The Vanderburgh County Drainage Board met in session this 5th day of December, 2017 at 3:57 p.m. in Room 301 of the Civic Center Complex with President Cheryl Musgrave presiding.

Call to Order

President Musgrave: Please call to order.

Pledge of Allegiance

President Musgrave: Would everyone stand please for the Pledge of Allegiance.

(The Pledge of Allegiance was given.)

Approval of the November 7, 2017 Drainage Board Meeting Minutes

President Musgrave: Is there a motion to approve the minutes of the previous meeting?

Commissioner Shoulders: So moved.

Commissioner Ungethiem: Second.

President Musgrave: All of those in favor signify by saying aye.

All Commissioners: Aye.

President Musgrave: Any no? The motion carries.

(Motion approved 3-0)

Reminder of Meeting Cancellation of December 19, 2017 & the Setting of the First Meeting of 2018 for January 2, 2018

President Musgrave: Our meeting of the, originally scheduled for December 19th, has been, will be, I guess, I need a motion to cancel it, perhaps?

Jeff Mueller: Yes, I think, don’t we, Joe, through the Drainage Board?

Joe Harrison, Jr.: That’s fine. The Commissioners already did it, but that’s fine.

President Musgrave: Okay, well, and the setting of our first meeting for January 2nd of 2018. If we don’t really need a motion, we can dispense with that.

Joe Harrison, Jr.: I don’t think you do.

President Musgrave: Okay.

Jeff Mueller: Okay.

President Musgrave: So, that December 19th meeting has been cancelled, we’ll see you in January.

Approval of Vanderburgh County Technical Memorandum #1

President Musgrave: Now we have a request to approve Vanderburgh County Technical Memorandum #1. Bring us up to speed, why are we doing a technical memorandum?
Jeff Mueller: Okay, so, the County Commissioners, at one of their last meetings passed the second reading of the revisions to county drainage codes. One of those revisions were the addition of Section 204, which was the creation of a Technical Memorandum. Also several other revisions to the code moved tables out of the code and referenced the Technical Memorandum. So, we have a code that addresses the memorandum, and now we will have, after your approval tonight, a memorandum. So, with the passage of the memorandum, coupled with the passage, previous passage of the ordinance, the drainage code’s revisions will be up and running on January 1, 2018. Now, if you wanted to talk a little bit about the code, or, I’m sorry, the Technical Memorandum, like I said, we moved some data out of the code to try to make it a little simpler. We updated some calculations that were in there from the LTAP Manual. We put some things in there like the Highway 41 Pond Flat Impacted Area that was a signed resolution. It’s now addressed, so you’ve got some place you can go and say, oh, it’s actually, here’s where we find this. We address undetained drainage areas, which was always kind of up in the air; so we now have a methodology to address it. A methodology to discuss solar farms, to be able to change benchmarks to address hydraulic programs. We took Huff Curves out, we mentioned about the National Pollutant Discharge Elimination System, a general permit that may be coming about from the State. We have an insert, with no fees at this time, but a place if we ever wanted to charge legal fees, and we also put in a starting point for someone wanting to create legal drains within a subdivision, to handle the basins and some of that stuff. So, that’s what we’re doing, and, you know, as we move forward, then we can have the Technical Memorandum updates and make them a little bit more smoother and keep up with times.

President Musgrave: So, basically, what we have is the ordinance on the one hand, and then now we have, we will have a set of administrative rules as well. They each have the force of law, local law. The ordinance takes several readings to approve. The Technical Memorandum does not. It’s a faster moving vehicle, if you will.

Jeff Mueller: Yes.

President Musgrave: And, it allows you to update it to keep up with technology, or something else that comes along that needs to be moved faster, but no one should mistake the Technical Memorandum for anything less than a requirement, correct?

Jeff Mueller: Yes, and also, just so everyone understands, and I know you do, Commissioner Musgrave, we did put a stipulation in there that we just can’t come in on a Tuesday and change the Technical Memorandum. There is a notification process of, I think, two weeks that we would notify the engineering firms, the developers and stuff like that. So, you know, the idea is not to try to sneak anything through. The idea is to be flexible.

President Musgrave: And, you did have multiple meetings, including a public meeting. I was there, and it was a great session.

Jeff Mueller: Commissioner Ungetheim was there.

President Musgrave: It’s been emailed around to everyone. Comments have been incorporated, and you took the original ordinance, you siphoned these technical memoranda items out of it, but then you also eliminated some unused, unnecessary things from the ordinance.

Jeff Mueller: That’s correct.

President Musgrave: So, it’s been thoroughly modernized. I really appreciate the work that everyone did on it.

Jeff Mueller: And, I also wanted to point out that James Morley in the back, he was at a lot of these meetings—

President Musgrave: He was.

Jeff Mueller: -- he made a lot of comments, and we took into account his comments too, so.

President Musgrave: Okay.
Jeff Mueller: And, I do appreciate Jim’s time and coming to the meetings and that.

President Musgrave: Is there anyone here who wishes to comment on these Technical Memoranda #1 before we vote on it? I see no one. So, is there a motion to approve?

Commissioner Ungethiem: So moved.

Commissioner Shoulders: Second, and great job to both you and Jim.

President Musgrave: All of those in favor signify by saying aye.

All Commissioners: Aye.

President Musgrave: That’s unanimous. The motion carries.

(Motion approved 3-0)

Sonntag Stevens/Vectren: Request for Stream Crossing & Permanently Reducing Right-of-Entry

President Musgrave: So, we move now to the Sonntag Stevens/Vectren request for stream crossing and permanently reduce right-of-entry.

Jeff Mueller: Okay, you have, in your package, the application to affect the Vanderburgh County regulated drain. This request is from, you’ll notice an old name, Sigeco, aka, doing business as Vectren. Two things, first is for the installation of a ten foot by six foot box culvert, 24 feet in length. So, Vectren’s property is up here, they’re wanting to access their property down here. So, they want to put a culvert in right there. Well, when I say a culvert, we’re talking a pretty good size piece of pipe. They’ve provided the calculations showing the culvert will pass the 25 year storm event. I’m fine with that portion of the request. Second, Vectren is also requesting a relaxation of the 75 foot right-of-entry on the south side of the drain, through their property, to 25 feet. So, on both sides of these there’s a 75 foot lay back, that’s true of all legal drains, and on the south side they’re asking to reduce that from 75 feet to 25 feet. We’ve done this a lot. I don’t have a problem with that request, however, on that request, on the remaining 25 feet that would be our right-of-entry still, they are wanting to have that rocked. I’m not against relaxing the 25 foot, but I would like to see a ten foot vegetation strip against the drain, instead of rock right up against the top of the drain. Mark Wannemueller is here from Vectren. Mark, do you have any comments? Are you guys okay, can you live with that ten foot?

Mark Wannemueller: Yes. We’ll leave ten feet from the top of the bank—

President Musgrave: Um, Mark?

Jeff Mueller: I’m sorry, you have to come up.

President Musgrave: I’m going to make you speak into the record, okay? And, state your name and address please.

Jeff Mueller: Tell us what your line is there.

Mark Wannemueller: I’m Mark Wannemueller with Vectren. You need my address, you said?

President Musgrave: You can use Vectren’s address.

Mark Wannemueller: Oh, okay. We’re at 1 N. Main Street. As the Surveyor said, we’re asking to relax the right-of-entry to 25 feet from the top of the bank. We had talked about both sides, if that’s still possible, we would like to reduce it to 25 feet on both sides. We do have a facility on the north side, we have an electric sub-station, and we have some grounding grid outside of that fence. So, it would be in our interest to relax that to 25 feet on both sides. The gravel on the south side is basically to make our existing facilities more useable. We’ll move some parking from the existing facility into this new area. That will free up some space, that’s part of our modernization of the electric grid, to maximize the use of our lay down area. As part of that, we’ll put a fence around that new parking area, on the south side of the ditch. That fence will be 25 feet from the top of the bank on the
south side of the ditch. We would like to extend the gravel north of the fence just to sort of reduce maintenance of that area, but we will leave a ten foot strip between the top of the bank and the gravel. So, that's the plan, as we've discussed it with the Surveyor.

Jeff Mueller: My only comment is, on the drawing you don't have the 25 feet on the north. If we approve, I just would request that you give us a new drawing showing the 25 foot on both sides.

Matt Wannemueller: Sure, yes.

President Musgrave: Okay, so, I'm going to ask for a motion that is predicated upon a revised drawing that shows 25 feet on both sides?

Jeff Mueller: Uh-huh.

President Musgrave: And, as soon as you provide that, this will be effective.

Matt Wannemueller: Thank you.

President Musgrave: Okay, so, that would be the motion that I'm asking for.

Commissioner Shoulders: So moved.

Jeff Mueller: And to put a pipe in the drain too to approve it.

President Musgrave: Oh, to do everything that the request was, plus that, alright? So, that's your motion?

Commissioner Ungethiem: So moved.

Commissioner Shoulders: I will second.

President Musgrave: Alright, we have a motion and a second. Is there any further discussion. Seeing none, I will call for the vote. All of those in favor signify by saying aye.

All Commissioners: Aye.

President Musgrave: That's unanimous.

(Motion approved 3-0)

Matt Wannemueller: Thank you.

Final Drainage Plan: Hotel Site on Red Bank Road: Star Hotel Group

President Musgrave: We move now to final drainage plan for the hotel site on Red Bank Road.

Jeff Mueller: Okay, this is the drainage plan for a single lot proposed hotel on Red Bank Road. The site, at this time, covers three addresses, so, for reference, it will just be noted as the Star Hotel Group hotel site on Red Bank Road. I’ve submitted a summary of the plan, and rather than read this information, I’m requesting that this information be included into the minutes as if read into the record.

The following summary was submitted by the Surveyor:

Star Hotel-Red Bank Road: The final drainage plan was submitted on February 27, 2017, with revisions submitted on March 15, 2017, November 2, 2017, and by email on November 9th and November 22, 2017. The plan that is requested to be approved consists of the submitted document with a receipt date of February 27, 2017 and revisions and emails submitted on March 15, 2017, November 2, 2017 and by email on November 9, 2017 and November 22, 2017 (all part of the bound final package) along with the following drawings. Drawings submitted by 3/15/17: C101, C105; Drawings submitted by 11/2/2017: C102, C501 Site Details. The following Drawings submitted 3/15/2017 are included for reference only and should not be considered part of the approved plan: C102-site plan-subject to final review by APC; C106 and C107 (Red Bank improvements) subject to approval by County Engineer/County Commissioners; C501 Site Details.
Jeff Mueller: I also want to point out that the two road vacations that were required in order for this site and drainage plan to be workable, are those vacations that were granted at the Commissioners meeting tonight. I have also included with your package a review of the submitted drainage plan, and request that the review document be made part of the approved final drainage plan. The drainage plan was reviewed by the County Surveyor and found to be in compliance with Vanderburgh County’s drainage code, with one exception, and therefore it’s being submitted to the Drainage Board for approval under Section 13.04.090. The one exception is that the developer is requesting approximately one half acre to leave the site undetained. The engineer has used the criteria in the new Technical Memorandum, even though that’s not in existence until the first, and it does meet that criteria, with the exception that where the Tech Memorandum states that it can be no more than ten percent of the area can leave undetained, provided it meets other criteria. For this project, the amount of undetained area is 11 percent. So, we’re really talking, not a whole lot, but the same area is currently flowing offsite to the north is a one and a quarter acres, so the north property, instead of seeing one and a quarter acres of undeveloped ground, will be seeing a half acre of developed ground, but the C values will make it so that they still will see less water on any storm event. So, I don’t have a problem with that one variance. You have a letter in your file requesting that variance, but this thing meets the code with the one variance exception that I also don’t have problems with and would recommend. Okay?

President Musgrave: Is there a motion for approval?

Commissioner Ungethiem: I would make a motion to approve the final drainage plan for the hotel site on Red Bank Road.

Commissioner Shoulders: I will second.

President Musgrave: Is there any further discussion?

Joe Harrison, Jr.: And that includes the waiver?

Jeff Mueller: Yes.

Joe Harrison, Jr.: Okay.

President Musgrave: And your motion and your second includes the waiver?

Commissioner Ungethiem: Yes.

Commissioner Shoulders: Correct.

President Musgrave: If there’s no further discussion, I’ll call for the vote. All of those in favor signify by saying aye.

All Commissioners: Aye.

(Motion approved 3-0)

President Musgrave: I do have one question for our attorney. I know that we are expanding our TIF District into this area. How’s that coming along?

Joe Harrison, Jr.: It still needs to move faster.

President Musgrave: What can I do to propel that forward?

Joe Harrison, Jr.: I’m still trying to get some better maps.

President Musgrave: And, um, is the Surveyor helping you get better maps?

Joe Harrison, Jr.: Well, I’ve talked to—

Jeff Mueller: This one is news to me. That’s why—

Joe Harrison, Jr.: Well, I’ve talked to Linda Freeman about it, and I’m also, I’ve got those areas out there.

President Musgrave: Can you check with Linda?
Joe Harrison, Jr.: You might ask her. I talked to her a month or so ago about it—

Jeff Mueller: Okay.

Joe Harrison, Jr.: --just to see if she’s—

Jeff Mueller: We’re going to do something different after the first of the year. We’re going to have a formal request form, and that way we won’t not have these things forgotten on a piece of paper.

Joe Harrison, Jr.: Okay.

Jeff Mueller: We’ll know who’s requesting maps. We get a lot of requests from the Sheriff’s Department and the Prosecutor’s Department for mapping too. Which, I don’t mind doing it, but I just like to keep track of it. And let people also know that, Joe’s not bad, but we get a few people that come in on Friday wanting something on a Monday.

Joe Harrison, Jr.: Okay.

President Musgrave: I’m not going to promise not to do that.

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**Blue Heron: Approval of Waivers & Releases:**

Lots 30, 31 & 58/59

President Musgrave: Okay, the Blue Heron approval of waivers on Lot 30, 31 and 58/59.

Jeff Mueller: Okay, on Lots 30 and 31, these two lots abut back to back, they’re at the top of the drainage. So, essentially it sheet flows through their backyard to the swale that’s on the adjoining lots. They’re happy with the drainage as is, like I said, most of their drainage goes across through sheet flow. Lot 58/59 are owned by one party, and they have a house actually straddling the property line. That’s the Ibay’s, I think that’s the way it's pronounced, I-bay.

Commissioner Shoulders: Go to your next picture there.

Jeff Mueller: I don’t have one on that.

Commissioner Shoulders: You don’t? That's alright.

Jeff Mueller: The drainage through there, instead of a swale, it actually goes through all of their landscaping and all of their patio and everything else. There’s not a whole lot of drainage going through there, and it’s happy the way it is. There is pictures of that in the encroachment, or in the waivers that are in your package. You’ll see one for 30, one for 31, and then for the Ibay’s you’ll see one with a couple of pictures on it. So, I don’t have any problems with these. These people are wanting to have it this way. I’m fine with them. So, I would recommend that we approve these waivers.

President Musgrave: Okay, is there a motion?

Commissioner Shoulders: I will make the motion. I know this has been going on for, two, three, four, five years.

Jeff Mueller: We’re gonna, we’re gonna, you’re gonna be happy tonight.

Commissioner Shoulders: I will make the motion to move forward on this.

Commissioner Ungethiem: I will second that.

President Musgrave: Any further discussion? Hearing none, I’ll call for the vote. All of those in favor signify by saying aye.

All Commissioners: Aye.

President Musgrave: That is unanimous.

*(Motion approved 3-0)*
President Musgrave: So, we move now again to a second Blue Heron item. The approval of drainage encroachments on Lots 7, 45, 48, 50, 51, 53, 54, 58/59 and 76.

Jeff Mueller: You have in your packets several encroachment agreements covering fencing, landscaping, or other obstructions. All of these were reviewed prior to signing and I have no issue with their approval and would recommend they move forward.

President Musgrave: Congratulations on getting them all. I know that it was practically a lifetime commitment. Is there a motion?

Commissioner Shoulders: I will make the motion.

Commissioner Ungethiem: I’ll second it.

President Musgrave: Any further discussion? All of those in favor signify by saying aye.

All Commissioners: Aye.

President Musgrave: That’s unanimous.

(Motion approved 3-0)

Blue Heron: Update on Remaining Issues

President Musgrave: So, we move now to the Blue Heron update on the remaining issues.

Jeff Mueller: Okay, in addition to everything you approved...first of all, Julie Bosma is here. Julie is married to the developer. Julie got involved about a month ago, and jumped in and all of this paperwork you’re seeing, Julie got signed. She gets a big atta girl.

President Musgrave: Congratulations, Julie. Thank you.

Jeff Mueller: She gets a big atta girl.

President Musgrave: Yeah.

Jeff Mueller: On top of that, she, we needed three additional drainage easements on Lots 65, 70 and 71. Those easements she has obtained, and she got them recorded. So, if you look on your fold out in your package, you will see an 11” X 17” fold out, and you will see that it is pretty well nice and green, and what isn’t green is pretty much, you know, with what you approved tonight, there is one swale on a house under construction, and you have a letter in your file from the builder, Larry Deutsch, and Larry has committed that he’s saying that when he gets the house done, he’ll go back and reestablish that swale. So, what I’m saying to you is that, I think, in my mind, and I think, John, I can put words in his mouth, in his mind, we are done with Blue Heron as far as having things done out there. With a couple things that, I mean, which are good things, you released those two lots in the Commissioners meeting. Bear with me, I’ve got another piece of paper I did not get in your package, what did I do with those? But, what that letter is, is it’s a letter from Chris Wischer, and if you remember, we did an escrow account to hold some of the money to make sure that things got done out there. Since we’re saying that we’re good out there, it would be my recommendation to the Drainage Board that, I don’t know how we would do it, but whatever we need to do, we would release that escrow account money out of that. Like I said, I cannot find a copy of the letter that I had.

President Musgrave: Well, when you find it, bring it for the record, okay, and we’ll consider it as part of the record now, and you’ll just go ahead and put it in there.

Joe Harrison, Jr.: Sure.

President Musgrave: What do we need to do, Joe, to release the escrow?
Jeff Mueller: I've got it.

President Musgrave: Oh, you’ve got it? Good.

Commissioner Shoulders: I had confidence in you, Jeff, that you would find it.

Jeff Mueller: We had a lot of paperwork this week.

President Musgrave: Thank you, Julie.

Jeff Mueller: So, you have this letter, so my recommendation would be that any funds that are left in this be released back.

Joe Harrison, Jr.: Yes.

Jeff Mueller: To the developer.

Joe Harrison, Jr.: With regard to the December 14, 2016 letter from Chris Wischer to John Stoll, all funds remaining in the escrow account that was maintained by his previous law firm that, I guess, went to the new law firm that he’s at now, on the closing on Lot 56 be released.

President Musgrave: Do I hear a motion to that effect?

Commissioner Shoulders: So moved.

Commissioner Ungethiem: Second.

President Musgrave: Any further discussion? John, do you have a discussion?

Joe Harrison, Jr.: And, I’ll submit this into the record so you’ve got it.

John Stoll: Since that letter was sent to me, do I just need to send Chris Wischer a letter indicating that the Drainage Board was okay with releasing the escrow funds?

Joe Harrison, Jr.: If that’s okay.

John Stoll: Yeah, not a problem.

Joe Harrison, Jr.: Assuming they vote on it.

John Stoll: Yeah.

President Musgrave: Alright, I kind of lost track. Do we already have a motion and a second?

Commissioner Ungethiem: Yes, we have a motion and a second.

President Musgrave: Alright, no further discussion? All of those in favor signify by saying aye.

All Commissioners: Aye.

President Musgrave: Opposed?

(None opposed)

President Musgrave: The motion carries unanimously.

(Motion approved 3-0)

Jeff Mueller: Okay, one other thing on Blue Heron, just for more of Julie’s knowledge, you have the letter of credit. You need to get with John, because I think what John is saying is we’re good there too.

President Musgrave: Good.

Jeff Mueller: Okay. So, we thank you for your efforts. Julie reached out to me through a mutual friend, and we had a nice meeting, and she jumped on this, and, like I said, again, thank you for your efforts.
President Musgrave: Yeah, we could probably hire you out. Now that you know how to do it.

Commissioner Ungethiem: What are you doing next week? No.

President Musgrave: Okay.

Jeff Mueller: That’s all I have on Blue Heron.

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**Enclave at Eagle Cliff: Revision to Final Drainage Plan**

President Musgrave: We move now to Enclave, a revision to the final drainage plan.

Jeff Mueller: Okay, this is for a swale on the west side of the property. Due to physical constraints, it’s really difficult for them to put a 3:1 swale in there. They have constructed a swale to steeper slopes. It’s vegetated, it appears stable, so I don’t have any problems with this. It’s just a minor revision to this one swale. So, I would recommend the approval of that revision.

President Musgrave: Is there any, a motion to that effect?

Commissioner Ungethiem: This doesn’t—

Commissioner Shoulders: Go ahead.

Commissioner Ungethiem: --solve all of the Enclave issues?

Jeff Mueller: Oh, no, no, no, no, no.

Commissioner Ungethiem: It’s just—

Jeff Mueller: All we’re doing is saying there’s one swale out there—

Commissioner Ungethiem: Okay.

Jeff Mueller: --that instead of doing this—

Commissioner Ungethiem: This is a single swale that you are—

Jeff Mueller: -- they’re doing this, and it’s green—

Commissioner Ungethiem: Okay.

Jeff Mueller: --and it’s on the west side. It’s not even going towards—

Commissioner Ungethiem: I would make a motion to accept this swale.

Commissioner Shoulders: I’ll second the swale.

President Musgrave: Alright, we have a motion and a second. Is there any further discussion? Hearing none, all of those in favor signify by saying aye.

All Commissioners: Aye.

President Musgrave: And, that’s unanimous. So, the motion carries.

**(Motion approved 3-0)**

Jeff Mueller: Okay, one other thing on Enclave before we move forward.

President Musgrave: Alright.

Jeff Mueller: I just want to bring this to your attention, on the back side of Lots 31 and 32, these are on the south side of the subdivision, these are not lots that float to Mrs. Bolin’s lake, okay, there is a drainage easement there. I’m not sure what the easement’s there for, it only goes across three lots, there’s no swale, it doesn’t even make sense to have a swale, because instead of, you know, a lot with a swale like this, it’s a lot that goes like this. It just goes off steep. They want to, two of the homeowners are wanting to remove the grass off of that and put rip rap. Jagoe approached me about it, and I said, well, we’ve
got a lot of things going on out there, you know, Jeff Stemaly’s the developer. They got Jeff to sign off on this, and I think, Jeff, you’re even going to do the work, aren’t you? So, if anything goes wrong, it’s Jeff’s own fault, I guess, is what I’m saying, but this does not, if this wasn’t a, if there wasn’t an easement there, we wouldn’t even be talking about this. But, we’re not changing a swale from grass to something else, because there’s not grass there. We’re not putting an obstruction in, so, I don’t even know if this needs approval. I just want to mention this, and say that it’s out there.

President Musgrave: Should we just go ahead and approve it so that there’s no—

Joe Harrison, Jr.: I don’t have a problem with that.

Jeff Mueller: Okay, I don’t either.

President Musgrave: Okay, so is there a motion to armor the slope—

Jeff Mueller: We could call it an amended plan to 30 and 31.

President Musgrave: Okay.

Jeff Mueller: How’s that?

President Musgrave: Okay, as he said.

Commissioner Shoulders: I mean, so moved, if we need a motion.

Commissioner Ungethiem: Second.

President Musgrave: Any further discussion? All of those in favor signify by saying aye.

All Commissioners: Aye.

President Musgrave: That motion carries unanimously.

(Motion approved 3-0)

President Musgrave: Are we done with Enclave or not?

Jeff Mueller: No.

Jeff Mueller: Now I think we’re to the meat of the Enclave.

Commissioner Ungethiem: I think there’s something else.

Jeff Mueller: Okay, as you recall, at the last Drainage Board meeting, we got a report, which was, we got a report from the developer. That report kind of came in just a few days before. So, in your packet we have where John and I went out and talked about the, you know, what we saw. So, kind of a, whether we agree or disagree with the issues, so what we said was, the area along Felstead Road had been reworked under permit by INDOT. An inspection report by Mr. Rich Montgomery of INDOT had been previously provided. Our only note is that it should be noted that the vegetation is dormant in that area, so, you don’t know, with it being dormant, how well it will perform if you would get a heavy rain. A large gulley that existed off the commercial site to Felstead Road has been repaired, and that is the case, it has been repaired. The east/west swale between the homes and the commercial site that drains into Basin #1 had been reworked and vegetation was beginning to sprout. Rip rap on the emergency outfall of Basin #2 has been reshaped to allow for the channel when overflowing, and that had been completed. The lake maintenance and LMSDE of Basin #2 has a fence on Lot 24 that needs to be removed. A letter was sent by the developer to the Building Commission requesting that the fence be moved. It’s unknown what the status of this is in regards to the Building Commission’s follow up to the request of the letter, or if the lot owner has any plans to remove the fence. Upon further investigation, the fence on Lot 23 is outside the easement, Lot 17 does have an outbuilding, but it’s outside the easement when we checked. However, a side fence on the east side is within the drainage easement and there is no swale, as it appears the existing swale was filled during construction. A revision to the drainage plan, which here
we’re just talking about a waiver, similar to what we did in Blue Heron, would be, I think, all we would need to do, as long as, as well as an encroachment agreement for that fence on that side lot. Two trees were planted within the lake maintenance agreement on Lot 14. These are not obstructions at this time, but they, and they don’t fall under the confines of any correspondence from the Building Commission, but I just do want to say that they do not meet the requirements for no trees within a basin. Verification that the orifice plate was installed on Outlet Basin #2 had been provided. The unapproved existing drainage swale located on the west side of Lot 57 has been filled on the north side of Stellar Drive. The drainage in this area will have to be addressed when a plan for development of the commercial site is determined. The ditch on the south side of Stellar Drive has been reconstructed and sodded. The ditch redesign was submitted, and that’s what you just approved. The natural ditch located on Lot 38 that’s conveying drainage from Lots 30, 31 and 32, previously showed a considerable amount of silt. This ditch is jurisdictional and it has been addressed as a problem in the past, with IDEM requiring the developer to remove the deposited silt. With the construction of homes, regrading of yards and the placement of sod, the source of this problem has been addressed, however, it’s not clear of what requirements IDEM will have regarding removal of any of the silt or if natural washing will take care of the problem. Mr. Buck has made it to the County Surveyor’s Office, as required by the Drainage Board on December 8, 2016, and has scheduled a completion of several projects for The Enclave. Some of these issues are addressed in the above comments, and the remaining issues have been resolved. Included in Mr. Buck’s items was the submittal of as-built drawings, any follow up requirement with the as-built drawings will be addressed upon request of the final release of letter of credit for those areas of the subdivision.

President Musgrave: Can I ask a question?

Jeff Mueller: Sure.

President Musgrave: Do you just want to submit that for the record, as if read?

Jeff Mueller: The letter?

President Musgrave: Yeah.

Jeff Mueller: I’ve got it in your packets, and Madelyn’s got it, so, yes.

President Musgrave: Alright.

Jeff Mueller: If you would like that, to submit it for the record.

President Musgrave: Unless you feel that there’s something in there that needs to be drawn into attention at this time.

Jeff Mueller: I mean, like I said, we can show you, you know, this is the fence problem. It’s in the basin, like 20 something feet, I believe.

President Musgrave: So, basically, you’re asking for an encroachment agreement or move the fence?

Jeff Mueller: The fence is going to have to be moved.

President Musgrave: The fence has to be moved. Okay.

Jeff Mueller: That has to be moved on that one.

President Musgrave: Okay.

Jeff Mueller: That’s a no—

President Musgrave: Alright.

Jeff Mueller: --when the basin fills up with water—

President Musgrave: And the homeowner knows that?

Jeff Mueller: Um—
President Musgrave: Somebody needs to tell the homeowner.
Jeff Mueller: They have requested that the Building Commission do that.
President Musgrave: Oh, that's right.
Jeff Mueller: Yeah.
President Musgrave: There's a fine, there's a notification and a fine process.
Jeff Mueller: Yes, there's a notification process.
President Musgrave: Right.
Jeff Mueller: So—
President Musgrave: Okay.
Jeff Mueller: Basin #2, this is where they did the rip rap. This is just some of the area that was open before. This is a swale on the west side of the property where it's been repaired. This is a completed swale. This is a swale on the north side, the commercial site is over here, so this is where I said they have went back and reworked it and they are getting some vegetation. So, and this shows the commercial site. So, and that's the outlet that had been repaired. So, what we're saying is, is that there's a lot of things here on this list that have been addressed, but, you know, whether they're going to work or not, I can't give you that answer, I guess is what I'm trying to say. You know, the fact that they reseeded the swale, that's good, but does that solve the problem? Well, eventually you would hope it would, but I'm not going to tell you it's solving the problem today. I guess, what I'm trying to say is, outside of moving the fence, they have made an effort to address everything on the list, but just because you've addressed doesn't mean that that's…does that make sense?
President Musgrave: Yes, it does.
Jeff Mueller: Okay.
President Musgrave: What's our next step?
Jeff Mueller: I think you've got two attorneys that want to talk to you about it.
President Musgrave: Well, let's have them come forward. That's our next step.
Commissioner Ungethiem: Jeff, let me ask you a question. You're saying that you don't know whether this will work or not. I guess, my question is, is does it meet the requirements of the drainage plan that was submitted and approved?
Jeff Mueller: You know, it meets, it would meet the requirement in the fact that it's been seeded, but is it stabilized?
Commissioner Ungethiem: Okay.
Jeff Mueller: Okay?
Commissioner Ungethiem: So, they have followed the correct plan to make that a final option, we just don't know if it's going to hold?
Jeff Mueller: Right.
Commissioner Ungethiem: Okay.
Jeff Mueller: And some of it just might be sun and rain time, and some of it, you know, I just don't know. Other than the encroachment of the fence in the basin.
President Musgrave: But, you're saying, it meets code, except for the fence, and that's where you stop.
Jeff Mueller: And whether it's stabilized or not. Because there is some things in the code about being seeded and stabilized.
President Musgrave: Alright.

Jeff Mueller: And, I would say it’s temporarily stabilized.

President Musgrave: Okay.

Jeff Mueller: Okay?

President Musgrave: Alright.

Jim Johnson: May I approach?

President Musgrave: Yes, please. Name and address. You know the drill.

Jim Johnson: Jim Johnson, Jackson Kelly, 5th Street. We’re asking, we have, the developer, the project meets the code requirements, it complies with the applicable ordinances, and at this time we request that the Section 5, which has been conditionally not released, be released. This is the residentialLots 50, 51, the Lot 60 across from Felstead Road, and the commercial lots, which are Lots 57, 58 and 59. We have done everything that we can conceivably do to comply with the drainage code. You just heard from Mr. Mueller that we are complying with the drainage code, and we have complied with the drainage code. We have stabilization. There are letters of credit, if there’s any future problems. So, our requirement is to comply with the code. We have done that, and therefore, we request that the lots be released.

Ted Ziemer IV: Ted Ziemer, here on behalf of Barbara Bolin, from Bingham Greenbaum Doll, 1 Main Street. I don’t want to rehash everything we went through on November 7th. I did want to just brush on a couple of highlights. You know, this project, I think, commenced in 2013, and here we are heading into 2018, and Mrs. Bolin is still dealing with sediment going down into her lake. IDEM and Eagle Enclave did enter into an Agreed Order where this was supposed to be taken care of, and if Eagle Enclave had satisfied what they agreed to do within that order, Mrs. Bolin’s problems would be solved. Instead, three and a half years later they’re still doing every litigation tactic they can to stall long enough to sell these lots and essentially get by without doing anything for Mrs. Bolin. I was under the impression that perhaps the underlying problem had been solved, and that what we were dealing with now was just correcting any damage that had been done, but I do want to pass out some pictures that were taken recently. These were taken on November 18th, on a Saturday, where we had a heavy rain. The first four pictures you can clearly see a line in the lake where the muddy water is slowly seeping out and permeating across the lake. The last picture shows a culvert running alongside Felstead Road, where the water drains off of Eagle Enclave, and you can see how muddy the water is. That water then drains directly into Mrs. Bolin’s culvert and into her lake. This happens every time it rains, and then the sediment slowly seeps across, and eventually mixes in and the depth of the lake has, over these many years, greatly reduced. Pond scum has formed across the surface of the lake, and this is, you know, this was a really good, actually the best pictures I’ve seen that show it actually while it’s happening. So, we don’t feel like the problem has been fixed. This Board is tasked with making sure the developers do not let sediment leave their site. We think it’s still happening. Although litigation is going on with IDEM and Eagle Enclave, you know, it’s been said here before, we don’t know if that litigation would solve Mrs. Bolin’s issue. Certainly if the lots are sold and all of the assets are gone, any judgement is going to do nothing for Mrs. Bolin, not to mention the fact that the condition is actually still worsening today. Mr. Johnson, in November, stood here and admitted that these are the remaining assets, and once they’re gone, there will be no further assets. So, we respectfully ask that this Board continue to support Mrs. Bolin, and delay the release of these commercial lots indefinitely until such time as the sediment is no longer draining into Mrs. Bolin’s culvert, and such time that the IDEM litigation can play out and Mrs. Bolin can rectify her pond situation. Thank you.

Jim Johnson: Can I respond?

President Musgrave: Can I respond? I would like to ask the Surveyor a question, before you respond. If you could just delay for a moment. You heard Mr. Ziemer make the comment that this Board has the obligation of making sure that sediment does not leave their site. Is that indeed the obligation of this Board to correct situations where sediment leaving a building site and entering onto private property?
Jeff Mueller: I know that would be a Rule 5 issue. I would have to go back and look at the code to see how it relates to Rule 5, because that’s more of a John Stoll Rule 5 issue, because that is definitely under the Rule 5 requirements, but I can’t remember…you know, we’ve pretty much kind of taken Rule 5 to the County Engineer, and 13.04 to the County Surveyor’s Office.

John Stoll: I don’t remember the exact language, but I know in the code there’s references to maximum extent practical, and I know that’s some language that was in some of IDEM’s codes as well. So, I don’t think you can ever say that there would be zero sediment coming from a site. It was to try to control it as much as possible.

President Musgrave: Have you seen these photographs that were just distributed to us?

John Stoll: Yes. I couldn’t tell what the origins of the muddy water were on the pipe. That would be my primary question, because like Jeff said a minute ago, there were areas that vegetation was being established, but that muddy water may have originated from some of those areas, it may have been somewhere else. You just can’t tell from those photos.

President Musgrave: So, you would like some time to look at Rule 5, and to perhaps examine the site?

Jeff Mueller: And, let me, one other, I think to answer your question, Commissioner Musgrave, if they submitted the Rule 5, you know, the erosion control plan, if that was submitted as part of the drainage plan, then I would kind of say that, yeah, they’re kind of a little bit more hooked together than if they didn’t submit it. Does that make sense? Sometimes they submit, okay, John gets an erosion control plan, and he gets drawings, and sometimes those same set of drawings come to me with the drainage plan, as part of it, because some of the things that they’ll reference will be on there. Like, for example, they’ll say, the seeding of the basin, well, it’s in the erosion control plan, and we supplied that. So, I can’t recall, because it has been since 2013, if they submitted part of the erosion control plan with the—

President Musgrave: So, you need to look into that?

Jeff Mueller: Yeah, it could have been part of the approved document, I guess, is what I’m trying to say.

President Musgrave: Okay.

Jeff Mueller: But, I don’t know.

President Musgrave: Alright, well, I’m going to ask you both to go look, on both of those issues.

John Stoll: I was going to say also that, since the erosion control measures can always be washed out by extreme rain, that’s one of the reasons why the developers are supposed to do their own self inspection reports, to go out and find the problems. So, it’s not unheard of that you’ll have an excessive rain event that will result in sediment leaving the site. You’ll never control it all. That being said, you’ve got to make sure that the proper measures are in when the rains occur, and then do the inspections and follow up and make corrections as needed. So, it’s never going to be silt free, but it should be controlled.

President Musgrave: Were the self inspection reports filed in this case?

John Stoll: I have not seen any. I’m not sure if our Storm Water Coordinator has gotten them or not, but that rain on that Saturday afternoon was very heavy, for a very short period of time. So, there should have been an inspection report at that point.

President Musgrave: Okay, well, that’s the third thing that I want you to look into, okay?

Commissioner Ungethiem: Can I ask a point of clarification? They’re asking for the release of several lots, are all of the lots that they’re asking for release of (inaudible. Microphone not on.) are any of them (inaudible)?

John Stoll: The west half of the commercial lot, west half give or take of the commercial lot goes to Basin #2, the south basin.
Jeff Mueller: Right now it’s not going anywhere. It's blocked off.

John Stoll: Oh, that’s true. Ultimately, it would go that way, but the east half of the commercial lot and the two remaining residential lots come to Felstead and then under Felstead towards –

Commissioner Ungethiem: (Inaudible. Microphone not on.)

John Stoll: Correct.

Jim Johnson: May I respond? Thank you. Can I approach and give you something? We anticipated (Inaudible. Not at microphone.) concerning the rain. We would like to, the first document shows that Eagle Enclave is probably about ten percent of what drains into the pond. The pictures behind were taken on Saturday. These are, so, were taken on, so the rain was on Saturday, the rain that everyone is talking about was on Saturday, the 18th, these pictures were taken by Jeff Stemaly, who’s right here, on Tuesday, the 21st. You’ll see the check dams where the rock check dams, if what Mr. Ziemer was saying was remotely true, remotely true, then you would see up against these rocks, you would see the silt that allegedly drained from this property on to, into Mrs. Bolin’s lake. You look at these pictures, there is no silt. The water is clear. You can see the vegetation that we’ve complied with the rules. The fact of the matter is, and there’s a picture of her lake. The fact of the matter is, there was no silt drainage off of Eagle Enclave into her pond. If there had been, there would be evidence of it here. This is an attempt to hold up the release of these lots, because of an issue that we are litigating with IDEM. We have complied with the regulations. We, at this time, are entitled to have the lots that were held back released.

President Musgrave: Is it your desire to incorporate all of the testimony at our last Drainage Board meeting into this Drainage Board meeting?

Ted Ziemer IV: Yes.

President Musgrave: Okay. Then, I would, do I need a motion for that, or do we just incorporate it?

Joe Harrison, Jr.: I would have a motion made.

President Musgrave: Is there a motion to do that?

Commissioner Shoulders: I would, so moved.

Commissioner Ungethiem: Second.

President Musgrave: All of those in favor signify by saying aye.

All Commissioners: Aye.

President Musgrave: That motion carries.

(Motion approved 3-0)

President Musgrave: So, if you’ll put all of that in here.

THE FOLLOWING TEXT IS DISCUSSION THAT WAS HELD CONCERNING THE EAGLE ENCLAVE AT THE 11/7/2017 DRAINAGE BOARD MEETING

President Musgrave: We move now to Enclave.

Jeff Mueller: Okay, I’m going to make a couple comments, then I know there’s some people here that want to talk about it. I received an email yesterday, after business hours, and a hard copy that you have in your packet, that’s that really, there’s a thick little binder, and a nice big stapled document there. Those were delivered today. I did a quick drive through yesterday to confirm a few items, and I have some pictures from the drive through. With that said, I have not had a chance to go through the package with any degree of scrutiny, and I don’t think Mr. Stoll has either, but I do have the following comments. First, there are several encroachments in the lake maintenance and drainage easement for Basin 2. This was brought up in our inspection, and it was pointed out to the developer that these could not be accepted. In the past, when this was an issue, the
developer has had a problem enforcing an issue when trying to get a release from a letter of credit. Back in 2015 we held meetings with the city, Building Authority, SIBA and some fence contractors and came up with a solution that everyone agreed to, which was to allow the Building Authority to send out a letter to the homeowner describing the violation, and if not addressed they could treat this like any other building code violation. That code was changed in June of 2015, so now what happens is, “no person shall install, construct or cause to be constructed any type of fencing or retaining walls in drainage easements or any combined public utility/drainage easement which is to be partially utilized for surface drainage or pipe drainage without the prior written approval of the Vanderburgh County Drainage Board. Any authorized structures or items installed or constructed in a drainage easement or combined public utility drainage easement without the prior written approval of the Vanderburgh County Drainage Board will be ordered removed by the Evansville-Vanderburgh County Building Commissioner. Failure to comply with the order of the Evansville-Vanderburgh County Building Commissioner will be considered a major code violation and subject to the owner of such property to fines as set forth in Section 15.08.170 of the Vanderburgh County Drainage Code.” So, the developers were wanting something, because people were saying, forget it, I’m not going to move my fence. So, this way it gave folks the right to do it. So, I told Mr. Stemaly about this option, and you will see in your package a letter to Dave Ballew, to the Building Authority on October 17th stating that they wish the Building Authority to address the issue. However, when I talked to Mr. Ballew today, because I had just seen the letter, he had no record of the letter, so I don’t know if it got lost or what happened, but he was just made aware, the Building Authority was just made aware of the issue today, and they actually need to get back with me, which we will do here in the next day or two where I can show them what issues are in violation. Okay?

President Musgrave: You said Building Authority, did you mean Building Commission?

Joe Harrison, Jr.: Yes.


President Musgrave: Okay.

Jeff Mueller: Yeah. Okay, so, that issue is not resolved at this time, although it’s working its way. With that said, the second issue I want to comment on is that we did receive an as-built drawing for the subdivision, however, the as-built drawing does not show the encroachments, so it would be more like an as-built drawing once the encroachments are removed. So, at this time, we really don’t have an as-built drawing on file, because the obstructions are still there, and we must address those obstructions being removed before we have an accurate as-built drawing. Okay? Third, I want to make this clear, that when we did the inspection, it was to be a highlight of major items, and that no way was the inspection that Mr. Stoll and I did to address the letter of credit. So, we looked at big picture items, as far as what’s going on out there, and going on from there. And, finally, as I said before, we could not really have a chance to look this over, because I didn’t get this information until after I had left work yesterday. So, we just got the hard copy today, and I had some other things on my list that I needed to do. But, just to kind of remind you of the issues, this is The Enclave, this is the commercial site, the homes are down in here. One basin is here, that basin empties out into and goes across the road to Mrs. Bolin’s lake. The other basin is back here. As I said, we had some fences, some encroachments, this is Number 2 Basin. The basin line is way up here—

President Musgrave: Wow!

Jeff Mueller: --yeah. So, we took a little bit of advantage of….it’s like I said, I’m not out there to look to see if somebody’s fence is a half a foot in the drainage easement. This is not the case. Again, just showing you, we have some fences, we’ve got a storage shed. This is Basin 2, it is looking a lot better than it was. This is the area on the other side of Basin 2, which in the past has caused a problem with some drainage to the west. It’s in better shape, it’s still got a little bit of exposed area. This is a swale on the west side, most of it’s complete. There was some work done here within the last week or so, because this is all new. This is a completed swale between two of the streets. This is a swale on the north side. This is an important swale, because this swale goes directly into Basin 1, and from there discharges across Felstead Road. This is a problem Mr. Stoll and I said, you
know, you've got a problem here and they did go back and reseed it. This is the
commercial site, a lot of that area has been planted in Korean Lespedeza. Great cover,
you don't want it in your yard though. This is an outlet from the commercial site that the
water was actually going across here and eroding out, and they had did some repair to
that. So, with that, the only other thing that I wanted to point out is there is a mitigation
site off of Christ Road. It's up in here, and it has been subject to some issues with the
Corps in the past. I don't know if they're in compliance up there or not. I don't have any
more comments on this right now, because I do think other folks do, unless you've got
questions of me.

President Musgrave: Okay. Would you like to... I don't have any questions for you, do
any of you have questions?

Commissioner Shoulders: I don't have any questions.

Commissioner Ungethiem: The only question I would have is, is there anything that we
can, anyway that we can, in the future, prevent these encroachments into the drainage
areas, of fences and buildings?

Jeff Mueller: We have some developers that are very good about, and, I mean, I've known
one of the developers to say, I'm out there and if I see something, I stop and tell them to
quit doing it. That's what it's going to take. I mean, in my previous life I managed 25,000
acres, and I drove that acreage, different parts on different days, and if I saw something
I would say, what are you doing? It just amazes me that some folks sell ground, then they
leave. Now, in this case the problem is that the developer sold the lots to the home builder,
you know, who built a bunch of homes, but somebody's got to go out there and say you
can't do that. I don't think it's our job to do that. It's our job just to make sure that when
they finish things up. I mean, if we're going to have a fence police department, I don't
want the job, and I really don't want to hire the person to just go out and check them.
Yeah, I know, I guess, maybe Barney Fife's available for that job. But, you know, I mean,
really people have got to learn to read their agreements. They've got to understand what's
back there and why. You know, outside of, I don't know what you're going to do, put a
gun to somebody's head and say, read your agreement and understand it. I mean, I don't
know how we get people to quit doing it. I mean, if we're going to have a fence police department, I don't
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back there and why. You know, outside of, I don't know what you're going to do, put a
gun to somebody's head and say, read your agreement and understand it. I mean, I don't
know how we get people to quit doing it. I do think we've gotten in a lot better shape in
that we have had some developers talk to people, we've had developers come in and say
you've got to get these fences out. We've had some, you know, some people, we are
getting better, people are coming in and saying, I've got an easement behind me, what
can I do? We're trying to work with the swimming pool people, because sometimes, not
the swimming pool people, but the fence people that put the fence up afterwards are guilty
of some of this. So, we're doing better at getting the word out, but, I mean, I don't know
beyond that.

Commissioner Ungethiem: Can we put a checklist on fence contractors to check
easements before putting fences in place?

Jeff Mueller: Well, some of them are doing it.

Commissioner Ungethiem: Yeah.

Jeff Mueller: You know, and, again, but, you know, also when we talked about the original
change in the code, there was talk about, well, what about coming down and getting a
permit? Well, personally we had fence companies in there and I did not want to tell a guy
every time you put a fence up, you've got to come down here, you know, pay $50, $25,
spend the hour to do that. Everybody was fine with that, and also we all recognized that
that's great, but then the guys going to, there's going to be the other guy that's going to
go out to Lowe's on the weekend and grab his own fence and he's not going to file the
permit. So, you know, that's why it was thought that the best thing to do was to give some
teeth to the—

Joe Harrison, Jr.: Ordinance.

Jeff Mueller: --the ordinance. So, I do think that's a great way to start, and, we, our
ordinance is a little bit stricter than the city's because the city's just says fences, where
ours says fences or other physical obstructions. So, you know, we do have some teeth
that we didn't have before. All we have to do now is kind of look at the map and say,
before or after '15. With all of the mapping that we’re getting now, it’s getting easier and easier to do. But, outside of that, I don’t have a real good suggestion, you know.

President Musgrave: A great GIS system with easements clearly marked would be—

Jeff Mueller: Well, you know, and you guys just approved a contract—

President Musgrave: That will help.

Jeff Mueller: --with—

Joe Harrison, Jr.: Next year.

Jeff Mueller: --you know, where that’s going to have $44,000 extra to get that better detail, of which my office kicked in $4,000 of that money.

President Musgrave: Thank you.

Jeff Mueller: And, you know, so, there’s some things there, but I just think it’s, I do think that some of the developers, not all of them, because some of them are doing a really good job, but some of them are going to have to take a little more responsibility of, I did more than just sell the lot.

President Musgrave: Policing? Yeah, alright.

Commissioner Ungethiem: Okay.

President Musgrave: Okay, any other questions?

Jeff Mueller: I’ll get off my soapbox.

Commissioner Shoulders: Thanks, Jeff.

President Musgrave: Okay. Mr. Johnson?

Jim Johnson: Thank you. Members of the Commission, my name is Jim Johnson, I represent Eagle Enclave Development, which is developing the Eagle Cliff Subdivision. We’re here today to ask for the release of Section 5, which are residential lots 50 and 51, Lot 60, which is across Felstead Road, and Lots 57, 58 and 59, which are the commercial lots. I would like to note that the commercial lots, whoever develops those, will have to come back in front of you and have a drainage plan approved for those lots. Just to give you a little bit of history, this Board approved a drainage plan on October of 2014, subject to conditions and platting of the certain sections had to come back before the Board. In June of 2016 we came in and asked that Section 4 and Section 5 be released, the Drainage Board released Section 4, it did not release Section 5. It provided three conditions; erosion control, plan for the ditch on the west side and the plan for a road cut. On October 4th, Jeff and John toured the property with Jeff Stemaly and I, and then Jeff Mueller provided us with a punch, well, with a list of items, and then he also attached to that a list that Dan Buck had provided in December of 2016. We provided you with a response to all of the items that were in both Mr. Mueller’s punch list and that were stated by Mr. Buck in his December letter. Specifically to the items mentioned in the June meeting, under Tab 2, is where INDOT has found that the ditch is acceptable. We have, I have Mr. Stemaly and Mr. Jim Morley, Jr. here, who are here to answer any specific questions. Mr. Stemaly did the work, Mr. Morley prepared the as-built, and is ready to tell you that the erosion control is within the, is within compliance to the as-built drawings. As to what Mr. Mueller was just talking about, the residential lots were sold to Jagoe. Jagoe is the developer that dealt directly with the homeowners who have put these fences into the easement. It’s my understanding from Mr. Stemaly that Jagoe has these homeowners sign a letter or a waiver of some sort, as to they won’t build into the easement, but, we are one step removed from that process. We sell the lots to Jagoe, Jagoe then constructs the homes and sells them to the homeowners. When Mr. Mueller spoke, there was nothing said about sediment leaving the property. We have done a lot of work out there. We believe we have met the requirements of the drainage code, or and the drainage ordinances, I’m sorry, and would request that the Section 5, the lots that I mentioned be released. Does anyone have any questions?

President Musgrave: I have none. Any questions?
Jim Johnson: Mr. Shoulders?

Commissioner Shoulders: I was just going to say, it sounds like though there’s still work being done, and I’ll lean on Jeff’s, back to Jeff’s point, and I believe our next meeting is what, December 5th? Correct, I mean, we’re still working some things out from a drainage (inaudible).

Jim Johnson: I believe we have, I believe we’ve done everything….we’ve done everything that we can do. I mean, we’ve complied with everything that Mr. Mueller has requested.

Commissioner Shoulders: Have they? I mean, it sounded like they hadn’t though.

Jeff Mueller: I have not had a chance to go out and do a complete check, because we just got this stuff today, you know, essentially.

Jim Johnson: And the reason this was provided yesterday was, I just got the as-built on Monday. That was the last thing I was waiting for.

Commissioner Shoulders: Right, sure.

Jeff Mueller: I did a drive through yesterday and just checked a few things, but we haven’t went through and said, yes, this is done, this is done, this is done, this is done.

Commissioner Shoulders: Right, so, I mean, I would like to see him do that before we--

President Musgrave: Well, I think there is someone else here who would like to speak as well.

Commissioner Shoulders: Yeah, I would, absolutely.

President Musgrave: Am I correct about that? Alright.

Jeff Mueller: I have not had a chance to go out and do a complete check, because we just got this stuff today, you know, essentially.

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President Musgrave: Am I correct about that? Alright.

Jim Johnson: And the reason this was provided yesterday was, I just got the as-built on Monday. That was the last thing I was waiting for.

Commissioner Shoulders: Right, sure.

Jim Johnson: So, when I go the as-built I put it together because I didn’t want to piecemeal it.

Commissioner Shoulders: Sure. Thanks, Jim.

Jim Johnson: Thank you.

Ted Ziemer IV: Good evening, Commissioners. Ted Ziemer, I’m here on behalf of, well, I’m an attorney with Bingham, Greenbaum, Doll here on behalf of Barbara Bolin. We appreciate the efforts that Eagle Enclave and Stemaly have made to address some of Jeff Mueller’s punch list items. It sounds like we don’t yet know for sure if all of those items have been taken care of, but we do appreciate their continued efforts. However, we’re not certain that, or we don’t believe that fixing the underlying cause of damages that have already taken place, after the fact, fixes the problem. We’ve got an innocent property owner who lives next door who’s got thousands of cubic feet of sediment and sludge in a pond that Jim Morley, Sr. said was in “pristine” condition prior to Eagle Enclave’s commencement of development. We think, although he didn’t actually just say it just now, I know that their, Enclave’s argument is that this is not really appropriate before this Board, this issue, because there’s ongoing litigation with the Indiana Department of Environmental Management that’s already, you know, going on in Vanderburgh County. We don’t agree with that. I want to give you a little bit of background of that litigation, just because if you’ll bear with me, I think it would help for you all to understand really what’s taken place over the, these last several years. Excuse me, me, so, in 2013 and ’14 numerous site visits were conducted by IDEM. What they concluded is that there were at least 14 violations of Indiana Administrative Code sections. In July of ’14 IDEM notified Eagle Enclave of these numerous violations, and then followed up in January of ’15, nearly three years ago, entering into this Agreed Order with Eagle Enclave, whereby if everything had been followed, according to what was agreed to in the Order, the situation that we have today, including Mrs. Bolin’s pond, would have been resolved. Included in the Agreed Order was a stipulation that her pond would be dredged and the sludge or sediment would be remediated. Fast forward to June of 2016, two years following the violations, 18 months following the Agreed Order, Eagle Enclave attempted to have the Agreed Order
thrown out. They sent a letter to IDEM requesting it to be thrown out. In August of ’16 IDEM notified Enclave that they would not agree to throw out the Agreed Order. So, on August 29th of 2016, Enclave sought to go up the ladder and appeal this to the Office of Environmental Adjudication, where they sought to have the Agreed Order thrown out. In April of ’17 that was dismissed, thereby confirming the Agreed Order as still valid. So, now, in January it will be three years since the issuance of the Agreed Order, and Eagle Enclave has still yet to comply. In fact, they’ve done the opposite, they’ve made numerous attempts to avoid the Agreed Order at all costs. In an attempt to enforce the Agreed Order, IDEM has now filed in Vanderburgh Superior Court for civil enforcement of the Agreed Order. Eagle Enclave has filed its answer and counter claims. One of their arguments is impossibility. They’re saying that it’s impossible to clean her lake, because Mrs. Bolin won’t even allow them on the property to do that work, which is a complete misrepresentation of the facts, and just totally untrue. So, now where it is in the process is IDEM is preparing its response and motion to dismiss the counter claims of Eagle Enclave. So, it’s very much still up in the air. So, I apologize for, if I put anyone to sleep with that background, but I think it’s important for you to understand really what’s going on and how many years this has gone on, and that really the developer is bending over backwards to not fix the problem that everyone seems to agree, but maybe them, that they’ve caused. It’s, you know, we could debate whether this is appropriate for the Drainage Board. Mrs. Bolin did have the opportunity to, and still may, sue the developer directly. However, you know, from her perspective, I think she’s, I know her thought is, the Drainage Board is here to make sure that the appropriate sediment control measures as taken, erosion control measures are taken, to excuse me, to protect against adjacent property owners. IDEM’s job is to enforce the, you know, environmental regulations. So, she’s got two governmental entities who are going to bat for her, and frankly entrusted in these agencies that they would do their jobs. So, now we’re at today, and, you know, Eagle Enclave’s been, I think, pretty clever. Litigation has dragged, stalled, now we’re to the point where if these lots are released and sold, there will be no assets remaining in this LLC that was formed, specifically for the purpose of these lots. At that point, it doesn’t matter if IDEM wins litigation against Eagle Enclave, or Barbara Bolin personally, there will be nothing left, no funds to collect, even if they get a judgement, to then go and make these remediations to the lake. We contend that’s been their plan all along; drag this out and then eventually there will be no more assets and they can leave, essentially get off scot free and move on to the next project and leave Mrs. Bolin holding the bag. Recently, in sort of the last ditch effort to get settlement talks going, we made a formal request to ask to see their financials, certain of their financials. We had reason to believe that the mortgage, the debt on this property is essentially paid off, and that these last commercial lots are going to be really pure profit for the developer. And, if that is the case, we wanted to discuss the possibility of letting the lots be released and sold, but potentially holding back some funds in escrow to be there to pay for the remediation of this lake, you know, at the conclusion of the litigation with IDEM. In addition, Mrs. Bolin, out of her pocket, paid a company called Heartland Dredging to come down from Indianapolis, do an extensive day long process of measuring and taking samples and what they came up with was 6,700 cubic yards of sediment at a cost of $239,000, is what it would cost to get her lake back to pre-development condition. Eagle Enclave denied our request to provide financial information, or discuss holding back anything in escrow. So, what we’re left with is an innocent property owner who has basically a quarter of a million dollars in damage to her property through no fault of her own. These lots are her last remaining leverage, and if they’re sold and released, if they’re released and sold, you know, she has no further recourse. So, I stood here on June 29th of 2016, and I heard this Board say at that time, by ordinance, we have legal obligation to make sure sediment does not leave the development site. For that reason, this Board voted no to the release of those lots. So, I stand here before you today and say, okay, if you’re responsibility is to not allow sediment to be released, shouldn’t it also mean that if you do allow sediment to be released, that we do something to remedy that? I know that many of you, I’ve been out there with Commissioner Ungethiem, I’ve been there with John Stoll and Jeff Mueller, you guys have spent hours, many hours for Mr. Stoll and Mueller, more hours than they can probably count, thinking about this, working on this, site visits, and if these are released today, all of that work is for naught. I just, what message are we sending at that point? It’s, landowners are not going to be protected by developers who are in blatant non-compliance with the Drainage Board, and conversely a developer gets the message that they can basically do what they want, and if they stall long enough, they’re going to get
away with it, and can move on to the next project. So, for all of those reasons, on behalf of Mrs. Bolin, I strongly urge this Board to stay consistent with their prior opinion, and refuse to release these lots. I know Mrs. Bolin wants to address you as well. Thank you.

President Musgrave: Mrs. Bolin?

Barbara Bolin: Thank you. I don’t have a whole lot to say, but I do have a beautiful home out there. I’ve been living with a mess out there for four years. I’ve tried to get it stopped, after the second time I called the Engineer’s Office, had someone out there. His name was Mike Wathen, he was a very nice man. I said can we not stop this until he gets his problem taken care of over there? He said, oh, no, Mrs. Bolin, we can’t stop progress. It continued on. It’s continued on for four years, nobody’s done anything. I don’t know what else to do, but I did rely on the Drainage Board. You all approved the whole plan and here we sit, with all this mess. I don’t know if it will ever be taken care of, but 6,700 cubic yards of sediment in a lake. I know we have a little bit of natural sediment, it happens to every lake. I’m not stupid, but 6,700 cubic yards? The man that came and told me how much was in there said, my lake would have lasted me 50 years. It’s ruined. So, this is our leverage. I’m depending on you guys to help me get through this, whether we have to sue or not, I’ve got to have some help. Thank you.

President Musgrave: Thank you.

Jim Johnson: May I respond?

President Musgrave: Certainly.

Jim Johnson: I was accused of quite a bit there. The fact of the matter is that, as part of the, in the Administrative Code action, with IDEM, there was a negotiation, there was an attempt to come up with a way to dredge the pond. We were negotiating with IDEM over the amount of square yards that would be dredged. Those negotiations were killed because Mrs. Bolin stated that we could enter into any deal we wanted to enter into with IDEM, but she would not release us. Therefore, we were looking at a possibility of having to dredge the pond twice, not dredge the pond twice, but dredge the pond to comply with IDEM, and then deal with Mrs. Bolin on a damage claim. So, it’s, we made an attempt to work with IDEM to dredge the pond, and that was killed because Mrs. Bolin wouldn’t sign off on anything less than exactly what she wanted. 51.5 acres drain into that pond.

Barbara Bolin: And it has for years.

Jim Johnson: And it has for, probably since 1960, it’s drained into that pond, and then for there to be 6,700 cubic yards of sediment, and for that to be all because of what we put in on four occasions, is an impossibility. Be that as it may, we have a complaint against us, which I’ve provided to you. It’s a verified petition for civil enforcement. It’s brought by the State of Indiana. If you look at paragraph 26 on page seven, it deals specifically with the Agreed Order, it speaks to Mrs. Bolin specifically. It’s on page seven, paragraph 26, and it talks about actions to remove any sediment attributable to the activities at the site from the off-site pond owned by Barbara Bolin. So, this action, brought by the State of Indiana, which was filed on July 13th, is designed specifically to address this problem. So, we are dealing with this litigation right now, and I believe, contrary to what Mr. Ziemer said, the State of Indiana can take care of its interests. They are more powerful than any body, any other county or city organization, and clearly more powerful than Eagle Enclave is. The State can pursue this interest. We’re a developer. We’re supposed to stop the erosion to get these lots released. We have done a lot of work, a lot of work, and we have complied with everything that’s required of us for these lots to be released. We have complied with conditions after conditions. Mr. Ziemer talked about what was said in June of 2016, what was said in June of 2016 was to ensure that there is no more sediment leaving the property. We have done that to the correct standard. At this time, we would like to have our lots released, and as far as, we can either deal with Mrs. Bolin individually, and we’re already dealing with the State of Indiana. Thank you.

Commissioner Shoulders: We have someone—
Ted Ziemer IV: Just a quick response directed to a few of those. First, in regards to the mediation that did take place between IDEM and Eagle Enclave, we absolutely cooperated with that, and IDEM had contacted me directly to get approval, well, and Mr. Johnson, to get approval to have various outfits come on to her property, to get quote, I guess is the best way to put it, for what this dredging would entail. When the final proposal was made on what work they were going to do, we had conflicting reports on whether or not this would really, whether or not IDEM agreed with it or not, which they perhaps were, I was not part of those discussions, but I can say that there were conflicting reports by the experts of whether or not it was sufficient to get her back to the way she was, get her lake back to the way it was. So, we completed agreed and gave approval for IDEM to, and Eagle Enclave to do the proposed work, we just said, hey, we’re not going to sign a release and waiver of all claims, in the event it doesn’t repair the problem. And, IDEM said to us, nor should you. You’re a third party, you’re not part of this litigation, why on earth do they think that you’re going to sign a release or a waiver when they are in litigation with us. So, you know, in speaking with IDEM counsel that really kind of sold it for me that, you know, signing a waiver made no sense for us. There is a lot of acreage around this lake, and Mr. Johnson talks about, we’ve heard this a lot over the years, that there has to be so much sediment in this lake based on all of these areas. The bottom line is there was no development in any of the surrounding acreage until this. The lake was 20 feet deep on one side, and ten feet deep on the other side when development started. Now where it was 20, it’s nine, and where it was ten, it’s two. Twenty years it maintained those depths, and boats went out there and fished. Now it’s completely covered in moss and you can wade out into areas that used to be ten feet deep. Immediately this all happened after, I mean, this isn’t a coincidence. You don’t have to be a scientist to know that. And, you know, Mr. Johnson also mentions again, this is in litigation right now, currently, and IDEM is a powerful authority that can take care of itself, but they’re also aggressively trying to get still this Agreed Order thrown out. I’m not sure, as powerful as IDEM is, if there’s an agency that has zero assets, what power they have to…maybe Joe Harrison can speak to that, but thank you.

President Musgrave: Okay. A lot of side conversation over here, do you—

Commissioner Shoulders: I mean, bare minimum, I think Jeff would at least like to see, that’s all I was saying. I mean, Jeff hasn’t even seen, what did you say, today you got…so, I mean, you haven’t even seen if some of these remedies have even been done.

President Musgrave: So—

Commissioner Shoulders: So, I mean—

President Musgrave: --time then is what you’re suggesting?

Commissioner Shoulders: I would think at the bare minimum, they come back, that would be a minimum.

President Musgrave: Alright, do you have any objections to taking the time necessary for the Surveyor to come and review the documents he received just today, yesterday? Today.

Commissioner Shoulders: Today.

Jim Johnson: When is the next meeting?

Commissioner Shoulders: December 5th.

Commissioner Ungethiem: December 5th.

Jim Johnson: Excuse me for a second.

President Musgrave: That’s okay.

Jim Johnson: That’s fine.

President Musgrave: Alright, December 5.

Commissioner Shoulders: Is that okay with you, Ted?
President Musgrave: Let me ask some questions though before we just punt the entire thing.

Commissioner Shoulders: Go ahead.

President Musgrave: I would like you to address the key point that Mrs. Bolin has that if we release these lots that there are no further assets to pay her potential claim to remediate the lake.

Jim Johnson: I, the lots, we don’t have any idea when the commercial lots are going to be sold. So, I mean, the Eagle Enclave assets will be the two residential lots, which Jagoe is under contract to buy after a certain period of time, and then the three commercial lots. We don’t know when they’ll sell, we don’t know what they are going to sell for, we don’t have any idea. So, we don’t know how long those lots will remain property of Eagle Enclave. Another fact that I didn’t bring up earlier—

President Musgrave: But—

Jim Johnson: I’m sorry.

President Musgrave: --are there any other assets of this corporation, beyond these lots?

Commissioner Shoulders: Existing assets.

Jim Johnson: No.

President Musgrave: Okay. So, once those are sold and the money flows through the corporation, then there’s nothing left. So, you’re agreeing with Mr. Ziemer and Mrs. Bolin that their hopefully, successful civil suit against you, which would, you know, return a claim of damages, if these lots were sold by then, there would be nothing for them to attach for their claim?

Jim Johnson: Those assets are, those, assuming that the residential lots sell before the commercial lots, once the commercial lots are sold, and once whatever money is recovered after the bank is paid off. Whatever is left will, once that cash is gone, then you’re right, there will be no other assets.

President Musgrave: Are you willing to pledge any of those funds in escrow in order to meet a potential award?

Jim Johnson: We cannot, because of the covenants with the bank. I contacted the bank, and we cannot do that.

President Musgrave: Talk to me about the letter of credit.

Jim Johnson: I don’t believe the letter of credit can be—

Commissioner Shoulders: That has an expiration of sometime.

Joe Harrison, Jr.: I don’t know what’s left.

Commissioner Shoulders: So, I don’t think that, I mean—

Jeff Stemaly: Good evening, I’m Jeff Stemaly, I represent the development.

Commissioner Shoulders: Hi, Jeff.

Jeff Stemaly: There’s multiple letters of credit.
Commissioner Shoulders: I think the one that was in reference to the earlier...I know we’ve talked about this for awhile, but wasn’t there, are you referring to, wasn’t there a letter of credit earlier in the conversation of this? Or are we talking about another project? I thought there was a mention of a letter of credit.

President Musgrave: Do you have any letters of credit which can be pledged to the potential award?

Joe Harrison, Jr.: Well, the letters of credit have not been released.

President Musgrave: Right.

Commissioner Shoulders: I think that was—

Jeff Stemaly: The letters of credit are to—

President Musgrave: Make sure you do what you said you were going to do.

Jeff Stemaly: --Evansville Water & Sewer Utility, Vanderburgh County—

Jim Johnson: The State, INDOT.

Jeff Stemaly: INDOT, okay, so I don’t know how you would—

Commissioner Shoulders: I think you’re just looking for collateral, right, President? I mean, you’re kind of...and then so, it sounds like, going back to what you just said, it sounds like the only asset—

Joe Harrison, Jr.: But, there’s some (Inaudible).

Jeff Stemaly: Yes.

President Musgrave: How much?

Joe Harrison, Jr.: I don’t know.

Jeff Stemaly: I don’t have the numbers with me.

Commissioner Shoulders: So—

Joe Harrison, Jr.: But there is some to the county?

Jeff Stemaly: Yes.

Commissioner Shoulders: So, what—

President Musgrave: I guess, I would ask the Surveyor to investigate that and come back.

Jeff Mueller: They are with the Engineer.

President Musgrave: Engineer, sorry, there’s John. Here he comes.

Commissioner Shoulders: Yeah.

Joe Harrison, Jr.: (Inaudible. Microphone not on.)

Jeff Mueller: He’s the keeper of the letter of credits.

Commissioner Ungethiem: We’re the keeper.

John Stoll: It’s my understanding the letters of credit that are in the county’s name would all be for the infrastructure and the infrastructure only, so it wouldn’t be anything that could be—

Commissioner Shoulders: Yeah, we couldn’t—

John Stoll: -- obtained, relative to the damages associated with the sedimentation.

Commissioner Shoulders: --assign them to. I believe that’s correct.
Joe Harrison, Jr.: Yeah. I just didn’t know the restrictions on it. So, it’s the infrastructure itself.

John Stoll: Every time a letter of credit comes up, we get an estimate from the developer’s engineer for the value of the remaining unfinished work. Then I sign off on it, then APC holds the letter of credit for that amount. So, it’s based upon the unfinished work within the subdivision. Since this is an off-site sedimentation issue, it’s not specifically addressed in a letter of credit.

Commissioner Shoulders: So, a letter of credit doesn’t work. The assignment of liquidity post sale doesn’t work, because of the covenants with the bank, which would go back to the assets of the LLC, being the only true and/or leverage of the LLC. Is that correct?

President Musgrave: It sounds like it to me.

Commissioner Shoulders: Okay.

President Musgrave: And, let me ask one more question of our attorney. Does this Board have the legal authority to indefinitely hold on to the, in other words, not release Section 5?

Joe Harrison, Jr.: Well, there are conditions that are out there that are before the Board, and that was a, those were to be completed by a certain date. I don’t believe the lake is on the conditions, but I don’t know if all of the conditions, we don’t know if all of the other conditions, or all of the conditions have been met yet, I should say.

President Musgrave: And, that’s what we’re asking for a delay for—

Joe Harrison, Jr.: Yes.

President Musgrave: --in order to determine that. Hmmm. Well, is there a motion to table this matter until December 5th?

Commissioner Shoulders: If that works for both parties, and they can be here again, in all fairness, since Jeff just got this today, I’ll make the motion to table this until December—

Joe Harrison, Jr.: 5th.

Commissioner Ungethiem: 5th.

Commissioner Shoulders: --5th, until our next meeting when Jeff can, in fact, go out there and see.

Commissioner Ungethiem: I’ll second that.

President Musgrave: We have a motion and second. Is there any further discussion? Seeing none, I’ll call for the vote, all of those in favor signify by saying aye.

All Commissioners: Aye.

(Motion approved 3-0)

President Musgrave: So, this matter is tabled.

Jim Johnson: Okay, thank you.

Ted Ziemer IV: Thank you.

Commissioner Shoulders: Thanks.

END OF DISCUSSION INSERT FROM THE 11/7/2017 DRAINAGE BOARD MEETING MINUTES.

Commissioner Shoulders: I did have a question.

President Musgrave: Go ahead.
Commissioner Shoulders: Mr. Ziemer, has IDEM, I'm just curious, has IDEM also seen these pictures? IDEM's counsel, I should say.

Ted Ziemer IV: I have sent them to—

Commissioner Shoulders: I didn't know if they had seen those.

Ted Ziemer IV: The counsel for IDEM, yes.

Commissioner Shoulders: Yes? Okay, just wanted to...that's all I need, thanks.

Ted Ziemer IV: And, if I could just, very quickly, you know, whether or not something is showing up on the rocks, I don’t know, I just, I can tell, without being a scientist, that the color of the picture in these lakes matches the color that’s coming out of the culvert, and it is widening across the lake during the rain, and it’s clearly muddy water. I don’t really know what other proof I would need to see to see what’s coming out and dumping into that lake. The other thing I would, again, point out is that Mrs. Bolin’s late husband built this lake, how many years before the development?

Barbara Bolin: He finished it in 1988.

Ted Ziemer IV: Okay, finished it in 1988, and the lake maintained a pristine condition, in the words of Jim Morley, up until 2013, and then the only event that changed was this development happening. So, to say that 90 percent of what’s going into her lake is coming from other sites when it was coming in from other sites from ‘88 to ‘13 too, and the lake was not changing it’s biology as it has since 2013. I think the cause and effect is pretty obvious in this case. Thank you.

President Musgrave: So, we have kind of a jurisdictional question here. Did the erosion control plan say anything about sediment leaving a site? And if it did, what was it? And does Rule 5 address that? So, I want that research to be done, and then we'll come back. We've already cancelled our December 19th meeting, perhaps you over heard that. On January 3rd, is it 2nd?

Commissioner Shoulders: 2nd.

President Musgrave: And discuss this further at that time, unless anyone has any further questions.

Commissioner Ungethiem: I had one other question for the Surveyor. These rock check dams that are in this ditch, are they part of the final drainage plan?

Jeff Mueller: No.

Commissioner Ungethiem: Or are they a temporary situation that has to be removed?

Jeff Mueller: No, they would not be part of the permanent drainage plan.

Commissioner Ungethiem: So, essentially what we’re seeing here is not the final drainage off of this piece of property. These final, the rock check dams would have to be removed as part of the final plan?

Jeff Mueller: Yeah, we don’t, normally the plans do not include those rock check dams, right.

Commissioner Ungethiem: Okay.

President Musgrave: Well, why are they there?

Jeff Mueller: For erosion control. To temporarily catch the sediment, but not, you know, when we’re talking our rule of drainage, we’re talking about carrying “x” amount of water. When you’re talking the Rule 5, you’re talking about catching sediment, with the idea that once everything is done, there won’t be anymore sediment. So, it’s kind of, they’re there for a temporary purpose.

Jim Johnson: Excuse me?

President Musgrave: Go ahead and come to the microphone.
Jim Johnson: I’m sorry. They’re part of INDOT’s plan for the work on Felstead Road. That’s why the check dams were put in.

Commissioner Ungethiem: Oh, I understand why they’re there. I just wanted to make a point that they’re not the final solution of the drainage here. Because if you put rock check dams into a drainage ditch, then you essentially impede the flow of that ditch during large rains.

Jeff Mueller: Yeah, unless you designed them so that the ditch could carry them with the check dam, you’re exactly correct.

Commissioner Ungethiem: Right.

President Musgrave: Okay. Is there a motion to continue this matter to January 2nd?

Commissioner Ungethiem: I will make that motion.

Commissioner Shoulders: Second.

President Musgrave: Any further discussion? Hearing none, I will call for the vote. All of those in favor signify by saying aye.

All Commissioners: Aye.

President Musgrave: The motion carries.

(Motion approved 3-0)

Ditch Maintenance Claims

President Musgrave: Do you have ditch maintenance claims?

Commissioner Shoulders: Yes.

Joe Harrison, Jr.: A couple.

Jeff Mueller: Yes, I think we have a record. You have a summary sheet in your packet. I’m submitting for your approval 28 claims, to nine different vendors for a total of $34,206. All claims were for previously approved or discussed work, with the exception of one claim for $480 to clear some debris on Sonntag Stevens, which I addressed to you in an email dated November 17, 2017. That email is part of your package. I would request approval of all of these claims.

President Musgrave: Is there a motion?

Commissioner Ungethiem: So moved.

Commissioner Shoulders: Second.

President Musgrave: Is there any further discussion? All of those in favor signify by saying aye.

All Commissioners: Aye.

President Musgrave: It’s unanimous.

(Motion approved 3-0)

Other Business

President Musgrave: We move now to other business.

Jeff Mueller: I do have one other thing, and I apologize, because it came up about 15 minutes before the meeting. I got a call from Steve Kahre, Steve is with Woodward Group, and Woodward Group is the building, you know, redoing the building, the spec building out at VIP. If you recall, we had a drainage plan to approve expanding the building to doubling it, and then afterwards they came back and said, for right now we’re just going
to get in the building and do some modifications. So, we kind of want to leave things the way they were. As part of that approved drainage plan, the second step, they had to fix a basin there along the road, and we made that a condition to get their occupancy. Steve called me today, and I will tell you, I know he’s been out there working on it, and some of the problems with the basin he has gotten resolved, but he said, Jeff, he says I’ve been testing the water every time I get in there, I can’t get it. I promised you I was going to get this done, and he said I cannot get it done without going in there and mucking it up. I said, Steve, I’ll meet you out there Thursday, but we’ll work something out, but because you guys had something, when I say you guys, I’m sorry, but the Board approved something, I didn’t want to sit there and go, yeah, Steve, it’s okay, we can delay, and then say, wait a minute, I’m kind of overstepping my bounds. So, what I would like to do is request that I can come in on January 2nd with something from Steve that he’s going to get the basin done, based on weather and everything else, but he can go ahead and move forward with, you know, being able to move in the building. He'll give us a new commitment letter on what he’s going to do. Similar to what we did for Dr. Stone out at the veterinarian clinic, but that we would keep this project moving forward.

President Musgrave: So, exactly what would you want the motion to say?

Commissioner Shoulders: Then it will come back on the 2nd?

Jeff Mueller: That the requirement to have their as-builts and the basin revision completed before Certificate of Occupancy be temporarily suspended, and that they would come in with a commitment letter to getting that basin done on January 2nd, but that they can move forward. Does that make sense?

President Musgrave: It does. Lack of occupancy won’t affect the new—

Jeff Mueller: The basin’s been there for a long time, and actually the work he has done has improved things, because at one time we were having problems with a county road—

President Musgrave: Okay.

Jeff Mueller: --they did fix that problem. It’s a lot better than it was, but it’s not to where it’s supposed to be.

President Musgrave: This motion would be agreeable to all parties?

Jeff Mueller: Yes, I mean, Steve’s just like, what can I do? He says, I’ll give you a letter, I'll post a bond, I'll do everything. I said, Steve, let me meet with you and we can figure out a piece of paper that will cover it that you’ll give us some kind of a commitment based upon the fact that we’ve had weather issues out there.

President Musgrave: Is there a motion to that effect?

Commissioner Shoulders: So moved that... go ahead.

Commissioner Ungethiem: Go ahead.

Commissioner Shoulders: I was going to say, I'll make the motion for the revision of the Certificate of Occupancy to come back then on the January 2nd.

Commissioner Ungethiem: I will second that.

President Musgrave: Joe, do you have any comments?

Joe Harrison, Jr.: No, it's just that it's going to be temporarily suspended.

Jeff Mueller: The—

Commissioner Shoulders: Occupancy?

Joe Harrison, Jr.: The requirement.

Jeff Mueller: Yes. Yeah, and they'll come in with a new requirement after I've had a chance...on the 2nd.

President Musgrave: Yes.
Commissioner Ungethiem: On the 2nd.

Joe Harrison, Jr.: Yeah.

President Musgrave: Alright.

Jeff Mueller: Steve’s good about this.

President Musgrave: Okay.

Jeff Mueller: I mean, he, well, we all know Steve.

Joe Harrison, Jr.: Yeah.

Jeff Mueller: I mean, I shouldn’t say it like that, but he is a man of his word. He is very disappointed that he didn’t get the work done himself. He’s like, I’m very, I promised you I was going to get this done and I didn’t. He says, I feel bad.

President Musgrave: Alright, Any further discussion?

Commissioner Shoulders: No.

President Musgrave: All of those in favor signify by saying aye.

All Commissioners: Aye.

President Musgrave: The motion carries unanimously.

(Motion approved 3-0)

Adjournment

President Musgrave: Any other?

Jeff Mueller: I have nothing else. We’re done for the year, as far as the Drainage Board is concerned.

Commissioner Ungethiem: Motion to adjourn.

Commissioner Shoulders: Second.

President Musgrave: We are adjourned.

(The meeting was adjourned at 4:49 p.m.)

Those in Attendance:

<table>
<thead>
<tr>
<th>Cheryl Musgrave</th>
<th>Ben Shoulders</th>
<th>Bruce Ungethiem</th>
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<tbody>
<tr>
<td>Jeff Mueller</td>
<td>Joe Harrison, Jr.</td>
<td>Madelyn Grayson</td>
</tr>
<tr>
<td>Mark Wannemuehler</td>
<td>Jim Johnson</td>
<td>Ted Ziemer, IV</td>
</tr>
<tr>
<td>John Stoll</td>
<td>Barbara Bolin</td>
<td>Others Unidentified</td>
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