The Vanderburgh County Drainage Board met in session this 2nd day of January, 2018 at 4:00 p.m. in Room 301 of the Civic Center Complex.

**Call to Order**

Commissioner Musgrave: I would like to call the Drainage Board to order.

**Pledge of Allegiance**

Commissioner Musgrave: If you would all join me in the Pledge of Allegiance.

(The Pledge of Allegiance was given.)

**Election of Officers for 2018**

Commissioner Musgrave: Well, it doesn't have it on here, well, it does have, let's go ahead and do the election of officers. Ben, would you like to be President?

Commissioner Shoulders: I was going to nominate you again, but—

Commissioner Musgrave: If you would like to do this, I would be more than happy.

Commissioner Shoulders: I thought you would like to do it again.

Commissioner Musgrave: I would be fine with it.

Commissioner Shoulders: I was prepared to nominate you again.

Commissioner Musgrave: I wouldn't want to cheat you of it.

Commissioner Ungethiem: I'll solve the problem. I make a motion that Ben be President of the Drainage Board for 2018.

Commissioner Musgrave: He might not be accepting of that.

Commissioner Shoulders: I will accept.

Commissioner Musgrave: Okay, there's been a motion and a second. All of those in favor signify by saying aye.

All Commissioners: Aye.

**(Motion approved 3-0)**

Jeff Mueller: I was going to say, guys, I took a shower this morning, you know.

President Shoulders: So, is that starting today?

Commissioner Musgrave: Yes.

President Shoulders: Alright.

Jeff Mueller: I didn’t know if anybody wanted me or not.

President Shoulders: Well, that was unexpected.

Joe Harrison, Jr.: Now, you need a Vice President.

President Shoulders: So, now I need a Vice President.

Jeff Mueller: That’s the person that has to go to the funerals.
President Shoulders: Yeah, that’s right.

Commissioner Ungethiem: I make a motion to nominate Cheryl Musgrave as Vice President of the Drainage Board.

President Shoulders: I will second that.

Commissioner Musgrave: That’s fine. Alright, okay, you’ve got to call for the vote now.

President Shoulders: Alright, so now I’ll call for the vote for Commissioner Musgrave to be Vice President of the Drainage Board, starting today, starting this year. All in favor say aye.

All Commissioners: Aye.

(Motion approved 3-0)

Approval of the December 5, 2017 Drainage Board Meeting Minutes

President Shoulders: Alright, okay—

Commissioner Ungethiem: Point of order, we need to approve the previous minutes.

President Shoulders: Yeah, we do. I was going to do that next. So, we need a motion to approve the previous minutes from the Drainage Board prior.

Commissioner Ungethiem: So moved.

Commissioner Musgrave: Second.

President Shoulders: Okay. All in favor please say aye, approving the minutes.

All Commissioners: Aye.

President Shoulders: Opposed same sign.

(None opposed)

President Shoulders: Thank you.

(Motion approved 3-0)

Schedule of Meeting Dates & Times for 2018

President Shoulders: Election, we did that. Schedule of meeting dates is next. We have proposed dates here, I believe.

Commissioner Musgrave: They mirror what we adopted for the Commissioners.

Jeff Mueller: Yeah, I didn’t have an opportunity—

President Shoulders: They do mirror—

Jeff Mueller: -- to do that.

President Shoulders: Well, now that we’ve adopted the—

Jeff Mueller: My suggestion would be, could we set like meetings for maybe the rest of the month and February, and then let me get back with a schedule at that time?

President Shoulders: Sure.

Jeff Mueller: What were your proposed meetings for January and February?

President Shoulders: 2nd, 9th and 23rd in January are our three meetings in January.

Jeff Mueller: Okay, I personally don’t see a reason to have one on the 9th.

President Shoulders: Okay.
Jeff Mueller: We haven’t got anything, I haven’t got anything sitting on my desk right now.

Joe Harrison, Jr.: So, the next meeting is the 23rd. What about February?

Jeff Mueller: The 23rd, and then what about, what did you have for February?

President Shoulders: Then we have three in February too. We have the 6th, 13th and 27th. There happened to be three in February too.

Commissioner Musgrave: Do you want a motion for that?

President Shoulders: Well, we need a motion for the 23rd meeting, but, I think Jeff’s still looking at his meetings for February. Do you want to come back to the meeting on the 23rd and decide?

Jeff Mueller: What were those again, 6th, 13th and the 20th?

President Shoulders: The 6th, 13th and 27th are the February Commissioner meetings.

Jeff Mueller: The 27th I won’t be here.

President Shoulders: So, do you want to do the 13th.

Jeff Mueller: We can do the 6th and the 13th, if you wanted.

President Shoulders: Okay.

Jeff Mueller: Because we’ve got some stuff to do.

President Shoulders: You would have three in a row, though, you would have the 23rd, the 6th and the 13th if you—

Jeff Mueller: Yeah, but I do have the drainage report and setting the—

President Shoulders: Okay.

Jeff Mueller: We’ll be okay. So, the 23rd—

Joe Harrison, Jr.: The 13th and 20th.

President Shoulders: No, 6th and 13th.

Joe Harrison, Jr.: Oh, 6th and 13th? I’m sorry.

Jeff Mueller: The 6th and 13th.

President Shoulders: The 23rd, 6th and 13th.

Joe Harrison, Jr.: Okay.

President Shoulders: Then, at that point—

Jeff Mueller: Oh, wait a minute. I’m sorry, wait a minute, I’m sorry.

President Shoulders: So, for sure...go ahead.

Jeff Mueller: February did you say 6th, 13th and what was the other date?

President Shoulders: The 27th is the other one.

Jeff Mueller: Oh, yeah, I’m probably not going to be here. So, yeah, the 6th and 13th.

President Shoulders: Okay, so we need a motion for the next three meetings, and at that point we’ll decide the rest of the year? Is that what we want to do?

Jeff Mueller: Yeah, I’ll come back to you with a schedule then.

President Shoulders: So, we need a motion for January 23rd, February 6th and February 13th being the next three Drainage Board meetings.

Commissioner Musgrave: So moved.
Commissioner Ungethiem: Second.
Jeff Mueller: Okay.
President Shoulders: All in favor need an aye.
All Commissioners: Aye.
President Shoulders: All opposed same sign.
(None opposed)
(Motion approved 3-0)
President Shoulders: Thank you.
Jeff Mueller: Then, I will look at the schedule, your schedule, and then pick dates from just those dates that you have, okay?
President Shoulders: Okay.
Jeff Mueller: So, alright, thank you.
President Shoulders: Yeah. Alright, so, we have a few meetings in the future, not all, we have three.

**Construction in Floodway: EWSU**

Jeff Mueller: Okay.
President Shoulders: So, Jeff, now we move on to the Construction in Floodway, EWSU.
Jeff Mueller: Yes, this is just a standard Construction in Floodway request. As always, the Department of Natural Resources includes you on their mailings. It’s for something that Evansville Water and Sewer is doing. I don’t have any issues with it. So, it’s just a matter of for your files. Like I said, if there’s an issue with them at all, I will tell you about them.
President Shoulders: Okay. This does not require a motion, correct?
Jeff Mueller: No.
President Shoulders: This is more of a—
Joe Harrison, Jr.: FYI.
Jeff Mueller: Okay.

**Encroachment Agreement: Airport Industrial Park: Lots 1, 2 & 3**

Jeff Mueller: Okay, next is an encroachment agreement for Airport Industrial Park, Lots 1, 2 & 3. This is north of Kansas. This is the industrial park where Pet Foods is located, or I think it’s also Nunn. As you’re aware, they’re doing some expansions. You guys have looked over some drainage plans for them previously and approved them. They’ve got to encroach, they’ve got to put a small bin in there. So, they’ve got to encroach on our drainage easement. You have the encroachment agreement before you. I don’t have any problems with it, and request that you approve that.
President Shoulders: Okay.
Commissioner Musgrave: So moved.
Commissioner Ungethiem: Second.
President Shoulders: Okay, all in favor, I need an aye. All opposed same sign.
All Commissioners: Aye.

(None opposed)

President Shoulders: The motion passes.

(Motion approved 3-0)

Other Business

Jeff Mueller: I do request, before we move on to The Enclave, there are a couple of other business items that kind of came in late. They’re small, but if we could address them real quickly, if you don’t mind?

President Shoulders: Sure.

Jeff Mueller: Okay, the first thing is, is back in our last meeting, the SEZ Holdings on the Foundation Lots 8 & 9, that’s where the plastics group is coming in. If you remember they couldn’t get the basin done in time, and SEZ was going to give us a letter with a commitment to get that basin done when the weather got better next spring, and get it done by June. They do have that letter in your file. So, they delivered it as promised. I don’t know if we need to have an approval on that or not.

Commissioner Musgrave: In case we do, Jeff Mueller: It’s there.

Commissioner Musgrave: I’ll move approval of the letter from SEZ Holdings?

Jeff Mueller: Yes.

Commissioner Musgrave: Okay.

Commissioner Ungethiem: Second.

President Shoulders: Okay, all in favor, aye.

All Commissioners: Aye.

President Shoulders: All opposed same sign.

(None opposed)

(Motion approved 3-0)

President Shoulders: Okay, what else, Jeff?

Jeff Mueller: The second thing I have is that our little furry friends are back on the Wabash-Erie Canal again. We have four dams there. We just got the quotes right before the meeting. One of them is $950 for Niemeier Excavating, and the other is $1,090 from McCullough, and I would ask approval to give Niemeier Excavating approval for the $950. Also to anticipate Mr. Ungethiem’s question, yes, we have talked to our buddy Mr. Wathen about coming in and giving us a quote on how to relocate those friends. He is busy right now, but he said he was going to take a look at it and give us a quote for that. So, short term solution and then we’ll work on the long term problem at the same time. So, I do request for the $950 to remove the four dams.

Commissioner Musgrave: So moved.

Commissioner Ungethiem: Second.

President Shoulders: Okay, all in favor, aye.

All Commissioners: Aye.

President Shoulders: All opposed same sign.

(None opposed)
President Shoulders: The motion passes.

(Motion approved 3-0)

The Enclave Update

Jeff Mueller: Next is Enclave, and I think it was just kind of left from last meeting on where do we go? I know both of the attorneys for both parties are here, and I really don’t have anything to bring up from what we’ve already talked about.

President Shoulders: And, Commissioner Musgrave, refresh my memory, because, obviously, until right now you’ve been President. Where did we, there was a, that’s been a month ago, and, so, did we have a status update before we voted on anything? Was there something we needed to, else we needed to hear about, talk about?

Jeff Mueller: Well, I think one question was, was the Rule 5 issues, can they be part of the drainage plan. I do want to point out, and I believe I sent you all a memo, an email, but if you’re like me that’s been a long time ago. But, there was, they did submit drawings with the Rule 5 as part of the approved drainage plan. So, there are three drawings that were in the approved drainage plan. I do have copies of those. They’re small, but, I’ll give you these.

President Shoulders: Thanks.

Commissioner Musgrave: I’m good.

Jeff Mueller: So, I guess, if you’re asking, you know, how did this come about? I mean, part of it is under this, since those drawings were submitted as part of this plan. That was one question that was directed towards me.

Commissioner Musgrave: So, as I see it, and I’m sure there’s room for dispute here, the petitioner has met every legal requirement that the county has. The petitioner’s neighbor is still suffering under a ruined pond, but there does not appear to be any legal authority for this Board to do anything about that, unless I’ve missed something.

Jeff Mueller: Well, we still don’t have a fence removed out of the drainage easement on the pond.

Commissioner Musgrave: And, I asked the Building Commissioner, because we passed an ordinance—

Jeff Mueller: Yeah.

Commissioner Musgrave: -- that said problems like that, were the Building Commissioner’s opportunity to send out a citation and move that obstruction, if necessary. I asked the Building Commissioner, well, have you done that? He said, I don’t know, I have to go check. But, whether he’s done it or not, it is not the Drainage Board’s responsibility.

Jeff Mueller: Other than I can’t, I don’t have an as-built set of drawings, because they don’t reflect the correct plan. That’s the only issue. I understand where you’re coming from, but also, I don’t have an as-built. It’s kind of, I guess you could say, who’s chasing who?

Commissioner Musgrave: Right.

Jeff Mueller: But, I don’t have an approved basin, because I do have a fence in it.

Commissioner Musgrave: But, this happens frequently, as we know, right? That your as-builts linger on forever and ever?

Jeff Mueller: Well, I would like to say that since I’ve been in office, no.

Commissioner Musgrave: Right.

Jeff Mueller: I have pushed these as-builts, and I’ve been a little bit more harsh on the as-builts.
Commissioner Musgrave: Well, I see the attorney there.

Jeff Mueller: Yeah, so—

Commissioner Musgrave: Desperately wanting to come and talk.

Jeff Mueller: Yeah, well, I'll let, yeah, I'm more than happy to let somebody else talk.

Commissioner Musgrave: Alright, I'm willing to let this matter...I'm willing to table it for another meeting, in order to get those as-builts, or however long it takes.

Jeff Mueller: Yeah, I understand.

Commissioner Musgrave: The basic thing that we have been holding on was to attempt some resolution for the pond. My attorney has advised me, my Surveyor has advised me that we don't have anything we can do about that.

Jeff Mueller: I mean, the only other thing to tell you is that we have a set of drawings for Rule 5. They have not been released from their Rule 5 obligations, because they have not filed their....John, do you want to help me out here? There is, actually, when you get into Rule 5 you get into John's. A lot of what they've got on those drawings are for construction, for things that have already been constructed, but there is still some open areas, you know, that need to make sure that the sediment is controlled off of.

John Stoll: Like Jeff was saying, the official close out of the erosion control plans is filing the Notice of Termination with IDEM. On this site, that hasn't been done. I don't think it would qualify for an early release, at this point, since there are still remaining lots that have not been developed.

Commissioner Musgrave: Say that again, John.

John Stoll: In order to close a project out, a Notice of Termination has to be filed with IDEM. That's not been done on this project. It, I don't think it qualifies for an early release either, because there are still undeveloped lots within the original approved boundaries of what was submitted for the original erosion control plan and permit.

Jim Johnson: Happy New Year. I'm Jim Johnson. I represent Enclave. At the last meeting, Commissioner Musgrave, you asked for the monitoring inspection report. We provided those. We provided a letter from Morley, and Jim Morley is here, saying that we are in compliance with the approved stormwater pollution prevention plan. We provided an email, which I provided to everyone, that the as-builts meet the requirements, and as Commissioner Musgrave said, it's up to the Building Commissioner to come in and take care of this problem with this fence. We have done everything imaginable to comply with everything that's been asked of us. I really don't want to belabor the point. I would ask that residential Lots in Section 5, 50 and 51, and Lot 60 across Felstead Road be released, and the commercial Lots 57, 58 and 59 be released as well. Thank you.

Commissioner Musgrave: Mr. Johnson?

Jim Johnson: Yes, Ma'am?

Commissioner Musgrave: Because this has been such a, the development of this area has been so destructive to the neighbors pond, why can't your client solve that problem?

Jim Johnson: Your Honor, we tried to solve the problem. We were in an administrative proceeding with IDEM, we had worked on a settlement with IDEM where we would come in and drain the pond. We were dealing with a contractor. We were negotiating with square feet on that issue, and when push came to shove and when we were trying to pull the trigger on that, Ms. Bolin said, that's fine what you're doing with IDEM, but I'm not going to give a release. Basically, she said, you can go ahead and spend whatever money you want to spend on that, but if I'm not happy with it, I'm going to, I'm going to save my rights to come back against you further. So, that literally made it impossible for us to settle with IDEM, because we couldn't settle with IDEM based on the fact that we would be settling something not knowing if we were going to have to come back again and deal
with Ms. Bolin. So, that’s why it ended up that IDEM’s filed depending action against us right now. I mean, we have an action brought against us by the State of Indiana to address this issue, and before Mr. Ziemer gets up here and starts talking about how I’ve delayed that proceeding, I haven’t delayed it. The State of Indiana has filed a motion on it, the motion is set for hearing on January 16th, the case is moving forward. We are being sued by the State on this issue. The reason the issue wasn’t resolved was because Ms. Bolin wanted to hold back her rights in case she wasn’t happy with what we had, were trying to agree to with IDEM. We have done everything that we can to try to get this resolved, short of doing everything that Ms. Bolin wants us to do. We have done everything that we were required to do under the regs to meet the drainage plan. I’m sure we have been jumped through more hoops than most contractors. At this time we would ask that those lots be released. Ms. Bolin can sue us. She can do whatever she wants as far as asserting her rights, but this is not the right forum for her to assert those rights. Are there any other questions? Thank you.

Ted Ziemer IV: Commissioners, Ted Ziemer here, again, on behalf of Ms. Bolin. First I wanted to address Mr. Johnson’s comments there at the end regarding, again, the mediation with IDEM. He asserts that it was impossible for Enclave to settle with IDEM because of Ms. Bolin’s failure to agree to waive any and all claims. I don’t think that’s really accurate. Enclave had agreed to dredge a very small portion of Ms. Bolin’s lake. IDEM, in my discussions with their counsel, could not provide any sort of guarantee that it would fully remedy Ms. Bolin’s, her sediment issue in her lake. They certainly did not ask Ms. Bolin to waive any claims. In fact, Sierra Alberts, counsel for IDEM, went so far as to say, I have no idea how Enclave thinks that a third party that’s not even part of our action, would waive a claim, nor would I recommend to Ms. Bolin to do that. So, to say that that made it impossible for IDEM to settle with Enclave is just not accurate. You know, you’ve all heard all of the facts so many times, I’m not going to rehash them. I did want to just read from the minutes from our June 29, 2016 meeting where Commissioner Ungethiem said, “I understand there’s a sediment issue leaving Section 5, and it is our responsibility, by ordinance, to make sure that sediment does not leave the site. So, from that standpoint we have a legal obligation to make sure that sediment doesn’t leave the site. So, for those reasons, I would make a motion that we do not approve Section 5, that indicates Lots 57, 58, 59, 51 and 50.” We think sediment is still leaving this site, as recently as December 23rd of two days before Christmas Ms. Bolin sent me more pictures showing muddy water exiting the culvert and draining directly into her pond. We don’t want this to drag on forever, but until the time that this litigation with IDEM plays out, if we release these lots, she’s going to have no recourse. She can file suit tomorrow, but once the lots are sold, her judgement is not going to be worth the paper it’s printed on. You know, just to finally reiterate, if we send this message to developers that they can do that to these people, people like Dan Buck are going to go on and just know that essentially they can thumb their nose at the Drainage Board and have no repercussions, and he’s going to do it again. So, we respectfully ask that you delay, if not indefinitely, at least until the litigation with IDEM plays out. Thank you.

President Shoulders: Ms. Bolin, do you have anything to add?

Barbara Bolin: I do have a question.

President Shoulders: Sure.

Barbara Bolin: They keep saying why am I here at the Drainage Board? The Drainage Board is the one that approves everything to begin with, is that not correct?

Commissioner Musgrave: Within the scope of our authority, but I understand, and correct me if I’m wrong, Joe, when the issue is adjacent land, we don’t have authority. If it crosses a roadway—

Barbara Bolin: It crossed the roadway. It did.

Ted Ziemer IV: Yeah, my understanding, and Jeff Mueller or John Stoll could help me maybe—

Barbara Bolin: They definitely can tell you too.
Ted Ziemer IV: --it goes over Felstead Road, into a ditch, into a culvert, then into Ms. Bolin’s lake.

Barbara Bolin: But, it also crosses the roadway just overflowing on the road. Mr. Buck had to be out there shoveling off the road. The very first time it happened, not all the different times it has happened. I’ve been dealing with this for four years.

Ted Ziemer IV: About the coloring.

Barbara Bolin: And he put dye in it to cover it up. He put dye in his own holding pond, when the rains came it filled my lake. It was in the newspaper. He said he thought it would make it look better. So, it’s in the newspaper. We’ve been dealing with it, I’ve been very nice with everybody, I haven’t talked with the newspaper about it, I’ve kept it all and tried to work it out, but I would not, they’re telling the truth I would not say you could clean 1/6 of my lake and I won’t go after you anymore. I will not do that. I don’t feel I’m wrong about it. But that’s all I have to say. I felt like the Drainage Board approves everything, I feel this is your, I mean, it’s really your responsibility, maybe you don’t have the authority, but in my eyes, it was your responsibility to correct it. All this time that we’ve gone… I asked for it to be stopped when it happened the second time. No, it continued on for four years, and it’s still happening. No wonder I have 6,700 cubic yards of mud in my lake. So, that’s all I have to say.

Commissioner Musgrave: You want us to table this?

Barbara Bolin: I sure do.

Commissioner Musgrave: You don’t have any other suggested motion for me to make today?

Ted Ziemer IV: Well, I mean, I understand you don’t have the authority to make them dredge the entire lake.

Barbara Bolin: No.

Ted Ziemer IV: Our biggest concern, honestly, is if the lots get released, they sell them and then there’s an LLC that’s left that has zero assets, and IDEM can get a judgement against them, Ms. Bolin can get a private judgement against them, but nothing will happen because there will be no money to go in and actually dredge. So, you know, essentially she’s left with nothing. So, that’s our concern. Unfortunately, at this stage, likely we are going to file suit, but, again, we’re under like a clock here, but if the lots get released prior to any conclusion of a personal lawsuit or IDEM’s lawsuit, it doesn’t matter what we do in court.

Commissioner Musgrave: When is the court hearing?

Ted Ziemer IV: January—

Jim Johnson: There’s a hearing on January 16th, but it’s not dispositive. It’s just a motion.

Commissioner Musgrave: When is it likely to be?

Jim Johnson: It could be—

Ted Ziemer IV: A year.

Jim Johnson: -- easily a year.

Commissioner Musgrave: So, you want us to table this for a year?

Ted Ziemer IV: Yes, or until the IDEM litigation plays out.

Commissioner Musgrave: That’s the perfect motion, in your opinion?

President Shoulders: When you say table, you mean, not release the lots?

Ted Ziemer IV: Not release the lots until—

President Shoulders: Until the—
Ted Ziemer IV: Yeah, if the Indiana Department of Environmental Management comes out and says we’re satisfied—

President Shoulders: Right.

Ted Ziemer IV: --with what they’re going to do to remedy this situation, and actually that goes to fruition and the repairs are made. There’s nothing else we can do. You know, obviously we wouldn’t expect you to hold the lots back after that point, but the very real concern is that the lots are sold, IDEM gets a judgement, but can never enforce it.

Commissioner Musgrave: Well, isn’t it true that he could sell all of the lots tomorrow, and the same situation is in play even if we don’t release them?

Ted Ziemer IV: Is that possible?

Commissioner Musgrave: Yeah.

Commissioner Ungethiem: John is shaking his head no.

Jim Johnson: (Inaudible. Not at microphone.)

Commissioner Ungethiem: I don’t think they can sell them unless—

Ted Ziemer IV: Well, then the new owner would then, I guess—

Commissioner Musgrave: Sorry, he can sell them without the release from this Board, correct, Joe?

Joe Harrison, Jr.: He could, but sooner or later the release has got to happen.

Ted Ziemer IV: Exactly.

Commissioner Musgrave: Right, but the sale of the lots and the disappearance of the assets that you’re looking to hold onto could happen regardless of what this Board does.

Ted Ziemer IV: I suppose. We think it’s unlikely that they would be sold without the lots being released.

Commissioner Musgrave: In his position, I would create a new LLC and sell them all to that. So, I mean, it’s extraordinarily likely that he would do that.

Joe Harrison, Jr.: And it’s possible a lawsuit could be filed and you could try to get some money that may be out there down the road. Or it might, right?

Ted Ziemer IV: Sure.

Joe Harrison, Jr.: I mean, you could probably do that tomorrow, right?

Ted Ziemer IV: Correct.

Joe Harrison, Jr.: Okay.

Jim Johnson: May I briefly respond, if you’re finished?

Ted Ziemer IV: Yeah, thank you.

Barbara Bolin: Thank you.

President Shoulders: Thanks, thank you both.

Jim Johnson: We’ve complied with all applicable ordinances. We have a letter from Morley that says that the site looks to be in compliance with the approved stormwater pollution prevention plan. That’s dated December 11th. We’ve done everything that we can do to comply with these requirements. Since we’ve complied with the requirements, the lots should be released. Ms. Bolin has had legal rights, she’s had legal rights for a long time, since the day that this occurred. She can assert her legal rights and this can be handled by the parties in litigation, but at this time we ask for a vote that the residential, that the lots in Section 5 be released. We move that lots in Section 5 be released, the residential Lots 50 and 51, Lot 60 and the commercial Lots 57,58 and 59. Thank you.
Commissioner Musgrave: Mr. Johnson? The Surveyor says that he does not have the as-buitts, which is a requirement of the code. When will you provide this to him?

Jim Johnson: We have the as-buitts. The as-buitts, we have the as-buitts as it was built, and I don’t know why the Surveyor is trying to make it so difficult on us.

Jeff Mueller: No, no, no, no. Let’s talk about as-buitts. Is a fence in the basin? Answer the question.

Jim Johnson: Yeah, there’s a fence in basin.

Jeff Mueller: So, the as-buitt doesn’t show the fence.

Jim Johnson: So, so—

Jeff Mueller: Answer the question. Does the as-buitt show the fence?

Jim Johnson: So, you want an as-buitt from us that’s showing the fence?

Jeff Mueller: No, I want an as-buitt that shows a dry basin that will hold the quantity of water.

Jim Johnson: See, what he’s trying to do is he’s trying to use this as-buitt argument to make us responsible for the fence. To make us responsible for moving the fence. That’s what he’s trying to do.

Commissioner Musgrave: I don’t think so. I’ve had interaction with the Surveyor on other, unrelated to your development, and I know that he is passionate about these as-buitts. Mr. Surveyor, we’re all being held up by the Building Commissioner here. Have you done anything to encourage—

Jeff Mueller: That’s his job.

Jim Johnson: We’ve contacted the Building Commissioner. We have an email from the Building Commissioner saying that he’ll get to it when he gets to it.

Jeff Mueller: Then go down and see him.

Commissioner Musgrave: Well, go sue him.

Jim Johnson: We’re not going to sue the Building Commissioner. We would like a determination of this. We’ve complied with the requirements. This is a red herring that’s being put up to just try to delay this. I mean, it’s time, we’ve met the regulations. This is, you know, this Commission does not represent Barbara Bolin. It represents the residents of Vanderburgh County, and it’s inappropriate for it to do her bidding. She can do her bidding. It’s inappropriate for the Surveyor to do her bidding.

Jeff Mueller: I am not doing her bidding. I am doing the ordinance, and I resent that comment, Mr. Johnson.

Jim Johnson: I resent having coming here—

Joe Harrison, Jr.: Enough.

Jim Johnson: Okay.

Jeff Mueller: That’s it. I resent that comment.

Jim Johnson: I would ask for a determination.

Commissioner Musgrave: Joe, what was it that John needed? Refresh my memory.

Joe Harrison, Jr.: John?

President Shoulders: Stoll.

Commissioner Musgrave: Stoll. Rule 5?
Commissioner Ungethiem: Soil erosion documents that are not completed, from what I wrote down.

Commissioner Musgrave: But, he can't do them—

Jim Johnson: That was the release from IDEM, I believe.

Joe Harrison, Jr.: Which is different.

Jim Johnson: Which is different than this.

John Stoll: I’m not sure where the line is drawn relative to the drainage and erosion control side of things, because, like Jeff said earlier, the erosion control plans were presented as part of the drainage. You can’t say, I guess the drainage is complete if the erosion control isn’t complete, if they were all lumped together on the submittal. That’s probably something for all the lawyers to argue out, but long story short, if the erosion control plan had to be finalized and released in conjunction with the drainage plan, I don’t think you can do it, because there is, there are lots remaining to be developed within what was originally permitted on the original erosion control plan. So, if that plan is tied in with the drainage plan, I don’t know if you could say it’s all finished at this point. It’s probably a gray area for the lawyers, but—

Joe Harrison, Jr.: Well, the one thing that does need to be done though is the, I mean, if anything’s ever considered by the Board, as far as releasing the lots, I would recommend that you consider it being conditioned upon submittal of revised as-built plans.

Commissioner Musgrave: I’m going to make a motion to that effect, along with compliance with the soil and erosion document, whatever it takes to get that done. I’m going to make a motion to release Lots 50, 51, 60, 57, 58 and 59, and it will only be effective when the as-builts are submitted and the soil and erosion document is submitted.

John Stoll: Do you mean the Notice of Termination for the entire project?

Commissioner Musgrave: Right.

Joe Harrison, Jr.: Yeah, and Mr. Morley may need some clarification on that.

Jim Johnson: That’s, the Notice of Termination is done by IDEM.

Joe Harrison, Jr.: Yeah, I think that’s done by IDEM, but I think….it has to filed with IDEM.

Commissioner Musgrave: I just said filed, not the Notice of Termination.

Jim Morley, Jr.: Yeah, the Notice of Termination comes when the whole thing is done—

Joe Harrison, Jr.: You’re not there yet.

Jim Morley, Jr.: --and we’re not ready for Notice of Termination.

Commissioner Musgrave: Okay.

Jim Morley, Jr.: We’re not asking for Notice of Termination.

Commissioner Musgrave: Well, let me revise my motion that it is when this, the release of these lots will be effective when the as-built is supplied. Now, as we all know here, this requires action by another party, the Building Commissioner. I guess we could give the Building Commissioner a hard time, but that’s about it.

Jim Johnson: Can we supply the as-built that shows the current (Inaudible. Not at microphone.)?

Commissioner Musgrave: You have to do exactly what the Surveyor requires to be done. In all other cases and in this case, in all of those cases, no, but I will tell you that the Mayor hires and fires the Building Commissioner, and if you would like to place political pressure, we’re of some use, but he’s of more. So, I invite you across the hall to discuss it with him.
Jim Johnson: So, you’re putting a requirement on us to make the Building Commissioner do his job? I mean—

Joe Harrison, Jr.: Well, you’re going to have to submit as-builds. I think the Building Commissioner needs to pay them a visit in some fashion, whether it’s a letter or something.

Jim Johnson: Well, we’ll submit that—

Commissioner Musgrave: Come to the microphone so she doesn’t get angry with us.

Jim Johnson: I’m sorry. We can submit as-builds showing what is there now.

Commissioner Musgrave: That won’t cut it with him.

Jim Johnson: Well, I mean, I don’t understand what’s, I mean, we can’t make the Building Commissioner do his job or her job.

Commissioner Musgrave: His.

Jim Johnson: His, I’m sorry, we can’t make the Building Commissioner—

Joe Harrison, Jr.: Maybe you ought to submit two versions.

Jim Johnson: Huh?

Joe Harrison, Jr.: Maybe you ought to submit two versions.

Jim Johnson: Two versions, one with it being gone and one with it being there? Okay, we can do that.

Joe Harrison, Jr.: But, the Building Commission’s got to, you’ve got to make some contact with them to get out there.

Jim Johnson: Okay.

Joe Harrison, Jr.: Maybe you ought to walk down there.

Commissioner Musgrave: It’s a joint city-county department.

Joe Harrison, Jr.: Say you were just here and talking about it.

Commissioner Musgrave: With the Mayor having hiring and firing (Inaudible).

Joe Harrison, Jr.: I don’t know how they’re going to vote, but that’s what I would do.

Commissioner Musgrave: Okay?

Jim Johnson: Okay.

Commissioner Musgrave: That’s my motion, but it hasn’t received a second yet.

Commissioner Ungethiem: Joe, let me ask a legal question here. We have a soil erosion ordinance, and that soil erosion ordinance has specific things in it, what can and can’t be done. Obviously that erosion, that ordinance has been violated, over the last four years, that allowed this sediment to get into the lake. From a legal perspective, and I know IDEM has stepped in and said here is the situation and here’s what we’re going to do, but from a legal standpoint, from a county standpoint, from a Drainage Board standpoint, what is our legal obligation of that sediment leaving the site, and entering another person’s property? And, does the county bear any legal responsibility for that?

Joe Harrison, Jr.: Well, the county doesn’t bear any responsibility. What the county did do, several years ago, was issue some violations.

Commissioner Ungethiem: We did issue violations. We did issue fines.

Joe Harrison, Jr.: And that was on the initial release. The project has gone forward, I guess, it’s complete, near completion. IDEM has stepped in, because they’re the ones that have jurisdiction over that issue. That’s why they got involved, that’s why they filed a
law suit, that’s why they’re the plaintiff, or the petitioner, and the respondents are The Enclave, or Mr. Buck’s entity. The county, you know, really didn’t have any authority to do anything like that.

Commissioner Ungethiem: We did what was within the—

Joe Harrison, Jr.: Ordinance.

Commissioner Ungethiem: --ordinance, within our authority of the ordinance.

Joe Harrison, Jr.: Right.

Commissioner Ungethiem: But, it still continued to happen. I guess my question then becomes is, did we do, did we, the county, do everything we could, within our jurisdiction, to minimize the problem? And, do we have legal obligation—

Joe Harrison, Jr.: I think the county did everything they could do at the time. The violations were issued, they were prompt. I don’t know what else the county could have done, and this matter is still hanging there today.

Commissioner Musgrave: Well, I think it’s just awful that we’ve been put in this position, where Ms. Bolin has this great harm that’s been done to her, and we can’t do anything about it.

President Shoulders: So, there’s a motion on the floor by Commissioner Musgrave. Commissioner Ungethiem do you haven anything else to…and, first of all, I agree with you, Commissioner Musgrave, in terms of not being able to do anything. I appreciate Ms. Bolin being here. I appreciate all of you being here today. Anything else that you want to add? So, there is a motion on the floor. If you could read back your motion, just so we know what it is, since we’ve—

Commissioner Musgrave: To release Lots 50, 51, 60, 57, 58 and 59, effective upon the submission of the acceptable as-builts.

President Shoulders: Okay, there’s a motion. Do we have a second to this motion? Okay, so the motion dies. Okay. Anything else to add, by the Commissioners, by the public? We probably need to have the next step, if we’re not going to—

Joe Harrison, Jr.: Or they come back.

President Shoulders: Yeah, so, on that note, do we have a motion to table this for another time?

Commissioner Musgrave: I’m not going to make that motion.

President Shoulders: Okay.

Commissioner Musgrave: And, I’m not sure you have to. We had a motion, nothing happened, the matter died.

Jim Johnson: Well, is this a determination pursuant to the statute? I mean, is this, I mean—

Joe Harrison, Jr.: There’s been no vote on your motion, on what you wanted.

Jim Johnson: I mean, we need to move forward, one way or another here. I mean, if it’s not here, we need to move forward. I mean, I don’t think you can, can you just drop it and just not, just let it sit?

Commissioner Musgrave: I don’t know, maybe you need to sue us too.

Joe Harrison, Jr.: Well, I think that’s what he’s wanting to do.

Jim Johnson: Well, I don’t want to sue anybody. I want, I mean, I’ve been here three times, we’ve tried to comply with everything that you’ve asked for. The only thing that’s hanging out there is something that is outside of the regulations, and I just ask the Commission to do what it’s supposed to do. If we’ve complied with the drainage plan, a motion, and at least vote on it.
Commissioner Musgrave: Let me try one more time. I want to release Lots 50 and 51, as soon as the acceptable as-builds. That leaves the commercial lots not released.

Jim Johnson: Well, but we need all of the lots released.

Commissioner Musgrave: I know. My motion is for Lots 50 and 51, at this point.

Jim Johnson: So, what happens to the commercial lots? They just sit forever? I mean, the Commissioners, you have a responsibility, I mean, as part of the Drainage Board—

Commissioner Musgrave: Let the record show that I'm attempting to carry out my responsibility.

Jim Johnson: --I mean, the Drainage Board, you have a responsibility. I mean, it seems that you could have a motion and vote it up or down, one way or the other.

President Shoulders: So, you've amended your motion, Commissioner—

Commissioner Musgrave: I made a new motion.

President Shoulders: You made a new motion to release—

Commissioner Musgrave: 50 and 51.

President Shoulders: 50 and 51, they're two residential lots.

Commissioner Musgrave: Those are the only two residential lots.

President Shoulders: Those are the only two residential lots, okay.

Jim Johnson: But, we need a resolution of the commercial lots.

Joe Harrison, Jr.: I think you need them all, don't you?

Jim Johnson: Yes, we need them all. We need a resolution—

Joe Harrison, Jr.: Well, maybe you ought to go in baby steps here.

Jim Johnson: Okay, so, go ahead.

President Shoulders: Alright, so there's a motion on the floor to release solely the residential lots, which are number 50 and 51. Do we have a second to release solely the residential lots?

Commissioner Ungethiem: I will second that, solely to get it to a vote, so that Mr. Johnson is right that we need to vote on this. I will second that portion of it, so that we would take it to a vote.

President Shoulders: And then a vote, right now, what we're saying is to vote on solely the residential.

Commissioner Ungethiem: Only the residential lots.

President Shoulders: Okay.

Joe Harrison, Jr.: Roll call.

Madelyn Grayson: Commissioner Musgrave?

Commissioner Musgrave: Yes.

Madelyn Grayson: Commissioner Ungethiem?

Commissioner Ungethiem: I'm going to dangle this out as hope that we can get these things finally resolved. I will vote yes for the residential lots. I will not vote for the commercial lots, because I think there's still work to be done, and I still think there needs to be some work to be done from the developer's standpoint.

Madelyn Grayson: President Shoulders?
President Shoulders: I will also vote yes in the release of the residential. No to commercial, because of those reasons—

Joe Harrison, Jr.: There’s no—

President Shoulders: Okay. Yes, to the residential

(Motion approved 3-0)

Commissioner Musgrave: I’ll make a motion to release Lots 60, well, 57, 58, 59 and 60. Again, effective upon the submission of an acceptable as-built.

President Shoulders: So, the motion now is to release the additional lots. I need a second for that.

Commissioner Musgrave: So, we can vote on it, will you second it?

President Shoulders: Okay, I’ll second it so we can take it to a vote. How’s that?

Commissioner Musgrave: That’s fine.

Joe Harrison, Jr.: Roll call.

President Shoulders: Uh-huh.

Madelyn Grayson: Commissioner Musgrave?

Commissioner Musgrave: Yes.

Madelyn Grayson: Commissioner Ungethiem?

Commissioner Ungethiem: No.

Madelyn Grayson: President Shoulders?

President Shoulders: And, again, I will also vote no, because I think there’s work to be done, and I believe that we don’t want to leave an assetless LLC with this still not resolved.

(Motion denied 1-2. Commissioners Ungethiem and Shoulders opposed.)

Commissioner Musgrave: Just to address your last comment there, they can leave this meeting tonight, set up an LLC on the Secretary of State’s website tonight.

President Shoulders: Uh-huh.

Commissioner Musgrave: Sell them all to that LLC, and it’s assetless. The original one is assetless.

President Shoulders: They could.

Commissioner Musgrave: Nothing that we are doing here today prevents them, now or ever, from doing that.

President Shoulders: Yeah, and I put myself in her shoes, and I’m not comfortable releasing the commercial lots. Okay?

Ditch Maintenance Claims

President Shoulders: Okay, moving on—

Joe Harrison, Jr.: Ditch claims.

President Shoulders: Ditch claims. Jeff?

Jeff Mueller: One second please. You have a summary sheet for, sorry about that, 13 claims, $11,085.91. This is all for previously approved work. Some of them are 15 percents and some of them are for 85 percents. I ask for your approval. Also I do ask that, I think at the beginning of each year we ask if it’s okay for Madelyn to stamp those, instead of you signing individually. I bring that up too.
Commissioner Musgrave: I'll make a motion that we allow Madelyn to stamp those rather than having us sign individually.

Jeff Mueller: Thank you, because I would be in trouble if I didn't bring that up for Madelyn.

President Shoulders: There's a motion to stamp, rather than individual, I need a second.

Commissioner Ungethiem: Second.

President Shoulders: Okay, all in favor please say aye.

All Commissioners: Aye.

President Shoulders: All opposed same sign.

(None opposed)

(Motion approved 3-0)

Jeff Mueller: Did we approve the claims then too?

Commissioner Musgrave: I'm making a motion—

Jeff Mueller: Oh, I'm sorry.

Commissioner Musgrave: --to approve the claims.

Jeff Mueller: I'm sorry.

Commissioner Ungethiem: I second it.

President Shoulders: Okay, all in favor please say aye to approve the claims.

All Commissioners: Aye.

President Shoulders: Opposed same sign, aye.

(None opposed)

(Motion approved 3-0)

President Shoulders: Thank you.

Discussion of As-Built Procedure

Jeff Mueller: The only other thing, I do apologize for losing my cool. I don't do that very often.

Commissioner Musgrave: Well, let's talk about as-builts. Can you and I set a meeting after this meeting, where we can discuss a procedure for as-builts?

Jeff Mueller: Okay, I think we have that, because they have, we've actually simplified it.

Commissioner Musgrave: Let's discuss that at our meeting.

Jeff Mueller: Okay, because—

Commissioner Musgrave: So, I'm crystal clear.

Jeff Mueller: Yeah, but, I do want people to understand that there is something that says, okay, you're supposed to have a dry basin. So, your as-built needs to reflect that. When you put a solid fence in that, that's—

Commissioner Musgrave: Right, that's the part that I, or a fence or anything, a little building or any other thing, I want to discuss that. Maybe we need to write up a technical memorandum, or something that pulls it all together in one place so that it's—

Jeff Mueller: We've actually got that on the certification statement now. They have that opportunity, but it has to be—
Commissioner Musgrave: Let's talk about it.

Jeff Mueller: -- it has to be that they, it has to perform. That's the end result.

Commissioner Musgrave: I want to get there, and I want it to be easier for people to understand.

Jeff Mueller: Okay, I understand where you’re coming from, but you’re, we’ve got to be careful about professional ethics on engineers.

Commissioner Musgrave: Okay, you'll help navigate that, right?

Jeff Mueller: Right, and that's where, that's what I’m saying, we’ve got to be very careful about that, alright?

Commissioner Musgrave: Okay. I'll be in touch.

Jeff Mueller: Alright? And, Commissioner Ungethiem, I think you understand that fully too. When you put your stamp on something, it's got to reflect what it is.

Commissioner Ungethiem: You're liable actually.

Jeff Mueller: You are liable. That's right.

Joe Harrison, Jr.: Actually.

Jeff Mueller: And there have been people that went to jail for that. So, anyway.

Adjournment

Commissioner Musgrave: Well, I don’t have any other business. Would you like me to motion to adjourn?

Commissioner Ungethiem: Anything else?

President Shoulders: I would like that.

Commissioner Ungethiem: I'll second it.

President Shoulders: Okay, all in favor please say aye.

All Commissioners: Aye.

President Shoulders: All opposed same sign.

(None opposed)

(Motion approved 3-0)

President Shoulders: We are adjourned in the 2018 first meeting.

(The meeting was adjourned at 4:47 p.m.)

Those in Attendance:

<table>
<thead>
<tr>
<th>Ben Shoulders</th>
<th>Cheryl Musgrave</th>
<th>Bruce Ungethiem</th>
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<tr>
<td>Jeff Mueller</td>
<td>Joe Harrison, Jr.</td>
<td>Madelyn Grayson</td>
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<td>Jim Johnson</td>
<td>Barbara Bolin</td>
<td>Ted Ziemer, IV</td>
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<tr>
<td>Jim Morley, Jr.</td>
<td>John Stoll</td>
<td>Others Unidentified</td>
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<td>Members of Media</td>
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VANDERBURGH COUNTY
DRAINAGE BOARD

Ben Shoulders, President

Cheryl A. W. Musgrave, Vice President

Bruce Ungethiem, Member

(Recorded and transcribed by Madelyn Grayson.)