

**ALLEN COUNTY DRAINAGE BOARD
REGULAR HEARING**

January 13, 2011

9:00 A.M.

Present: DB: Linda K. Bloom, Therese M. Brown, Allan D. Frisinger; Absent: F. Nelson Peters;
ACSO: Larry Weber, Acting DB Secretary: Susan Elser. See sign-in sheet for others present.

The Allen County Drainage Board convened on Thursday, January 13, 2011. Following introductory remarks, the following slate was nominated for 2011 reorganization of officers: Chairperson – Linda K. Bloom, Vice-Chairperson – Therese M. Brown, Secretary – F. Nelson Peters. Mrs. Brown moved to approve the slate as stated. Ms. Bloom seconded the motion. Motion carried.

Minutes of December 9, 2010 – Mr. Frisinger stated that the approval for a Petition for Encroachment within the Drainage Easement for Construction and Installation of Homes, Streets and Underground Utilities for Lots 122 thru 167 in Hamilton Meadows, Sec. 5 was inadvertently left off of the 12/09/10 Minutes. He requested that approval of the December 9, 2010 Minutes be amended to include that petition approval. Mrs. Brown moved to approve the Minutes of December 9, 2010 as amended. Ms. Bloom seconded the motion. Motion carried

Approval of Petitions:

The following reflects a synopsis of action taken by the Allen County Drainage Board during the meeting. Minutes do not reflect the order the petitions were heard.

- 1. Doc#10-140, Amstutz #2 Drain (#4-29-410) located in Milan Township, Sec. 2.**
Petitioner – Kaylene Souers. Petition, requesting an encroachment, was deferred from the October 28, 2010 meeting for the following reasons: 1) Deed for property missing. 2) Survey for property needs to be updated. 3) Requires a 35 foot setback for construction not the requested 20 feet.

The Petitioner provided the requested documents and following comments and general discussion by the Board, Mr. Frisinger met with the property owner and as a result of that meeting recommends approval of the petition as submitted. Mrs. Brown moved to approve the petition, seconded by Ms. Bloom. Motion carried.

- 2. Doc#10-157, Rehling Drain (#6-20-520) located in Lake Twp. Sec. 30 –** Petitioner – Prashanthi, LLC. Petition, requesting an encroachment for the installation of a 12 inch plastic pipe and rip-rap, was deferred from the December 9, 2010 meeting for the following reasons: 1) Offsite easement is needed. 2) Proof of ownership.

The Petitioner provided the requested documents and an engineer rectified the previous problems identified with the Omkaar Temple Worship Center. Mr. Frisinger recommended approval of the petition. Mrs. Brown moved to approve the petition, seconded by Ms. Bloom. Motion carried.

- 3. Doc.#10-158, Drain tile east of Hoagland Elementary School on the east side of Hoagland, Madison Township, Sec. 19.** Petitioner – Charles Emehizer. Petition to Remove Obstruction from field drain tile.

Mr. Emehizer is requesting a public hearing. The Surveyor's Office has done preliminary investigation on this request.

Mr. Frisinger recommended proceeding to a public hearing. Mrs. Brown moved to proceed to a public hearing for the removal of an obstruction in a mutual drain as listed in the petition. Ms. Bloom seconded the motion. Motion carried.

4. **Doc. #11-001, re: 4 foot to 5 foot wall of soil at property located at 7022 US 930, Adams Twp, Sec. 10.** Petitioner – Joseph E. Main Sr. /Main's Flower Garden. Petitioner's address is 7300 930 E. Petition seeks removal of a 4 to 5 foot high wall of dirt at 7022 US 930. Petitioner states this obstruction will cause flooding during heavy rains and result in high product loss and interruption of business at Main's Flower Garden.

Preliminary evaluation by staff indicates a mound that could obstruct surface flow water from Main's Flowers property.

Upon the recommendation of Mr. Frisinger, Mrs. Brown moved to proceed to a public hearing for the removal of an obstruction. Ms. Bloom seconded the motion. Motion carried.

5. **Doc. #11-002, Lampe Drain (#9-22-900) located in Milan Twp. Section 22.** Petitioner – Curtis Lichty. Petition for Consent to Allow a Permanent Structure in a Legal Drain for a new home and private septic system. Petition to outlet a 4 inch perimeter drain tile into the Lampe Drain ditch.

Mr. Frisinger recommended approval subject to inspection of the structure at the time of installation and that the structure would be stabilized at the point of discharge. Mr. Frisinger also indicated that the Board will also start removing installations if the office is not notified for inspections at the time of installation.

Mrs. Brown moved to approve the petition as recommended by Mr. Frisinger. Ms. Bloom seconded the motion. Motion carried.

6. **Doc. #11-003, Drain ND located in Cedar Creek Twp. Section 33.** Petitioner – Allen County Highway Department. Petition to remove a 10 inch pipe and fill as installed by Richard McNiece of 11515 St. Joe Road. In 2010, the property owner built a wall in front of the discharge pipe from the highway. He then filled in the downstream channel and said that he did not want to maintain it. A 36 inch roadway culvert drains to this natural ditch and the obstruction causes the potential for flow to back up and overtop the road or cause property damage to neighboring properties. The Drainage Board will instruct property owner to remove the wall and reinstate the channel that he filled in. The property owner states that he has mowed the ditch for many years and since he can no longer maintain it he just filled it in. If he will not comply with the directive, the Drainage Board has the legal ability to rectify the problem and bill the property owner.

Discussion centered on facts that the Highway Department does not have the ability to require this property owner to remove this obstruction. The 10 inch pipe is far too small to handle the water flow from the 36 inch roadway culvert. The issue of water topping the road also constitutes a public safety issue. Mr. Frisinger added that IDEM has concerns since this is a land disturbing activity affecting more than one acre.

Discussion followed regarding "waters of the United States" and how that affects water sheds.

As recommended by Mr. Frisinger, Mrs. Brown moved to proceed to an obstruction hearing contingent upon Allen County Highway Director Bill Hartman signing the petition. Ms. Bloom seconded the motion. Motion carried.

PUBLIC HEARINGS

(Tape recordings of these proceedings are available upon request.)

1. **Vacation of the O.P. Weaver Regulated Drain (#17-04-670). Doc. #10-075. This hearing was deferred from December 9, 2010.** Petitioner – Quion Enterprises, LLC. A report submitted by Quion Enterprises maintains that the vacation of the upstream tile west of Ardmore Avenue combined with minimal stormwater improvements by the City of Fort Wayne and Fort Wayne Metals constitute viability for the vacation of the O.P. Weaver Drain.

Mrs. Bloom opened the Public Hearing

Mr. Frisinger read the Surveyor's Report (Doc. #10-075) into the public record. Fort Wayne Metals provided a letter in support of the vacation. There were no oral comments in favor of the petition.

There were no letters or oral comments in opposition to the vacation petition.

Mrs. Brown moved to close the public hearing. Ms. Bloom seconded the motion. Motion carried to close the hearing.

Mrs. Brown moved to approve the vacation of the O.P. Weaver Regulated Drain. Ms. Bloom seconded the motion. Motion carried.

Larry Weber said that in the future Fort Wayne Metals wants to use the 150 foot drainage easement right-of-way for plant expansion. Mr. Frisinger stated what that the vacation does is eliminate the statutory easement and allows for free and clear title for building expansion.

2. **Petition to Construct a Regulated Drain and Establish a Periodic Maintenance Fund for the Crawford Drain (#11-05-161) Doc. #10-147.**

Mrs. Bloom opened the Public Hearing.

Mr. Frisinger read the Surveyor's Report into the public record. He noted that the drain will be referred to as the Hamilton Meadows-Crawford Drain.

Letters from Gary W. Probst, property owner, and Anthony J. Reincke, Illinois Development, LLC were entered into the record. Each letter stipulated no opposition to the establishment of the Hamilton Meadows-Crawford Drain or its associated maintenance fund.

Mrs. Bloom asked who would have to pay maintenance for this drain. Mr. Frisinger said the owners of real property in the Hamilton Meadows Drain. The Crawford Drain has its own maintenance fund. Mr. Frisinger added that each new section of Hamilton Meadows will be assessed for internal drainage systems for the Crawford Drain, the Graham McCulloch Drain and the Hamilton Meadows-Crawford Drain.

Larry Weber added that Mr. Probst did not ask for any damages for his land but did request easements.

There were no letters or oral arguments in opposition of the petition.

Mrs. Brown moved to close the public hearing. Ms. Bloom seconded the motion. Motion carried.

Mr. Frisinger recommended finding in favor of the petition. Mrs. Brown moved to approve the petition to construct a regulated drain and establish a periodic maintenance fund for the Crawford Drain. Ms. Bloom seconded the motion. Motion carried.

Ms. Bloom reconvened the regular Drainage Board Meeting.

OTHER BUSINESS:

1. **Doc.#11-04, Bandelier Drain (#14-07-400) located in Jefferson Twp. Sec.7.** Petitioner - Steinman LLC. Petition for encroachment within the drain easement for the replacement of an existing drive culvert approximately 6 foot diameter.

Mr. Frisinger said that Mr. Steinman has paid the fees and wishes to upgrade his pipe on the Bandelier Drain. He will use a 10 foot pipe instead of the 6 foot pipe that he initially requested. Mr. Frisinger used a map to show that several of the buildings on this property are constructed and encroaching on the statutory right-of-way of the August Martin Drain. Mr. Frisinger recommends approving installation of a pipe under the driveway as an element of improving the site. This will not create a backwater situation. But, Mr. Frisinger said the landowner needs to be notified that the buildings are encroaching on the August Martin Drain at this location and it would behoove him to file an encroachment petition. Mrs. Brown asked if this was an issue that needs to be addressed by the area Plan Commissions. Mr. Frisinger said that there is sometimes a disregard for the statutory rules and often it is the Title Companies that catch the encroachment. It was agreed that the landowner would be notified of the situation.

Further discussion settled on how the various Department of Planning Services in Allen County handle regulated drains within their communities and how they affect the regulated drains in future years. Mr. Frisinger also brought up that the issue of "nuisance waters" as defined by the State and the Federal Government was being addressed at the state legislature.

Mr. Frisinger recommended approval of the petition for encroachment. Mrs. Brown made the motion to approve. Ms. Bloom seconded the motion. Motion carried.

2. **Dickmeyer & Associates – Proposal to encroach in platted statutory surface drainage easement. Doc# 11-025**

The home, newly constructed, is located on Lot #106 in Hamilton Meadows was constructed within the platted right-of-way and extends 1 foot over the platted 15 foot utility and drainage easement. When Drain Board approves regulated drains in subdivisions, the easement, although platted, is 14 foot. The statutory easement is 15 foot at right angles from the pipe installation. This house sits approximately 9 feet into the statutory easement. Their air conditioning unit pad now moves further into the easement. Mrs. Bloom asked why encroachments are allowed in the easements at all. Mr. Weber said that it is cheaper for the developers and builders to put the pipes down the easement rather than other locations. Both Mr. Frisinger and Mr. Weber stated that these encroachments often happen because builders/developers bring a non-certified drawing back to DPS that does not include the plat lines or utility easements. DPS approves without knowing about the easement. Mrs. Bloom said that she is very disappointed that this is being allowed to

happen with the original staking process. Mr. Frisinger said that the two options are moving the house or redefine the utility easement, a difficult process. In this case, Mr. Frisinger recommends informing the owner of all the issues, stabilizing the area and building an overflow. Also that there be a design submitted and swale construction occur around the air conditioning pad before final acceptance.

Mr. Frisinger recommends approval of the proposal subject to all issues previously stated. Mrs. Brown moved to approve the proposal for the encroachment subject to the recommendations of Mr. Frisinger and that the homeowner is notified of the risks and a swale be recognized on the property. Ms. Bloom seconded the motion. Motion carried.

3. Cedar Springs Drain Reconstruction

Max Shambaugh, developer of Cedar Springs subdivision filled in wetlands, channels and forebays to increase the number of lots within the subdivision by nine. He did this after the stormwater facilities had been built and inspected. This change was done without approvals from any agencies. After IDEM discovered that he had done this, they required him to expand the pond, go through a reporting mechanism on how the water quality issues were going to work, get re-approvals from the Surveyor's Office, clarify the lot lines with DPS and re-plat the area. Mr. Weber said the DPS has approved, subject to the Surveyor Office's sign-off, five lots in Section 2 and four lots in Section 3.

The first problem surfaced when it was discovered that the storm lines in three areas were realigned without the knowledge of the Surveyor's Office. It has never been ascertained by the Surveyor's office who did the work other than the fact that it was authorized by Max Shambaugh. Ms. Bloom asked how IDEM found out about this. Mr. Frisinger said that wetlands were being filled in and someone called the Surveyor's office and said that 50 trucks a day were bringing in dirt. It is believed that dirt from the Parkview project was being used to fill in the wetlands.

Subsequently, new drainage pipes were installed that were not to grade, laid incorrectly and no manholes were installed. Ms. Bloom asked how DPS approved this. Mr. Frisinger said that this was strictly a Surveyor's Office issue, that Shambaugh had altered regulated drain pipes without any approval. Mr. Shambaugh was told that he needed to provide elevations, locations and exacting details. Numerous meetings and phone calls have resulted with Mr. Shambaugh being sent a letter stating that the regulated drains have to be re-constructed according to Indiana Code, brought up to spec, have to be inspected and installed by a licensed, bonded contractor. There are numerous utilities that will have to be worked around.

Mr. Frisinger reiterated for Mrs. Brown and Ms. Bloom that any work done on a regulated drain must have permission of the Drainage Board and the Surveyor and it must be done by a bonded, licensed contractor working with approved plans. Mr. Frisinger said that he has put a stop order on the work. Ms. Bloom asked what happens if he goes ahead on his own. Mr. Frisinger said that he would have the work torn out. Ms. Bloom said she would like to see the work done by a licensed contractor under the auspices of the Surveyor's Office and then bill Shambaugh. Mr. Frisinger agreed that that would be his preferred plan of action.

Mr. Weber and Mr. Frisinger added that Shambaugh also installed an additional storm pipe through a pond embankment to control the pond level. There is a requirement that such a pipe installation in an embankment be compacted to 97% density and there was no compaction at all on this installation.

Mrs. Brown made a motion to hiring a contractor to address the issues at Cedar Springs subdivision and then take whatever means necessary to correct them to statutory requirements. Ms. Bloom seconded the motion. Motion carried.

Mr. Frisinger said that there is definitely a safety issue involved here. Ms. Bloom asked if Mr. Shambaugh would be notified of this decision. Mr. Frisinger said yes.

4. Argo Drain – Funding Limit Through CEDIT

Mr. Frisinger provided background information on the Argo Drain to Mrs. Brown. The Argo is a regulated drain located outside the town of Monroeville that the Surveyor's office is looking to reconstruct. The original estimate was in the \$500,000 range. Effectively the water shed cannot support this kind of an expenditure as there is not enough acres in the watershed. Mr. Weber added that the \$500,000 did not include the \$6 million cost to move the 6 Continental pipelines. In 1999 a nursing home that utilizes the Argo was built with detention and required to make a payment of \$100,000 to the county Drainage Board. That money was put into the Argo re-construction fund and has since been reinvested to a sum of around \$140,000. Even with this, the total reconstruction of the Argo is not feasible.

Unfortunately, water overtops the road and the area that surrounds the nursing home facility. Now, the Cornerstone Children's Home is located across the street and they are inconvenienced by this condition and poses a potential health, safety and welfare issues.

The Drainage Board has committed a dollar amount to this project; Mr. Frisinger is asking the Board to give a specific amount so he can move forward with the project development. Ms. Bloom added that the watershed will also be assessed. Mr. Frisinger said that reconstruction for the entire Argo is not feasible so his plan is to come up to the railroad and divert down to the watershed. This will be a "moving of water" to another shed. This will lower the cost of the total reconstruction. The Argo downstream will still need to be reconstructed, but this will then allow a smaller pipe to be used. This plan will lower the overflow on the road and mitigate the problem. Ms. Bloom asked what happens to the Bohnke watershed and those people that are assessed. Mr. Frisinger said that that is a regulated drain and he has determined that the capacity in the Bohnke will be adequate to accept this water. A subshed will be assessed for this work. Owners of real property in the Argo watershed will also be assessed for work on the downstream of the Argo.

Mr. Frisinger said that to move forward, he needs to know the full dollar amount that he has available to go into the public hearing. There are going to be property owners who do not want this project. Two have already contacted the Corps of Engineers expressing their displeasure. The Corps has indicated that they will be looking very closely at any application as they have already received two complaints.

Mr. Frisinger said that if he has a specific guaranteed amount he can go into the Hearing and tell the property owners exactly what their assessment will be. Ms. Bloom said that she does not want the landowners to have to pay a prohibitive amount. Initially the project was rejected by the Board due to cost, but now that there are road and flooding problems it must be addressed.

Ms. Bloom said that she wants an approximate cost of the project before committing to an exact amount. Mrs. Brown agreed with that opinion. Mr. Weber said that determination of the costs is controlled by the scope of the project and which level of design is used. For example, a minimalistic design would be in the range of \$330,000 to \$350,000, but for \$60,000 more a design incorporating a larger pipe diameter can improve the performance

of the flow. Mr. Frisinger said that it will be nearly impossible to drain all the water from around the buildings due to their location, having been built in a low area.

Mr. Frisinger said that the plan was to raise the road at Whittern and Monroeville Roads for approximately 1000 feet. This will alleviate water on the road but will create backwater at another location. Then, an outfall will be created and the water will be diverted to the Bohnke drain. This will affect some property owners, several of whom do not want the project. Damages (loss of crop land) will have to be paid to several property owners. Even though it will benefit them by virtue of moving some water, it will create problems at other sites.

Mr. Frisinger said that \$350,000 would be the minimum cost of the project. He added, though, that if that amount is spent and there is still water sitting around the buildings, then more money will need to be spent and the property owner being benefitted will need to be assessed more. This is a hard decision. For example, the upstream landowner who has no water will not want to contribute more money.

Mr. Weber suggested that a Plan A and Plan B be offered to the Board to help them make their decision on how much they are able to contribute.

5. Gallmeier Drain #1 on South County Line Road

The Adams County Surveyor and Adams County Drainage Board wants to assess this drain, but wants Allen County to relinquish their hearing rights so that there does not have to be a joint Drainage Board. Mr. Frisinger said that there are only a few property owners that would be affected. *He recommends that the Allen County Drainage Board, on a one time only basis, allow them to hold the hearing and perform the assessments.*

Mrs. Bloom moved to approve a letter being sent to the Adams County Assessor allowing for a one time only drain assessment on those property owners with the Gallmeier Drain #1 watershed and Allen County will relinquish its rights to a joint Drainage Board Hearing. Ms. Bloom seconded the motion. Motion carried.

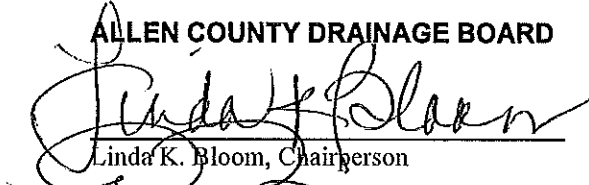
6. Letter to Leo- Cedarville and Huntertown regarding the Allen County Partnership on Water Quality.


These communities are represented by the Partnership in NPPES matters with IDEM for Stormwater, Phase 2. These communities were brought into the Partnership in 1999 when the EPA issued its federal mandates for storm water quality. Leo-Cedarville and Huntertown do not have the capabilities of performing all the 6 minimum control measures for stormwater control that are required under state and federal mandates. The Partnership hired an outreach coordinator five years ago who represents the Partnership's issues on two of the minimum control measures. He works out of Soil and Water Conservation and is a county employee. He is paid from funds from the City of Fort Wayne, the Partnership and Allen County. There is now a shortfall due to rising expenses. Fort Wayne was paying one half of the salary and Allen County was paying one third. Fort Wayne lessened their contribution as they felt they could perform the work in-house.

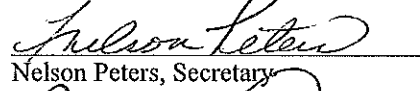
Mr. Frisinger asked that he be allowed to send a letter to Leo-Cedarville and Huntertown asking them to participate financially in the funding of this position since they benefit from it. Ms. Bloom seconded the motion. Motion carried.

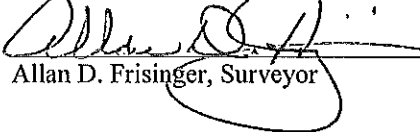
Mrs. Brown moved to adjourn the meeting. Ms. Bloom seconded the motion. Motion carried. Meeting adjourned 11:05 a.m.

ALLEN COUNTY DRAINAGE BOARD


Linda K. Bloom, Chairperson


Therese M. Brown, Vice-Chairperson


Nelson Peters, Secretary


Allan D. Frisinger, Surveyor

Jan 27, 11
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.