you

where Hollopeter Road is, and this is the O'Neal property (unintelligible) to the right and these are taken on 3/8 of 09 and the picture right below it shows where Sheriff Ken Fries' property is that he was identifying that he lives on the north side of Hollopeter Road. You can see on this picture that this is actually Hollopeter Road and you can see how Hollopeter Road and the cul-de-sac filled up with water – and this was not after a rain this from overflow from Mr. O'Neal's geothermal dumping into his pond.

Mr. Brown: But not after a rain right?

Mrs. Hogan: This was not right after a rain.

Mr. Brown: After a week or –

Mr. Hogan: Oh this has been there since winter all through winter. This gets there and it stays that way throughout the rest of winter. The excess flows over the road and washes out the road and the other excess goes south along the property line and floods his back yard. That is what he is talking about. But this water this starts like in November and then just continues throughout the whole winter months. That starts to fill up in November as the overflow runs in the summer months when it runs and the heat evaporates a lot of it and it dries up. So you don't other then when we get real sufficient rains which we all end up with standing water on our properties when we get real sufficient rains. That happens. Just like Mr. Marley said we don't have any opposition to the natural runoff and heavy rain and flooding. We get it in our yard, pooling of water that be going on all along. But this starts in November when the cold weather starts coming and then that water is a steady stream through the whole winter with the freezing and the water coming on top and freezing again water coming on top and freezing again. This is the tail end of it now as warmer weather is starting to come (unintelligible) so it is melting and thawing now (unintelligible).

Mrs. Hogan: The next set of pictures shows again the overflow and it is going so fast that it is causing bubbles out here in the picture. In the picture right below that is, that is what the Sheriff Fries was talking about.

Mr. Brown: (unintelligible)

Mrs. Hogan: It looks like this. (Shows pictures to the board)

Mr. Hogan: The top picture is the water flowing out of that pipe and how rapid (unintelligible)

Mr. Brown: O'Neal's overflow from his pond.

Mrs. Hogan: Correct and in the picture right below that. That is actually Ken Fries' property and this is what actually happens there's culvert pipe that we have all talk about previously that is underneath Hollopeter Road. But the water comes so fast and furious (unintelligible)

Ms Bloom: You can't

Mrs. Hogan: when it does.

Ms Bloom: You can't

Mrs. Hogan: If freezes also on Sheriff Fries' property. And then the next picture shows this is after uh the snow had already melted then we did get a cold snap for a few days so the water has begun to freeze and you can see that there is nothing else under except what has frozen and what is coming out of the overflow and this where that little divot I was talking about earlier that runs in front of the pond and is located on Mr. O'Neal's property just south of Hollopeter Road. And he had talked about or someone about the side ditch that he had put there.

Ms Bloom: Yeah

Mrs. Hogan: and the sandbags the next picture shows there were two areas that had broken through and because we were trying to protect our driveway again this winter we did end up putting plastic down and some bricks because it eroded so bad and then further south of there is where it broke through and that is a problem we had before because that is where our septic system and it washes all the dirt away and it erodes all that dirt off of that area of our property and it dumps it onto the Marleys.

Mr. Hogan: This spot in the top picture where you see that water collecting there, I intentionally dug that a little low with a bobcat in order for the water stay – our septic system is just to the right of that. In order to keep that water from getting at our septic system and washing that soil away.

Ms Bloom: Right

Mrs. Hogan: (unintelligible)

Mr. Hogan: To try to collect it there and keep it to the north of the septic system.

Mrs. Hogan: We have our own natural runoff from the higher part of our property and that water needs to go somewhere in order not to discharge it unto the Marleys' property we end up you know digging that out on our property.

Ms Bloom: And collecting

Mrs. Hogan: (unintelligible)

Mr. Hogan: Trying to keep it

Mrs. Hogan: Save it so that we are not shooting it across their septic system.

Ms Bloom: Umm

Mrs. Hogan: And the last few pictures uh again Hollopeter Road that flooded from O'Neal's overflow and we deal with this and we been dealing with this for ten years.

Mr. Hogan: That is all potholes. As we get into the winter and stuff (unintelligible) that is all potholes and stuff you have to doge it jockey around it uh

Mrs. Hogan: And again the other picture on the bottom shows it going across Ken Fries property. Now the last

Mr. Brown: I just want to ask you so.

Mrs. Hogan: Um (Affirmative)

Mr. Brown: No rain it's not raining this takes place? This is Hollopeter Road flooding (unintelligible)

Mrs. Hogan: Yes

Mr. Hogan: The last page of the pictures – second from last page of pictures will show you just a few days ago.

Mrs. Hogan: This was taken on Monday. Monday we had some snow. Uh and everything was white (unintelligible)

Ms Bloom: They must have gotten a lot more then we did.

Mr. Peters: Uh-huh (affirmative).

Mrs. Hogan: Overflow from O'Neal's pond was making everything wet and as you can see along our property line the fence line that is the our east his west property line looks at his fence on his property and you can see where –

Mr. Brown: This picture here?

Mrs. Hogan: Right before that.

Mr. Hogan: (unintelligible)

Mrs. Hogan: That one

Mr. Brown: You are saying that there is actually flowing water –

Mr. Peters left the meeting for a few minutes.

Mrs. Hogan: There is floodwater. Yes it was there Monday.

Mr. Hogan: That top picture where you see that tree just to the left of the fence post that is where the discharge is tuck away. And that is where it shoots the water you can see the water just melts the snow. That is where all the green grass is.

Mrs. Hogan: And this is from the water coming out of his pond and everything else which you can see is white full of snow because it snowed on Monday. That is the stuff that we deal with all the time.

Mr. Hogan: So it isn't surface water we don't have a problem with surface water.

Mrs. Hogan: We don't.

Mr. Hogan: We problem with artificially inflated water levels by collecting and geothermal dumping into it and then just aiming directing it right across our front yard.

Mr. Brown Uh-huh (affirmative).

Mr. Hogan: That is what we have a problem with. Even culverts in front of property along the roadway, they are not designed to take geothermal water. They are not designed for you to pump water out of your well and aim it there. That is not what they are designed for. They are for surface water. Natural runoff surface water.

Mrs. Hogan: Now a couple things that I would like to draw attention, I have provided a copy of a case law and I know it is difficult if you are not an attorney or familiar on how to read cases that have come down from the Indiana Appeal Court and Supreme Court. However, some things that I have included in here and have highlighted a number of areas that I would like to direct the board's attention too. Uh and one of the cases which is 893 which is the very first case. Uh this was decided by the Indiana Court of Appeals August 25th, of 2008 on page four. "Although our Supreme Court observed that the improvements made by the Argyelans limited

or eliminated ground absorption and the changing of the grading of the land, such actions were not impermissible under the common enemy doctrine." Now some things that are very important here, it also states, "Surface water has been defined as "water from falling rains or melting snows which is diffused over the surface of the ground or which temporarily flows upon or over the surface as the natural elevations and depressions of the land may guide it but which has no definite banks or channel." And that is exactly what we are dealing with – surface water. The problem is we are not dealing with just a surface water issue; we are dealing with Mr. O'Neal's pond overflow which artificially collects water basically and then diverts that water directly across all of our properties. Now there are some suggestion that have been made obviously we have made them previously to Mr. O'Neal and I believe that was the County Surveyor that had mention something this morning would – that co-sided with what we had suggested six – seven years ago to Mr. O'Neal. Uh there is because of the problem not just with us and not just with the Marleys and not just with the Polstons, and not just with Sheriff Fries and his wife Peony. All of us are affected by this substantial amount of water coming out of his pond. The alternated we believe would be the best suggestion, that we have suggested before is for Mr. O'Neal to run drain tile. To run all that back to the back of his property. It is our (unintelligible) he owns a whole ten acres. Five of that is wooded and five more is unwooded.

Mr. Brown: This is the blue line?

Mrs. Hogan: That would be correct. That would be an alternated and probably the best suggestion to take care of all of our problems.

Ms Bloom: yes that one.

Mrs. Hogan: The issue we are going to be dealing with if we take down our berm we are going to have problem with our septic system, we are going to have problem with the driveway. We can't get in and out of our property. The Marleys are going to continue to have problems and the Polstons are going to continue to have problems. I don't know how it would affect Mr. Fries; I am going to assume that it wouldn't impact maybe a little less water (unintelligible) from this direction.

Mr. Hogan: So of that water even before we built that berm ran north south some of it, it wasn't bad but it has always had run a little north and gone to the pipe that takes it to Sheriff Fries' property. It was not very significant back them, I don't believe. Uh but obviously it we take that down three of us will be back under the gun again and Sheriff Fries's property will probably see substantially less water no doubt.

Mrs. Hogan: We understand that could had been some other alternatives, as Ms Bloom had mentions the problems that we have with undeveloped land and on the developing end some people may know that we have been involved with a law suit for eight years with a developer dealing with some of the issues of our property as a result of this. Was it done properly, perhaps it was, I can't answer that, I am not an engineer. I am not hear to testify to say that something that someone had done – What we are here today though is we obviously all have a problem. We are trying to find the best solution. We as a collected group, Poltsons, Marleys, and us have attempted to help find a solution to this problem in 2003. Unfortunately Mr. O'Neal has chosen to ignore it and decided that it was our problem until we built the berm and then began to be his problem. He is now dealing with what we have been dealing with for the last seven years. The only way to fix the best way to fix is one of two options. Either run a larger culvert pipe under Hollopeter Road to take all of this excess discharge water from his pond and run a culvert all the way back to 69, but I don't know how that would impact Sheriff Fries's property. The alternative is to let him do it himself; run it back to the back of his property and discharge that into the woods. Because that five acres back there is certainly probably sufficient enough of an area to take on. But it shouldn't be our responsibility or the Polstons or Marleys to continue to take this water as a result and sustains damages. Because we have spent a substantial amount of money trying to fix this problem, but I can tell you knowing what has been going on. The Polstons have a much greater impact on the (unintelligible). And I think emotionally with all the water issues they have been dealing with. Because when their basement flooded a few years it was over the Memorial Day Weekend. We had substantial rains that weekend. We took on a lot of water. It blew in their doors to their basement and there were like four for five feet of water in their basement. That wasn't all from the rain. The rain did not cause that. But that pond was so full that we were dealing with

it. It was coming across our property so fast and furious that it went every direction (unintelligible) ended up blowing in their basement windows and flooding their whole basement. They had to replace the furnace, waterheater, and everything else.

Mr. Frisinger: What time of the year was that?

Mrs. Hogan: Memorial Day weekend.

Mr. Frisinger: Okay.

Mrs. Hogan: Memorial Day weekend, because we were home, we had guests from out of town.

Mr. Frisinger: So was their geothermal running much then?

Mrs. Hogan: I don't believe ours was. Usually that time of year we don't have as much unless we (unintelligible)

Mr. Hogan: Warner weather it runs for air-conditioning. It doesn't run as substantially honestly as it would during the winter months.

Mr. Frisinger: Right.

Ms Bloom: In the winter.

Mrs. Hogan: But again the O'Neals' are on a geothermal system which we know that (unintelligible) because we know that we do. We have a lot of water that goes into our pond that does not affect anyone –

Mr. Frisinger: Does your pond go up and down (unintelligible)?

Mrs. Hogan: Yes it does. Yes it does.

Ms Bloom: But it doesn't overflow?

Mrs. Hogan: It never overflows because there on the other side there –

Mr. Hogan: On the south end of that pond there is an overflow that runs into a dry creek bed.

Mrs. Hogan: Runs into a dry creek bed.

Mr. Hogan: That eventually take (unintelligible)

Mrs. Hogan: Again as I talked earlier. We are not dealing with natural surface water and the only problem is the natural surface water. The problem is he is collecting it and shooting it in such force unto our property and if (unintelligible) for a solution to the problem. We do believe that solution to this problem is to let him come up with a solution to the problem and run his drain lines or what ever he needs to do back to his woods and it takes care of that problem for everybody. Anything else you would like to ask?

Ms Bloom: You are a good tag team.

Mrs. Hogan: We have been doing this for awhile.

Ms Bloom: Yeah – it works.

Mr. Hogan: Like Mr. Marley said. We understand surface water, completely (unintelligible) if you go through (unintelligible) we understand surface water and we have never had a problem with that, but when you are collecting it in an acre plus pond and then shooting it through, I think it is about a nine inch pipe, and you are aiming it right into our front yard. Like I said and those natural drainages or culverts are not designed to be taking somebody water that is being pumped out of their well, utilize for geothermal system and then cast out. That not what it all about. Those natural areas are for surface water. Natural run off that is how the course ways run. Uh

Mrs. Hogan: Again, the case I was talking about earlier, on the last page of that on page five of that case (unintelligible) on the first column it said, "Moreover, In the case the individual apparently ignores the meaning of "collecting and casting" water within the context of the common enemy doctrine. That is what we are dealing with here. He is collecting his water by virtual of his pond and he is casting it in substantial amount on all three of our properties, four you include Kenny Fries. Because I think that there has been some damage to his property as the result of the amount of water. Substantial amount of water that comes out of there, but if you are talking about a pond it's not a simple overflow when we have fish in our driveway and on our property and they are out there and they are smelling and we are doing our best to try and save them. Something is definitely wrong here and something needs to be done. There is no question, we have been trying to work on this problem for almost seven years and unfortunately Mr. O'Neal has chosen to ignore all of us until such time we put up the berm and it has caused a lot more water. And you will see as you go through the pictures, within two weeks after we put this berm up, that's not surface water. That is water directly from his pond

that is coming across and already damaging the work that we had just done in putting that up to protect our property and to protect our septic system.

Mr. Frisinger: Your testimony is you did obstruct the flow of water?

Mrs. Hogan: Absolutely we did. There is no question that we did. Yes we did do it intentionally, and the reason is because we had - we have a right to protect ourselves from what is happening with our property. But the key here is although we may have put up an obstruction if we take it down, the question is the amount of damages it causes not just us, but the Marleys, and the Polston collectively who damage more here? The three of us or Mr. O'Neal who actually is the cause of all these problems in the first place. There is a simple solution to this problem. The simple solution is. Is to run a culvert pipe or drain tile or whatever he needs to do back to his woods and that should solve the problem.

Mr. Brown: When you say casting out - I am trying to get a visible on that? Because the pond has an old flow pipe and then it will run out. So there is no pumping of water or

Mrs. Hogan: There is no pumping of water but when that water gets very high it shoots at a very very fast rate.

Mr. Hogan: About half of that pipe will be water coming out. I think it is a nine inch pipe about half way up.

Mrs. Hogan: Actually there is a picture here.

Several people talking at once.

Mr. Hogan: There is a steady flow of water coming out of that thing.

Mrs. Hogan: In fact at

Mr. Hogan: In referencing a pump - He is pumping water in from his geothermal it's flowing out naturally, but he is pumping water in.

Mrs. Hogan: If you look at the picture -

Ms Bloom: Huh

Mrs. Hogan: Nine pages from the back. Those were taken on 3/12/09 last month. As you can see, at least two third if not more of his overflow pipe got water coming out of it.

Mr. Hogan: He doesn't pump it, because it flows out.

Mrs. Hogan: Essentially he is pumping here because he is pumping water into it and it has to go somewhere.

Mr. Hogan: Really the natural force is pushing it out casting it out.

Mrs. Hogan: At one point in time I don't remember how long ago, my husband might have a better memory of that, but Mr. O'Neal's overflow something happen to it, it got obstructed, and I don't

Mr. Hogan: It got clogged. Where the water comes inside the pipe it got clogged with sticks and branches, what ever. And

Mrs. Hogan: He did clean it out and that thing ran none stop onto our property for thirty-six hours. And it flooded us.

Mr. Frisinger: Anything else to add?

Mrs. Hogan: I think pictures speaks for themselves, plus (unintelligible) all three of the parties that are affected on the west side of the property.

Mr. Brown: That was really very helpful to understand that is for sure. All the pictures from everybody, giving us an idea what is taking place.

Mr. Brown: Asked if we should wait until Ms Bloom returned.

Mr. Frisinger told him that he didn't know where she went.

Quite conversation

Mr. Brown: I did do a brief calculation; I'm not a geothermal person but it is about 24/7 about 3 million gallons a year I don't know what the multiplier would be for something like that if you figure (unintelligible)

Mr. Frisinger: When I put my geothermal in to discharge to my pond I was told about a million gallons per year at maximum.

Mr. Brown: You do the cycle on it running 24/7(unintelligible)

Mr. Frisinger: Right and that is a (unintelligible) that equals about 2800 hundred gallon a day discharge on average. At a million gallons a year which I think is pretty high. If you got an acre and half pond a foot of freeboard you are going to have around 500,000 gallons of storage in that pond. So to eat up that storage it is going to take around 178 days to reach maximum with no discharge. If there is a discharge and you add in rain fall, there is going to

be they are always going to have discharge or a good possibility. I don't know how else you calculate that unless Mr. O'Neal took his geothermal and directly discharged on his property to the lowest point and let it just go across their property again, which his right to do it is, I think. - It is his choice on his property to do with his water as he chooses. The pond issue is something we always wrestle with. (Unintelligible)

Mr. Peters: With respect to the septic, the order came from you guys right?

Ms Doseck: I didn't have any of this information on the address or stuff (unintelligible)

Mr. Frisinger: But they could have very well be given a notice that (unintelligible) cover

Ms Doseck: Oh, I have been out to quite a few of these properties.

Mr. Peters: So what's the potential if indeed the notice from you guys is to condemn what to me who never dealt with septic, what does that mean in terms actually happening and potential cost?

Ms Doseck: I have to check and see if theirs were – sometime some of the properties don't have proper cover initially establish. And that is when we order uh sometime it is because of erosion sometime it is because they haven't proper grass across it and anything else. So I would have to see the time line on it, pull the file and everything else.

Mr. Peters: So the relief is to dump more dirt.

Ms Doseck: You have to have the minimum of 12 to 24 inches of cover across to prevent erosion and prevent excess water from rain fall and stuff from penetrating in and saturating (unintelligible).

Mr. Peters: Now potentially the water continues to run and I am probably asking questions beyond what you can tell me, but there really is no way to keep –

Ms Doseck: But they would fix the eroding away. I mean they are supposed to have (unintelligible) you could have erosion so are suppose to have a swale on all septic systems to prevent

Mr. Peters: Okay.

Ms Doseck: If you have –

Ms Bloom: the erosion?

Ms Doseck: To prevent erosion it is supposed to go into the perimeter drain.

Mr. Peters: I got you.

Ms Doseck: So it suppose directly –

Ms Bloom: So it would be an ongoing or correction.

Ms Doseck: Because we have property you know that has water just natural flow not saying any of this, just natural flow you got water coming –

Mr. Peters: Right.

Ms Doseck: You are suppose to have a swale develop and created around it. Of course some of the problems we have is afterward we get with new construction you get people redirecting it from other properties or also just re-landscaping and stuff like this which creates another set of problems that – then it not dealt with by the installer by whoever and so sometime it is not done (unintelligible)

Ms Bloom: And we have a lot of those too.

Mrs. Hogan: Just for clarification, we did not get a letter that stated that they would start condemnation -

Mr. Peters: No I think that was really with respect to the corner property.

Mrs. Hogan: (speaking at the same time as Mr. Peters) (unintelligible) I received the letter I contacted somebody at the Board of Health and said what we need to do to correct this problem. They explained to us what needed to be done and this was the direct result of a substantial amount of water that we had taken on from the O'Neal's overflow.

Mr. Peters: Right.

Mrs. Hogan: This was not just strictly surface water. And so at that point they told us what we needed to do. Three times since them that we have done that we have not had to do now since we have put up that berm along our property line. It has protected our septic system. So we have not have any issues since we have done that, but we are going to deal with the same thing again if we end up taking that down and along Chuck to just dump his water across our property.

Ms Bloom: Right.

Mr. Peters: I thought that is was Mr. Marley maybe that testified there had been some notice given to him but maybe not.

Mrs. Hogan: That actually – that was us

Mr. Peters: Okay.

Mrs. Hogan: We had received a notice, I believe it was in 2004 or 5, I don't remember I don't have a copy of the letter anymore. I remember obviously being concerned in 2006 was the third time that we had done that landscaping not just landscaping but (unintelligible) 2006. The reason was that was now our third time that we had to do something with our septic because it kept eroding away. We do have grass planted there. There is a substantial amount grass we do have some natural vegetation that we had left there in order to collect some of our surface water that was coming down our property. But unfortunately there was so much water that it could no longer take it on. So we had to give up some of our property (unintelligible) we had dug a hole into the front of our in order to collect some of the runoff. But it was not design to take on all the water that was coming from the O'Neal's property. So that is what we are dealing with now. In having protect that issue and having to protect our septic system and the Polston have the same problem. They have nothing but problems the first four or five years, to the best of my knowledge they haven't had any problems the last couple of years, but again we put this berm up four ago and so a substantial amount of water has not come across and it has eroded in a couple of different places.

Mr. Hogan: We had a close call. A couple of different time even after I put the sandbags up it still managed to snake and break through a couple of spots. I don't know what a million gallons worth of water looks like, but I got to believe that it is a pretty significant and I am sure Mr. O'Neal showed you pictures of what his back yard looks like. There is a fair amount of water back there, but that is what we were dealing with every year. And the freezing and more going on top and freezing and more going on top. Uh, like my wife said, he didn't have a concern along as it didn't impact him. He didn't care how it impacted everybody south or to the left of him. Now he has an understanding what it was we dealt with for all these years and how frustrated we got because he wasn't interested in doing anything.

Mrs. Hogan: And unfortunately the Polstons and us had incurred a great deal of expense trying to fix this problem and Mr. O'Neal had done nothing at this point, and so we don't believe that is fair to require us to bear the burden and additional expense and problems on our property because he chooses to ignore and did not want to do anything about it. Again we believe that the solution to this problem is to have them run his own drain tile back to the woods to take care of his overflow from his pond.

Mr. Peters: Uh m (affirmative)

Mr. Brown: I got a question about this. This pond the one you talk about draining your's into –

Mrs. Hogan: Correct

Mr. Brown: Now who owns these three lots? Looks like there is a house, are these your lots?

Mr. Hogan: No.

Mrs. Hogan: We own part of the pond

Mr. Brown: You own part of the pond.

Mrs. Hogan: Yes. Our property does go across part of that pond.

Mr. Brown: I see.

Mrs. Hogan: The rest of the pond is own by uh there is actually two individuals right now that owns it. Because there was just a foreclosure proceeding on the property that lies directly south of us.

Mr. Hogan: The open ground is directly south of us.

Mrs. Hogan: Correct. There is nothing built there right now.

Mr. Brown: So is that – I know there are two little lines here. Is there an option to (unintelligible?)

Mrs. Hogan: No, not any more.

Mr. Brown: It is not an option?

Mrs. Hogan: We originally (unintelligible) effort and now that is where our pool is going to be going installed. It is not going to be an option for Mr. O'Neal anymore.

Mr. Hogan: But that was offered to him.

Mrs. Hogan: That was offered to him.

Mr. Hogan: That was offered to him.

Mrs. Hogan: Absolutely,

Mr. Hogan: And we were willing to help to (unintelligible) the cost and labor involved in doing it.

Mr. Brown: Take something similar to this and go here –

Mrs. Hogan: Correct across our property.

Mr. Hogan: Right across this back of our property and get into that pond knowing that that pond had a dry creekbed that it overflowed into so that it was not going to be an issued taking on that additional water. But he was not interested in doing that.

Mr. Brown: Okay.

Mrs. Hogan: So basically he has created his own problem now.

Mr. Frisinger: Okay.

Mr. Peters: In your-

Ms Doseck: Mr. Peters, can I bring up two more things about it because she mentioned a couple of things?

Mr. Peters: Yes.

Ms Doseck: One thing would be that in 2000 or until (unintelligible) we would not, Allen County Waste Management District, we would not go on the property unless there complaint in the area. So if there was something that we were on their property about this septic it was because we had a complaint in the area. I am just going to state that part. Where it came from, like I said, I don't have any documentation –

Ms Bloom: Well there is no way you could just go out

Mr. Peters: Right - right

Ms Doseck: Correct. The other thing with Polston, I have been personally on their property a couple of times. Theirs was a damaged tile on their property that was causing their septic problems, because, their tile was crushed in putting some soil around their property and stuff like this. They did crush it –

Mr. Peters: Hmm (affirmative) interesting okay

Ms Doseck: and that was causing some of their septic problems. Because we found it and they had to create – they also went then at that time into the 69 overflow and they had to make sure their flow was lower and stuff like this. But I remember going out on that.-

Ms Bloom: Sure

Mr. Peters: We appreciate that. Speak Ms Hogan for just a second to the damages that you are aware of in your letter of February 12th, to Mr. O'Neal you speak somewhat anecdotally regarding the damages. Now you have mentioned the driveway and the neighbor driveway. Was he aware of the extent? Do you believe he was aware the extent of damages and what specifically –

Mrs. Hogan: With out question.

Mr. Peters: Might he be aware of.

Mrs. Hogan: He saw it. (Unintelligible) We seen him walking in his back yard looking at our property. A number of times. He knows what's there. He just doesn't care. He is just – he hadn't cared until such time that he started taking on his own water which was last year is when we built the berm a little higher in order to keep that water from overflowing onto our property.

Mr. Hogan: But it broke through very quickly.

Mrs. Hogan: It broke through very quickly –

Mr. Hogan: It broke through very quickly.

Mrs. Hogan: and it did again this winter as you can see from the pictures, two different locations. And so that is why we ended up having to go get sandbags because we started taking on so much water unto our driveway and unto the Marleys' driveway that something needed to be done immediately.

Mr. Peters: Uhmm (Affirmative) so the driveway was damage, I think I heard somebody testify to a flooded basement.

Mrs. Hogan: That would have been the Marleys.

Ms Bloom: The Marleys.

Mr. Peters: Okay.

Mrs. Hogan: I mean the Polstons. That would have been the Polstons.

Mr. Peters: Okay and that flooded basement would had been as a result of –

Mrs. Hogan: There were a number of things. There were substantial amount of rain that we took on that for a day or two I believe it was over Memorial Day (unintelligible)

Mr. Hogan: A day and a half before (unintelligible)

Mrs. Hogan: (unintelligible) (Mr. & Mrs. Hogan were speaking at the same time)

Mrs. Hogan: The only reason I remember that from reference is because we only have family members from out of state that weekend. And they were there when this happen. We got a substantial amount of rain we already had a fair amount of rain prior to that. There was not a lot absorption in the ground and so when that water came, it came so quickly and obviously the pond was already full at that point any rain that went into the pond plus the geothermal pumping into it and rain that had fallen as a result of natural in the natural course all of that ended up draining down towards the Polstons' property and like I said, we were there that weekend. It blew in their basement's walls er their basement's windows because they had sliding glass doors. It blew them right into the basement. And a lot that (unintelligible) a lot of the water was coming out and it ended up going into the Fries's property it came onto our property and on the Marleys' property. Their pond ended up overflowing they had enough of an issue with their pond overflow but when there is a substantial amount of rain and we take on a lot of water and it shoots across our property from the O'Neals then it just adds to the flooding because they have (unintelligible) in their pond and there is not enough of an area to be able to drain this quickly. (Unintelligible) needs to be in order to protect those three properties. We understand that those properties are on lower levels. However, you can see from the pictures ours' is built higher. When the pond behind us was dug, I am assuming some of that dirt was put onto the property that we ended up buying. Our house is actually located at the highest point of all four of these properties.

Ms Bloom: Yeah

Mrs. Hogan: Our house is safe, but the problem is nothing else is. And so any water that use out of our house ends up going back to the south has no impact whatsoever on the neighbors. And we make sure of that before we decided to put geothermal system in, in 2000, when we built because we were concern about that. We looked at the possibility of a close loop system. But showed to go with an open loop. We had talked with the individuals back in the Preserves and talked with the secretary of the association and asked permission to bury our lines into the pond. The only thing they had advised us, is we had to be careful about during that because we bury low enough that if somebody came up with a boat they wouldn't damage our line and have liability issues. So we ensured that they buried deep enough into our pond. So we do not have any issues with water run off. Infact we have a very low spot, we have a walkout basement towards the back of our house. And (unintelligible) south where pond ends and we have never ever had any issues with other then when it rains very heavy and it gets wet down there. But we don't have any issues what so ever with any water that we take on (unintelligible).

Mr. Peters: Let me; let me ask what I am really driving at. If there were an order to remove the obstruction from your prospected, what are the potential damages?

Mrs. Hogan: We are concerned obviously about our septic system, we are concerned about having to replace our driveway, and we are concerned about the damages that applies obviously to our neighbors because it is coming across our property. (Unintelligible) The first thing I am going to do if the board votes against us and force us to take it down, Mr. O'Neal has already told my husband does not want to turn this into a fight it will be. I will be filing for an injunction and I will be filing in Superior Circuit Court to have it stop. We have done all of the case law research and I know where our rights are and the basically where it will be going. Because I am not going to allow someone to cause the problem and force us to have to pay as the result because he doesn't want to do anything about. It is not a surface water issue; it is not just rain water and melting snow. That is what you got to understand. It is a pond issue, the overflow from pond and if he wants a pond and deals with the issue of pond he should not be forcing this down our throats to have to get a deal with what he wants to do on his property. We have a right under the common enemy doctrine to do what ever we need to do whether it is walling it in or walling it out our improving our property so that the water just stands on his. That is basically where we are right now today.

Mr. Hogan: I am not interested in parking on my cul-de-sac and walking five hundred feet up to my house through the winter months because my driveway got (18) eighteen inches of ice and water on it that we can't drive through.

Mrs. Hogan: And it not just us, we do have children; we have family we have friends. Nobody can get to our house when these kinds of issues are not dealt with. And we shouldn't be forced to have to do that in order to accommodate Mr. O'Neal because he doesn't want to do anything about his own problem.

Mr. Frisinger: Okay. I think we have beaten that horse to death.

Mr. Peters: We need a motion to close the hearing? Or

Mr. Frisinger: I think that we need to go over a few facts.

Ms Bloom: Do we need to –

Mr. Frisinger: Before we close the hearing.

Mrs. Hogan: Are we excused?

Mr. Frisinger: Yes

Ms Bloom: Thank you.

Mr. Frisinger: Linda while you were out I just made a couple of statements about the amount of water that a geothermal uh it is tough to determine without knowing the size of the home, size of the system and exactly what they are doing. I know when I built mine, it was about a million gallons a year is what they were saying would be discharged. In a maximum element you know. So that equals about 2800 hundred gallons a day, 2739.

Ms Bloom: A day?

Mr. Frisinger: A day on an average – two thousand seven hundred and thirty-nine gallons a day. If Mr. O'Neal's pond, has an one foot freeboard and is an acre and a half then that equate to about four hundred eighty-nine thousands two hundred and sixty-eight gallons of storage before it overtops or depending upon the level of his pipe that it would discharge from the pipe. I do not have any idea what that is.

Mr. Brown: What was that number again Al?

Mr. Frisinger: 489,268 gallons of storage. I tried to put it in equal terms you know so.

Ms Bloom: Your's have a million?

Mr. Brown: And how many gallons in a cubic foot?

Mr. Frisinger: 7.44

Mr. Brown: So basically (unintelligible)

Mr. Frisinger: So you uh that's just you know some thought. I don't again, we don't size of the pond exactly where the elevation of the outfall and more then likely during rain events or stormwater events it's going to discharge water uh in our normal operating condition today when we have a development come through, we require that that property owner deals with their water on site. Control it and discharge it.

Ms Bloom: Right.

Mr. Frisinger: And that is what Mr. O'Neal done in a fashion prior to us having that particular say so. When we look at property being develop as Hogans and the Marleys and the Polstons have developed that are downstream from the upstream property so to speak. I guess you know –

Ms Bloom: Right.

Mr. Frisinger: They built down here this guy up here you know Larry will probably throw something at me but water runs down hill. That is just the way it works.

Ms Bloom: You have told us that before.

Mr. Frisinger: Yes, there is no other way you are going to change that physical property of the earth. Water runs downhill. What we requires though in those lower properties is that they direct the flow from their property on their property to a receiving stream so as not to create an issue as we got today with this property owner. That means that they pipe or make a ditch or discharge it some kind of way around their property. In normal development they can take it to a pond or storage on their property or they can route it around their property, but when it goes beyond their property it has to go somewhere else.

Ms Bloom: So even though they had the original system out there and they were the first ones on the any of that property –

Mr. Frisinger: Who are we talking about?

Ms Bloom: O'Neals.

Mr. Frisinger: Right yes
Ms Bloom: Because they weren't affecting anyone then because it was going west.
Mr. Frisinger: Well it goes west. That the way the water goes.
Ms Bloom: Right.
Mr. Frisinger: Alright –
Ms Bloom: But
Mr. Frisinger: As indicated on
Ms Bloom: At what time then because he is on the upper part of it, at what time does he has to as new development happens then he has to accommodate that not going –
Mr. Frisinger: No, they have to accommodate that water coming at them. It is not his responsibility at that juncture. That's what happens. In normal development is you got water coming at you and uh-
Mr. Brown (unintelligible) – Ms Bloom and Mr. Brown were both speaking at the same time
Ms Bloom: It appears that he doesn't have to correct what he did to begin with.
Mr. Frisinger: That is an interesting question of Mr. O'Neal has a system that extracts ground water uses it for heat and cooling. Takes the heat out of the water, cools the water and then discharges to their pump. So he has a control element on his pump. That pond also serves as a stormwater control device so to speak.
Ms Bloom: On his property.
Mr. Frisinger: On his property, because if it was not there it would be direct discharge off of his site. Just grass area running off. So now he got a collection and point discharge on his site. I sure he didn't intend it that way, but that is just an unintended consequence of building a pond. When you have a freeboard, you are going to collect a certain amount of water and it is going to discharge to the outfall.
Ms Bloom: Yeah, I get that. So –
Mr. Brown: Sounds like he is putting out four thousands gallon a day.
Mr. Frisinger: Maybe, I have no way – I mean how – where did you come up with that number?
Ms Bloom: But the Developer
Mr. Brown: I was just basically, you said – somebody said it was 3,880 a day. You take a million divide it by 365 –
Mr. Frisinger: Right. That's a million gallons a year so on average that would be twenty-seven hundred thirty-nine a day.
Mr. Brown: Oh, 27
Mr. Frisinger: But that all depends if it not a million gallons if it's a half million it's half of that. So it's really –
Mr. Brown: It is going to be hard it is unfortunate that we don't have better information on how much from a geothermal person they could look at this site and say two and a half tons -
Ms Bloom: Well wait a minutes. It is still the principal of the thing. –
Mr. Frisinger: I'm not even sure it that is relative issue.
Ms Bloom: I agree.
Mr. Brown: Okay.
Mr. Frisinger: Yeah
Ms Bloom: It is still the principal of the thing. Mr. O'Neal was taking care of his of what he needed. Then all of a sudden when the development happen to the west of him –
Mr. Frisinger: Right.
Ms Bloom: Why wouldn't the Developer had
Mr. Frisinger: Be held to a standard that discharge the water.
Ms Bloom: Yeah.
Mr. Frisinger: Yes that is exactly correct. In 2000 the state's legislatures pass a law saying that the county had to adopt an ordnance that required stormwater management plans. That is what we deal with here.
Ms Bloom: Right.
Mr. Frisinger: Now we didn't get ordnance until –
Ms Bloom: Quickly enough.
Mr. Frisinger: I fought with everybody that came through trying to get stormwater management plans that affect individual properties. Uh that's and it is still tough, because

nobody believes they are going to have any impact on anybody else when build their home and their pond.

Ms Bloom: I know

Mr. Weber: The fact Drainage Board waives stormwater management for Granite Ridge on two acres site because you said it is only two acres and one house. That couldn't cause a problem; two acres and a house and (unintelligible) individually development can't cause a neighbor a problem.

Mr. Frisinger: So here –

Mr. Brown: I think that the whole rest of that development that was the last one out of that land (unintelligible) I remember that.

Ms Bloom: It was. We did.

Mr. Weber: In December of 2008.

Mr. Frisinger: We have a – that's

Mr. Brown: That is the only one in that whole thing.

Mr. Frisinger: It's really hard to take those. It is really hard to take these small developments and assess a level of discharge and how much the receiving stream or pipe is going to be able to take. So again we go around with this a lot. The next thing that I would like to point out as a matter of fact that I think Mrs. Polston said this. That they had actually mounded along Holoopeter Road uh so that the water would go back north and I think the Hogans also said something along that line. Uh, again my old theory it isn't my theory, it is just the physical property of nature, water runs down hill. From the Fries' property to the outfall at 169 goes from roughly around 849 elevation at the pipe outfall, don't have an exact number to 853.2 on the and that is right off of our GIS.

Ms Bloom: On the north side.

Mr. Frisinger: On the north side of the Fries' property. So you got about seven hundred that equate to about .6% fall and if you build up that area with a mound yes you are going pond water on the adjacent properties. So I think it is important to note that that these three properties that have been develop, the Marleys, The Polstons, and the Hogans have been built in a low area that by all accounts had drainage problems prior to development. I think Mrs. Polston again or Mr. Marley one of them said something about yes there were cattails growing there, but we built a pond so we got rid of that. Well I have no way of knowing if that pond is built higher then the existing ground was at that time that would had obstruct flow if the driveway obstruct flow, the pipe underneath the highway may not have enough size or capacity to direct the flow from the O'Neal property.

Mr. Weber: We do not have control on the elevation of the houses.

Mr. Frisinger: Right. And don't have –

Ms Bloom: Because they were metes and bounds.

Mr. Frisinger: Right.

Mr. Weber: Right.

Mr. Brown: Are we going to do this?

Mr. Frisinger: Yes, I am just trying to get through the facts of the matter here.

Ms Bloom: See why we had to change all this.

Mr. Frisinger: A three-quarter inch geothermal discharge uh I you know I just think it a couple of things and I don't – I am not trying to dispel what you said about the geothermal discharged and (unintelligible) device and all that stuff. I know that on a geothermal discharge you are suppose have it four feet below surface level for freeze and thaw conditions so that it doesn't have an affect on your system. I know the cooling affect of the water is pretty darn cold when it comes out of there. Uh, I just can't imagine how that would cause a thawing affect. But it also I can't imagine how a three-quarter inch pipe would create a forced condition – looks to me like that is a four outfall. I look at your pictures – Did you measure it?

Mr. Hogan: No I never measured it. I thought it was a nine inch pipe. Mr. O'Neal maybe will (unintelligible)

Mr. O'Neal: It is a six inch pipe.

Mr. Frisinger: Split the different. But I think that is just important to note, that uh the common enemy is not a statutory condition correct. It is not part of law.

Mrs. Hogan: The Supreme Court said, " (unintelligible) Common enemy document, we have the right –

Mr. Frisinger: But it is not written in statute.

Mrs. Hogan: That I don't know.

Mr. Frisinger: Okay. I don't think it is.

Mrs. Hogan: I can tell you that the Supreme Court's ruling –

Mr. Frisinger: Right, and they do – I have the whole common enemy doctrine in my office. I am not disputing that it is sited and it has some validity, but it is not part of what the board has to deal with today. They have a statutory siting that tells them what they have to deal with. You know, that how's they are set up - If anybody has any – common enemy doctrine is a doctrine of sorts that is black and white. It exists in just about every state in the Union I believe. And it offers up uh thoughts about water discharge so to speak, stormwater issues. Uh the element you have to deal with today is the – and Bill just asked me if we are going to do the 36-9-27 thing here, is the standard of law that is brought forward under the drainage code.

Ms Bloom: Obstruction, yes.

Mr. Frisinger: Yes, so –

Ms Bloom: The questions.

Mr. Frisinger: Right and I have the building permits here from the properties in question. It is interesting. You know there is a very specific time line and even one of them got a letter from Kathy saying gee site inappropriate for septic system.

Ms Bloom: One of these homes?

Mr. Frisinger: That would have been the Polstons.

Ms Bloom: I go back then and say, "How did –

Mr. That would have been the Polstons. Well they came back with a different design is my presumption –

Ms Bloom: But how did that developer ever-

Mr. Frisinger: He probably came back with a mound system or something.

Sheriff Fries: I can help you. We have been there since 87.

Ms Bloom: I want your name again please. Laughter

Sheriff Fries: Kenney Fries Hollopeter Rd.

Ms Bloom: Thank you.

Sheriff Fries: Actually if you would check, part of their septic system is on county right-of-way.

Ms Doseck: Uh m (affirmative)

Sheriff Fries: Because they were told by County Highway that that road had been vacated and it had not been vacated and we said no. We would have to vacate it. It is not vacated you can't put a septic system there because it is on county right-of-way. No it went through. One of the more problems that we have been dealing with.

Ms Bloom: Who's septic is on the right-of-way?

Sheriff Fries: The Polstons. So consequently the mound they put on there is even further on county right-of-way.

Ms Bloom: So we need to vacate the area passed the cul-de-sac over to 69 and vacate that. Is it in that section?

Mr. Frisinger: Well I think before you go do that Linda you need to address the issue that Mrs. Polston brought up, that they had mounded that area and again –

Ms Bloom: It washed away?

Mr. Frisinger: Well from the Sherriff's property to the south there is - how much fall did I say here?

Sheriff Fries: About three feet.

Mr. Frisinger: Yeah, four feet of fall in seven hundred feet so that is about .6% rate but if you put a mound – a foot of dirt it's not going to get away because it will be backing .4 of a foot onto his property. Which is another issue, but it is one that was brought forward here about not only the right-of-way having never being vacated and the septic being there but –

Sheriff Fries: We won't vacate the right-of-way from our side of property for Hollopeter Road. We aren't interested in doing that – we have been trying to sell that five areas down there especially lake now. (Unintelligible) It goes back, I don't want to beleaguer too much, but it all started when the culvert pipe – when the cul-de-sac got put in and it stop the flow of water to the west. That is what started all the problems. When the culvert was put underneath Hollopeter Road by the developer that is when it cause water problems. And hopefully if the

Hogans filed an injunction and they win, that is good for me because I got (unintelligible) thousand truck loads of dirt and I am going to pile it along Hollopeter Road. And I won't have flooding anymore.

Mr. Frisinger: Who put the pipe in?

Sheriff Fries: Steve Jahn

Mr. Frisinger: So it was the developer.

Sheriff Fries: Yes. Jahn did the cul-de-sac and the culvert. One of the guys from Leo that I went to school with (unintelligible) while he was putting it in, I said, "You can't do that."

Mr. Frisinger: How did they do it in the right-of-way? They must have got a permit or something I guess.

Sheriff Fries: It was Steve Jahn, he didn't get a permit. (Laughter) – Is that on the physical records, I hope so?

Mr. Frisinger: Sure.

Sheriff Fries: He is a crook, I would like to have him my – (Laughter)

Someone: We would love to put him there for a long while.

Mr. Frisinger: Okay.

Sheriff Fries: Thank you.

Mr. Frisinger: If the board would like we could move forward with the Findings of Fact and Order.

Ms Bloom: Okay. The hearing is close. After a hearing on a petition identified as file number 09-007 filed by Charles O'Neal (Names of Petitioners) the Allen County Drainage Board heard evidence on the 9th day of April, now makes the following findings and order:

1. The obstruction of a mutual drain or a natural surface watercourse that is alleged in the petition exists. That is yes.

Mr. Peters and it was testified yes.

2. The removal of the obstruction will promote better drainage of the petitioner's land. That is a Yes.

Mr. Frisinger: I think you should take action on each one of those.

Ms Bloom: Separately?

Mr. Frisinger: Separately, yes, I think you should actually call for a vote starting back with number 1.

Ms Bloom: Alright. Number 1.

Mr. Peters: I make a motion on number 1 that there is a finding of obstruction of a mutual drain or natural surface watercourse alleged in the petition exists,

Mr. Brown: Second

Ms Bloom: All in favor signify by saying aye.

Three ayes motion passed.

Ms Bloom: Okay alright

Mr. Brown: Proceed to number 2.

Ms Bloom: The removal of the obstruction will promote better of the petitioner's land.

Mr. Brown: I will make a motion that is a yes.

Mr. Peters: I will second it.

Ms Bloom: All in favor signify by saying aye.

Three ayes motion passed.

Ms Bloom: Number three. The removal of the obstruction will not cause unreasonable damage to the land of the respondents.

Mr. Peters: I think there is little bit of a double negative there, but I think no the removal of the obstruction will not cause unreasonable damages to the land of the respondents.

Ms Bloom: So you are saying no to number 3?

Mr. Peters: What I am saying is that what has been testified too that the removal of the obstruction will cause unreasonable damage to the land of the respondents.

Ms Bloom: yes yes

Mr. Peters: So that in my book makes that answer no.

Ms Bloom: Alright.

Mr. Brown: I will second that.

Ms Bloom: All in favor signify by saying aye.

Three ayes motion passed.

Ms Bloom: If No, deny the petition. So number three is a no and the petition is denied.

Mr. Peters: Do we do anything else?

Ms Bloom: Uh – What do I do? Oh here. If no proceed to no that is a no deny the petition.

Mr. Frisinger: This is why since you have taken action this why we have plan review.

Ms Bloom: Absolutely, that is what I have been saying all this time.

Mr. Frisinger: We just, you just made ruling that affects Mr. O'Neal and I am not a voting member so I'll just say it. I think it's uh

Ms Bloom: But it is going (unintelligible)

Mr. Frisinger: I am not sure what we calling unreasonable damage?

Ms Bloom: Well we are talking, I am talking the driveway, the septic, the and I realize that when he built his, he was the only homeowner out there.

Mr. Frisinger: Right.

Ms Bloom: But all of the sudden –

Mr. Peters left the meeting

Mr. Frisinger: But they knew the consequences of building downstream also. So you have to voice out what is unreasonable.

Ms Bloom: Well you don't think a septic and driveway and you can't get to your house –

Mr. Frisinger: No no no, I think you are missing my point.

Ms Bloom: Okay.

Mr. Frisinger: Unreasonable – when you build somewhere, you have certain expectations okay. If you don't take into account those issues when you build you can't very well expecting someone else be held to a different standards because you didn't do it. Okay.

Ms Bloom: I hear you.

Mr. Frisinger: That's my point. So it is kind of unintended consequences here for Mr. O'Neal. But, the board made their decision so it not – I am not trying to talk you out of it.

Ms Bloom: No, but – I know you are not, except –

Mr. Brown: In this free wheeling situation that exists in metes and bounds isn't it everybody for themselves basically, or not?

Mr. Frisinger: It is not now

Mr. Brown: Not now,

Mr. Frisinger: Right right, but when we say everybody for themselves there is still some guidelines that go along with it.

Ms Bloom: How could the developer do this?

Someone: Because he is a crook.

Mrs. Hogan: Ask the county. That is why we have been involved with a law suite –

Mr. Brown: Six years ago, that was before we passed the stormwater

(Unintelligible) everybody talking at once.

Mr. Weber: It is still allowed, even today. This person because I don't know on these houses in today's world the same developer could come in and build a house and sell a lot and in 2009, 2010 and 2011. One a year and be exempt from doing anything.

Mr. Frisinger: No, he is not exempt under state law. He still has to come through our office, but if it does not get routed and we don't see it, that's it.

Mr. Weber: People has to file a minor plat or do –

Ms Bloom: No, I understand that (unintelligible)

Mr. Frisinger: Stormwater Management Plan. Yes

Mr. Hogan: He is currently out of the homebuilding business and development.

Someone: We tried to stop him.

Ms Bloom: But what can we do now to make this – I mean we got to correct this.

Mr. Weber: Somebody can petition to make a regulated drain and build a drain.

Mr. Frisinger: There's one, two you could have voted yes and went on to the level of the petition to jointly fund a resolution of some sort.

Ms Bloom: Oh, when you get to the percentages and everything.

Mr. Frisinger: Right, yes.

Ms Bloom: But in my opinion because of the vote I made is the obvious it is causing unreasonable damage to their property.

Mr. Frisinger: Again, unreasonable isn't a measurable issue right now. So I don't know how that comes about.

Ms Bloom: Okay, so what can we do now that we have voted – Okay, it sounds like the pond overflow – okay, uh preexisting natural surface watercourse can't be re-established without removing the house, that's not going to happen.

Mr. Frisinger: Right.

Ms Bloom: A swale could be constructed from the petitioner's pond across the respondent property to shared pond on the east side of I69.

Mr. Weber: I am not even sure when you are reading that because when we offered that we weren't even aware of Mr. Fries' problems. So right now you might even look at plan that says if I am doing it. If at that point, I might look at a drain thing and say okay how I can I solve those three, the fourth, Mr. Fries', all into one plan.

Ms Bloom: to correct what happen.

Mr. Weber: Right.

Ms Bloom: Well what about swale and pond easements, maintenance agreements are needed to establish and clarify- okay.

Mr. Frisinger: If you are going to traverse across somebody's property you have to have some sort of agreement (unintelligible) won't be obstructing.

Mr. Weber: That is why I said the option somebody (unintelligible) a petition and makes a regulated drain and you have those by statute.

Ms Doseck: Can't you put it in the right-of-way?

Ms Bloom: But to reduce the likelihood of future stormwater inundation associated with the petitioner's pond recommend diverting petitioner stormwater south through swale constructed along common property line. Swale would continue through wooded area in rear of petitioner's lot, outfalling to N.D., outfalling to Rinehold Drain. So you would be redirecting.

Mr. Weber: Right and I don't know if that would handle – that would take the pond water but it wouldn't take Mr. Fries's water that was blocked by the dam on Hollopeter.

Mr. Frisinger: You only got –

Mr. Weber: You only got -

Mr. Frisinger: Because there got to be two of them –

Mr. Weber: We got two blockages now, presented by testimony. One –

Ms Doseck: Hollopeter Road.

Mr. Weber: So there is more then – that was addressing one. (Unintelligible) we got testimony (unintelligible)

Ms Bloom: Can't we have a hearing and we because of a serious problem out there we could uh –

Mr. Weber: Highway could petition for a regulated drain hearing.

Mr. Frisinger: Well that would be interesting.

(Laughter)

Mr. Weber: But they could.

Mr. Frisinger: That would be interesting.

Ms Bloom: Why would that be interesting?

Mr. Frisinger: Because you got a septic system in the right-of-way so now they are petitioning to do something in the right-of-way where there is a septic system, an obstruction in the right-of-way.

Mr. Weber: You might have to try the other side.

Ms Bloom: I hope this man never, never, never tries to develop again.

Ms Doseck: Where does Mr. Fries's farm tiles go?

Ms Doseck: To Mr. Fries, "Where do your farm tiles go?"
Sheriff Fries: To the back.
Ms Doseck: In the back toward –
Sheriff Fries: Towards the creek back there.
Ms Doseck: Okay.
Mr. Frisinger: But this is a separate shed.
Conversation took place between Ms Doseck and someone in the audience –
Ms Bloom: Okay, what do we need, what can we do?
Mr. Frisinger: I think right now – I don't think we can do anything at this junction because one I don't – If I had a petition from the affected property owners to – you know create a regulated drain that would be one issue.
Ms Bloom: But why can't they – Drainage Board do this, or the Surveyor's Office why does it have to be –
Mr. Frisinger: It has to be a petition by the property owners, because they are the ones who will end up paying for it anyway.
Ms Bloom: No, no, I understand that.
Mr. Frisinger: So the board –
Ms Bloom: But there would also be partial cost to the Allen County Highway Department because it is over that Hollopeter Road.
Mr. Frisinger: Yes, potentially there would be some cost to the –
Mr. Weber: That is why the highway could as an owner, but the Surveyor's Office can't -
Mr. Frisinger: It comes down to the public health safety and welfare issue on right-of-way of – it is a none traveled right-of-way that is setting there so –
Mr. Brown: Are we talking, just so I am clear, about potentially doing this?
Mr. Frisinger: Well, you got two things Bill.
Mr. Brown: Potentially doing this.
Mr. Frisinger: I think what you do here –
Ms Bloom: Yes, we need to do something. I mean we already ruled I am not saying –
Mr. Frisinger: (unintelligible) come right that (unintelligible) here maybe do that, but they would end up paying also even with all here because they're the beneficiary of the redirected flow.
Ms Bloom: So they would have to pay for.
Mr. Frisinger: Everybody would have to pay –
Mr. Brown: (unintelligible)
Ms Bloom: If it weren't a regulated drain would everybody have to pay for it. They tried to negotiate all of them.
Mr. Frisinger: Well, we weren't a party to that. That is kind of hear say (unintelligible)
Mr. Brown: Whatever we figure out, those costs will be shared by them.
Mr. Frisinger: Right.
Sheriff Fries: Not us,
Mrs. Fries: Not us, we have not moved the first spoonful dirt.
Sheriff Fries: No, I won't pay a dime.
(Unintelligible)
Ms Bloom: This isn't a sheriff thing right now. This is a drainage thing.
(Laughter).
Mr. Brown: So I guess (unintelligible)
Laughter and conversation between all present.
Ms Bloom: Well we do have to come up with something because –
Mr. Brown: So when do we, motion to adjourn and the process starts again with a hearing for a regulated drain. Right.
Mr. Frisinger: It could yes.
Ms Bloom: Well maybe.
Mr. Frisinger: If Mr. O'Neal filed a petition
(Unintelligible)
Ms Bloom: Now we have to help Mr. O'Neal.

Mr. Frisinger: Well help is only in the form of action that is directed through a petition. The same holds true for Sheriff Fries, if he files a petition on the obstruction that would be another element.

Mrs. O'Neal: My concerns over if we file a petition the last thing we want to do is mess up the Polstons' lives.

Mr. O'Neal: Base on what just happen at this hearing today, if we were to file a petition because they built this mound to stop the flow of water, the board could find that to remove it is going to flood their septic system and cause unreasonable amount of damage, so

Ms Bloom: Right, unless they redirect the water.

Mr. O'Neal: So it doesn't seem like that is an option.

Mr. Frisinger: Right.

Mr. Brown: This. I mean I would be curious to understand better what this would do. How much would that particular –

Mr. Frisinger: Again, we are putting together our best look without doing any field work.

Ms Bloom: Yes, but can somebody come up with some idea and –

Mr. Frisinger: Yes, we can do that. If the Board wants to direct me to come up with a better plan with dollars.

Ms Bloom: A plan. A plan. Then do they have to –

Mr. Frisinger: Obviously there are issues here that I don't have full grads. One the septic system is in the right-of-way.

Ms Bloom: Of course you don't –

Mr. Frisinger: The exact elevation of parcels, but we can do that.

Ms Bloom: But if we tell you to look into it, and Mr. Brown: I will make a motion –

Ms Bloom: but wait a moment-

Mr. Frisinger: You don't need a motion (unintelligible) –

Ms Bloom: Look into it and uh then would they have to file a petition for regulated drain or would we just be fixing their existing –

Mr. Frisinger: I will bring back a recommendation.

Ms Bloom: Alright, I would really – does that yes

Mr. O'Neal: Now if I for some reason rerouted my geothermal and it still floods what happens? Do I petition the board again? What is going to happen?

Mr. Frisinger: What's that now?

Mr. O'Neal: What is going to happen?

Mr. Frisinger: What's that Chuck?

Mr. O'Neal: Even if I am going to reroute that geothermal back towards the north like they're saying –

Mr. Frisinger: Well it is just go back to the north –

Ms Bloom: To the north, no we were talking about to the south.

Mr. O'Neal: I mean to the south, I am sorry, the south. It is still going to flood there.

Ms Bloom: In the wooded area?

Mr. O'Neal: No –

Mr. Frisinger: Right where he is got - because they built that wall there.

Mr. O'Neal: (unintelligible)

Mrs. O'Neal: From natural rain going in there –

Mr. Frisinger: Yeah.

Mr. O'Neal: It still going to flood

Mr. Frisinger: I think what Mr. O'Neal trying to make a point of is it is not the geothermal that's being block. It is the overland flow pattern.

Mr. Hogan: I don't believe – I don't believe, if Mr. O'Neal reroutes his geothermal, I don't believe we are going to have an issues with flooding other than when we get really sufficient rains like we get on occasions and we all – we talk about this earlier, we all had issues. Mr. Marley testified – when we get sufficient rain everybody has spots where we end up with water. Okay. If the geothermal gets rerouted, let's see where we are at that point.

Mr. Weber: It is an interesting point that you bring up – historically

Mr. Hogan: Reroute the geothermal, reroute the whole overflow and take it all back woods.

Mr. Frisinger: Okay all right, we're done

Mr. Weber: Historically, we had a hearing four years ago on the same obstruction, at that time the one person volunteer to move the geothermal to a different place or location and the other person volunteer to do – to remove the obstruction without an order. Both parties said that we will agree to mutually and we don't need the board.

Mr. Brown: Is that the group where the one guy was sitting behind the other guy and they never met before but they were neighbors.

Mr. Weber: But they resolved it.

Mr. Brown: One guy was sitting where Ken is sitting and the other guy was sitting where Roy was sitting and they have never spoken to each other and was neighbors got all the way to this process. So at least you guys are –

Ms Bloom: When was this?

Mr. Brown: About four years ago.

Ms Bloom: Where was this one?

Mr. Brown: It was a farm. Someone build a berm up and their pond was blocking.

Mr. Weber: But it was a pond, it was a berm some similar, it was a geothermal.

Ms Bloom: So we are going to work this out, right?

Mr. Frisinger: I will come up with something.

Someone: By the end of the month?

Talk and laughter.

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.