

**ALLEN COUNTY DRAINAGE BOARD MINUTES
REGULAR HEARING
PUBLIC HEARING
AMSTUTZ RD**

October 22nd, 2009

9:00 a.m.

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

The Allen County Drainage Board convened on Thursday October 22nd, 2009, following introductory remarks, Ms Bloom asked for approval of the October 8th, 2009 minutes. Mr. Peters moved for approval of the minutes as they were prepared, second by Ms Bloom. Motion carried. Mr. Brown was absent for vote.

Approval of Petitions:

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

1. **Doc. #09-106. Willow Creek Br. #7 Drain located in Perry Twp. Sec. 20.** Petitioner – Fred Merritt. Petition for encroachment for the construction and installation of driveway crossing, sanitary sewer tap, storm water basin and parking/drive area. Deferred from October 8th, 2009.
2. **Doc. #09-107,** Request from Dickmeyer and Associates for approval of the Stormwater Management Plan for Riverside Manufacturing located in Perry Twp. Sec. 20. Deferred from October 8th, 2009.

Mr. Frisinger explained to the Board that the petitioner asked for Doc. #09-106 and Doc. #09-107 be pulled from the agenda. They are looking at a different plan. He suggested that it be removed from the agenda until we have a new submittal. Petitions were removed from the agenda.

3. **Doc. #09-112, Sumner Drain located in Washington Twp. Sec. 14.** Petitioner – Brotherhood Mutual Insurance Co. Petition for encroachment for the construction and installation of a proposed parking lot and stormwater detention basin.

*Following comments and general discussion by the Board, Mr. Frisinger recommended deferral. Petition was submitted without the benefit of calculations, or notation of the amount of encroachment into the drain. Mr. Peters made a motion to defer, second by Ms Bloom. Motion carried. Mr. Brown was absent from the vote.
Andy Bearman – Foresight Consulting, LLC.*

Mr. Bearman said that he would provide the information to the Surveyor's Office.

4. **Doc. #09-113, Meier Drain located in Milan Twp. Sec. 30.** Petitioner – Ben Schmucker Jr. Petition for encroachment for the installation of a four-inch perimeter drain tile. Outfall for private septic system.

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

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5. **Doc. #09-114, Baldwin Drain located in St. Joseph Twp. Sec. 32.** Petitioner – Woodview Assisted Living, LLC. Petition for encroachment for the construction and installation of asphalt parking area and concrete dumpster pad.

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

6. **Doc. #09-115.** Request from American Electric Power for approval of the Stormwater Management Plan for the Woods Road Substation located in Perry Twp. Sec. 18.

Following comments and general discussion by the Board, Mr. Frisinger recommended approval subject to the following: Petition for the Establishment of a Regulated Drain and the usage of a 30-inch pipe instead of twin 24-inch pipes. The Town of Huntertown requested making this a regulated drain. Mr. Peters made a motion to approve the Stormwater Plan subject to the Surveyor's requirements, second by Ms Bloom. Motion carried. Mr. Brown was absent for the vote.

7. **Doc. #09-116, Rodenbeck #2 Br. #4 Drain located in Perry Twp. Sec. 29.** Petitioner – Mr. Alan Bugg. Petition for the encroachment for the construction of a private drive.

See Below.

8. **Doc. #09-120.** Request from D.A. Brown Engineering for approval of the Stormwater Management Plan for Pathway Church located in Perry Twp. Sec. 29.

Following comments and general discussion by the Board, Mr. Frisinger recommended approval of petitions 09-116 and 09-120 as submitted. Mr. Peters made a motion to approve both petitions as submitted, second by Ms Bloom. Motion carried. Mr. Brown was absent for the vote.

9. **Doc. #09-117, Hoffman-Lepper Drain located in Madison Twp. Sec. 8.** Petitioner – William Hartman (County Highway). Petition for encroachment for the replacement of Allen County Bridge #276 on Monroeville Road over the Hoffman-Lepper Ditch.

Following comments and general discussion by the Board, Mr. Frisinger recommended approval subject to the receipt of certified set of plans, second by Ms Bloom. Motion carried. Mr. Brown was absent for the vote.

10. **Doc. #09-118, Roy No. 2 Drain located in Perry Twp. Sec. 33.** Petition from property owners requesting reconstruction of the drain. Motion to proceed.

Following comments and general discussion by the Board, Mr. Frisinger recommended deferral of petition for a more in-depth review and legal response. Mr. Peters made a motion to defer petition for legal review, second by Ms Bloom. Motion carried. Mr. Brown was absent for vote.

11. **Doc. #09-119.** Request from Bishop Engineering & Development for approval of the Stormwater Management Plan for Sycamore Pointe Retirement Community located in Aboite Twp. Sec. 3.

Following comments and general discussion by the Board, Mr. Frisinger recommended approval as submitted. Mr. Peters made a motion to approve, second by Ms Bloom. Motion carried. Mr. Brown was absent for the vote.

12. **Doc. #09-121.** Request from Donovan Engineering for approval of the Stormwater Management Plan for Crossview Church located in Cedar Creek Twp. Sec. 23.

Following comments and general discussion by the Board, Mr. Frisinger recommended approval as submitted. Mr. Peters made a motion to approve as submitted, second by Ms Bloom. Motion carried. Mr. Brown was absent for the vote.

Other Business:

Lynn Witt – Address: 13403 Second St., Grabill, In
Rob Hathaway – DLZ

Mr. Witt asked the Board for permission to change the outfall for Jim's Auto Care from the Grabill Country Village's pond to the existing line in the street. It is a ten or twelve inch pipe.

Rob Hathaway reviewed the project with the board explaining that they original submitted plans showing the outfall going to the Grabill Country Village's pond. They were there to ask the board permission not to retain water. He would do more investigation to ensure that there would not be a problem using the drain.

Mr. Frisinger told him that the issue is they need a plan adequately facilitated the site design also the discharge of the stormwater from the site to an approve outfall system. The stormwater detention facility offers the most logical alternate not only for you but Grabill Country Village. He thought that there had been an approval between the town and Grabill Country Village. He expressed concerns regarding the proposal to relocate a building and tie it back into an unknown system.

Mr. Peters asked if there was anything the board could do at this time to facilitate what they need to do to move forward.

Mr. Frisinger told Mr. Peters that he was not ready to say it would be okay.

Mr. Frisinger suggested getting Rick and Rob together and try to figure out what is going on.

Mr. Witt asked Mr. Frisinger, if they could get the developer and Rick Slayback to agree to allow them to run their own line would he has a problem.

Mr. Frisinger said he thought their pond size was okay. We will get Rick in sit down and talk about it.

Sible Drain. Mr. Frisinger reviewed with the Board the steps taken by the Surveyor's Office to reopen the tile line. There will need to be a public hearing for the establishment of maintenance dollars on the drain.

PUBLIC HEARING

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

Amstutz Road Drain located in Cedar Creek Twp. Sec. 3.

Mr. Peters made a motion to open the public hearing, second by Mr. Brown. Motion carried.

A. **Doc #09-110** - Surveyor's Report

Mr. Frisinger read the report to the Board. Copy attached.

B. Comments and letters in Favor:

No letters in favor.

C. Comments and letters in Opposition:

Mr. Frisinger presented to the board a remonstrance & objection to the Amstutz Road from Country Lake Estates Homeowners Assoc., Inc. & Affected Landowners. He reviewed the objections and concerns from the landowners to the board. The property owners are opposed to creating a new regulated drain and the establishment of a fund for construction and future maintenance on the new drain. They are also opposed to drain being located outside road right-of-way.

Linda Bloom asked Bill Hartman, Director of the County Highway, to come forward and speak to the Board.

Mr. Hartman reviewed the situation explaining since the Highway had already allocated \$90,000 for the repair of the road, he proposed that the Highway Department would take care of at least the initial cost of the total construction.

Mr. Frisinger asked Mr. Hartman if he was willing to take this cost on all across the county. If one is good, then all are good.

Mr. Hartman said that their roads are not flooding all across the county.

Mr. Frisinger thought this would set policy, Mr. Hartman disagreed.

Mr. Peters didn't think so, since the highway already had this amount allocated for fixing the problem.

Ms. Bloom: Asked Mr. Hartman if the plan he had was the first plan, but Mr. Frisinger expanded the plan to include bigger pipes.

Mr. Hartman explained that it is a larger, better system than the Highway can planned.

Ms Sorrento stated that she thought only the board could establish policy as a county wide policy. The general lay person . . . are going to assume that they can call in here and say, "Hey you gave this guy money, why can't you give me

money." She didn't think that it establishes a policy or a true legal precedent, but you will have in the minds of the people hearing and reviewing this that there is a preferential issue at play. At a political stand point, you are going to have to deal with those questions from members of the public who don't understand why this person got something why can't I get it.

Ms Bloom stated that she would like for this meeting to be adjourned right now.

Mr. Brown asked for clarification of what would constitute using CEIT Funds.

Mr. Frisinger gave him the following examples: The Lee Drain that we voted down. Aboite Center Road (Eggeman), Garman, Rinehold, Shambaugh Drain, Dennis Drain, Scar Drain, Witmer Drain, Roy #2, WO Lake, Monroeville Road (Argo Drain). These are all flooding roads. Where do you draw the line? . . .

Mr. Hartman explained that this was an extreme case. . .

Ms Bloom asked if this would still be a regulated drain. She was told by Mr. Hartman that that would be up to them.

Ms Bloom asked if this would be built to an urban drain status or can it be classified as a rural drain. . .

Mr. Frisinger told her that the Surveyor's Office only design drains to an urban drain standards.

Ms Bloom clarification: County Highway Department has help with county drainage if it affects county roads. Mr. Hartman told her yes, the highway has a designated drainage crew north and south.

. . . .

Mr. Frisinger asked to clarify something. He is not against the highway coming up and wanting to pay for this, it is that everyday he deals with complaints that have no resolution. The resolution is strictly through what is written in Indiana Law. If it is the highway pleasure to pay for this issue, that is completely up to this board and the Highway Department. He was sure that would make some people very happy, but it does nothing for him to reify issues in the future relative to this kind of situation or any kind of a situation. Mr. Brown said it very well; there are people out there who will notice that belly up to the trough. He does not have a pot or pool or money, he has the ability to operate under Indiana Law. When there is an impact to a watershed based on what has happen, as he had stipulated, from 1964 forward, the impact is all driven by development.

. . .

Ms Bloom asked if there were any comments in opposition to the drain.

Mr. Michael Cameron, President of Homeowner Association. – address – 19031 Amstutz Road

Mr. Cameron wanted it designated as a rural drain. There are horses and chickens being raised in the area, so it should be classified as a rural drain. He also wanted it built within the right-of-way of the road.

Mr. Peters asked him if there was an issue with maintenance fees being assess to the residents.

Mr. Cameron told the board that they are currently paying maintenance on the Hilkey-Carnahan. He would not be opposed to paying maintenance.

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Cathy Toupin – address – 19310 Amstutz Road

Ms Toupin asked that if you go outside of the road highway, does that mean that you will be tapping into the Metcalf Ditch and if so, does the Metcalf Ditch work? Their property floods now and it would get worst if you drain more water towards us.

Mr. Frisinger explained to her that she lives in a very low wetland area. He told her that there wasn't much they could do. The Metcalf Drain runs due east south of County Line Road. If the Metcalf is not working property and there are maintenance dollars they would do some work on it.

Ms Toupin asked if they would check prior to dumping more water into it.

Ms Bloom asked if they were going to vote on it, or keep it under advisement.

Gary Woods – address – 19213 Amstutz Road

Mr. Woods asked how far on to the property would they come.

Mr. Frisinger told him it would be the 25 feet from the center of the road plus thirty. It would be fifty-five feet from the center of the road.

Gerry Hoops – Address 19220 Amstutz Road

Mr. Hoops reiterated the severity of the flooding in the area.

D. Close Hearing:

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

E. Board Finding and Order:

Following a discussion between members of the Board, Mr. Peters made the following motion: Regulate the drain, provide up to \$90,000. in funding, through the Highway Department. If the project goes over there needs to be an assessment of property owners, and the maintenance portion to be determined however that is normally determined.

Clarification by Mr. Peters. The criteria for the Highway Department being responsible for funding drainage work, is the Highway petitioning the Drainage Board for improvement of a drain. Motion seconded by Mr. Brown.

Ms Bloom said that she would not vote for this today. She asked all in favor signify by saying aye. Mr. Peters said aye. Ms Bloom asked for all opposed. Ms Bloom opposed. She said that she is not against the project; she just wasn't prepared at this point to vote on it.

Mr. Brown asked Ms Bloom what were her concerns.

Ms Bloom changed her vote to abstaining.

She felt that there were a few things that needed to happen and wanted to speak with counsel and have some criteria done in writing before voting.

Mr. Frisinger told Ms Bloom that at this point, the vote will kill this project. You have a motion and a second, one vote for and one abstain.

Mr. Brown: We had a motion and a second and a declaration by the President prior, to Mr. Brown's vote, that said that I am not going to vote on this. I want more information and I want to check with legal counsel clouding the whole thing.

Cathy Serrano: What the Surveyor is saying, is you table it right now today and you don't go forward on this public hearing and the motion that is currently on the table you basically are going to have to go back and do another public hearing, send out notice all over again too ever address this again because you have already done that and we are at the public hearing and having in evidence and comments. If you table it now, you are done today period. You will have to repetition, he will have to republish back out, have another public hearing and address it all again.

Mr. Brown: So it has not be tabled it has not been voted up or down, we have one vote and a declaration from the president that we want more information and not to vote today. What are the issues that we need to discuss?

Cathy Serrano: The issue is regarding the CEIT funding issue and it is setting either a policy or establishing criteria by which we will always rules a certain way. This is a case by case type of scenario. You never want a policy in place that say we only use CEIT funds whenever someone comes and you also don't want to hamstring yourself to say that we never will. The petitioner in this case is the Highway Department who had originally said that they were going to use funds to do it in a different way. That same petitioner has come and petition the Surveyor and have offer to use those same funds that they were going to use previously that is a very different scenario then having John Q Citizen come forward and petition and say, "I want CEIT funds." . . . This is an exception to the rule type of scenario and you want to leave it as an exception to the rule.

Mr. Brown: This is a good example point of order these sidebars that takes place in these Drainage Board meetings, people leaving the room together, board members getting up. He would prefer that they would not do that in the future, that they keep these meetings focus on the people in here giving

testimony and the folks sitting here in front of the microphone. This whole thing almost blew up because of what just took place and all we had to do or sidebars – we will just let it go at that. Now that he knew more information that was share earlier, he voted yes.

Ms Bloom changed her vote to yes so long as she had the minutes and what the attorney Cathy Serrano said in writing so that she get some kind of idea that this isn't an ever day occasion, this is a special project that they are doing and it is because of road destruction and closure and we don't have the open account that we can do everyone in the county like this. She did however think that the ninety thousand was the max. Mr. Nelson told her that was his motion. There would be an assessment for any amount over the ninety thousand.

Mr. Brown: We have stated to the public that if people do have an over topping of the road with water to some degree, they can petition the commissioners try to get Highway to float a petition and or themselves float a petition for a hearing that we will hear them.

Mr. Nelson: That has to be the minimum in order for us to offer

Mr. Brown: Do you think it has to go through the Highway Department? Both Ms Bloom and Mr. Nelson agreed.

Mr. Nelson: Because it was money that they budgeted for CEIT for specific drainage issue.

Mr. Brown: It we have other situations that crop up like this where citizens has something going on for a long-long time, He thought they should be heard.

Mr. Nelson: There is nothing preventing them from being heard.

Mr. Brown: As long as you are not sitting here today saying that we would not fund it if Highway did not create a petition for us. Because He thought at that point Highway could then get it into their budget. It might take two or three years, but the citizens has to come up and frankly they are just getting relief now because the county acted and it seems like it been a long time acting on it.

Ms Bloom: Motion passes.

Mr. Peters: He has enough confidants in the highway department. The citizens came to the highway department with an issue and the highway department thinks it is egregious enough too petition us, he was willing to say okay. It is not that the citizens' comments or concerns don't mean anything, but at this point it has gotten to a level where there is a bucket of funding that we can say yes or no.

Mr. Brown: The highway department works for us and if for some reason there is a situation out there in the county that doesn't rise to level that we think as the Drainage Board, Board of Commissioners, then at that point he thought they could give them some, not necessary that they would do it, because they are no

establishing precedent they are basically taking these on a case by case. He just doesn't want folks to feel like they have to go through the Highway Director to get to them.

Cathy Serrano: Property owners in that watershed always have the right to petition the Drainage Board if they have a drainage issue and bring it forward. All they have to do is follow the drainage code and petition through the office of the Surveyor to have their issue addressed and looked at.

Mr. Brown: We could contribute then to a highway scenario with CEIT dollars.

Ms Bloom: The reason why we are participating in this is because the Highway petitioned us.

Mr. Brown: If it was reverse, if they petition as property owners wanting this problem fixed. The Board of Commissioners/Drainage Board could abdicate in the Highway budget that we approve every year to put money into that for certain areas.

Mr. Brown made a motion to adjourn second by Mr. Peters. Meeting adjourned.

ALLEN COUNTY DRAINAGE BOARD

Linda K. Bloom, Chairperson

Wm. E. Brown, Vice-Chairperson

Nelson Peters, Secretary

Allan D. Frisinger, Surveyor

Date

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