The Vanderburgh County Drainage Board met in session this 7th day of November, 2017 at 5:03 p.m. in Room 301 of the Civic Center Complex with President Cheryl Musgrave presiding.

**Call to Order**

President Musgrave: I’m going to call to order the November 7, 2017 meeting of the Vanderburgh County Drainage Board.

**Pledge of Allegiance**

President Musgrave: If you will please join me in the Pledge of Allegiance.

(The Pledge of Allegiance was given.)

**Approval of the October 24, 2017 Drainage Board Meeting Minutes**

President Musgrave: I would entertain a motion for approval of the minutes of the previous meeting.

Commissioner Ungethiem: So moved.

Commissioner Shoulders: Second.

President Musgrave: We have a motion and second. Any discussion? All of those in favor signify by saying aye.

All Commissioners: Aye.

President Musgrave: The motion carries.

(Motion approved 3-0)

**Waiver & Release & Drainage Easement Encroachment Agreement**

Lot 20: Blue Heron Estates

President Musgrave: We move now to the waiver and release of Lot 20 in Blue Heron.

Jeff Mueller: This is for a waiver to the drainage plan to eliminate the designed swale on Lot 20, which the property is located at the top of the drainage. The lot essentially sheet flows through the backyard. After they complete the installation of their ground pool, their inground pool, they won’t even have that occur. The encroachment is for an existing fence, so I have no problem with either request, and I’m bringing them to you for your approval.

President Musgrave: So, there’s an encroachment of a fence, but not a pool?

Jeff Mueller: Right.

President Musgrave: Alright.

Jeff Mueller: Yeah, an encroachment on the fence, and then a waiver to do away with the drainage swale.

President Musgrave: Right. Is there a motion to approve the waiver and release of Lot 20 in Blue Heron?¹

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¹ Motion also included approval of the Drainage Easement Encroachment Agreement.
Commissioner Ungethiem: So moved.
Commissioner Shoulders: Second.
President Musgrave: All of those in favor signify by saying aye.
All Commissioners: Aye.
President Musgrave: The motion carries.

(Motion approved 3-0)

Stone Ridge Animal & Equine Care Extension Letter

President Musgrave: We move now to Stone Ridge Animal and Equine Care extension letter.

Jeff Mueller: This site is located on Boonville-New Harmony Road, across from the 4-H Center. As you can see from the pictures taken in October, the detention pond has some serious issues. I met with the owner, and he’s here tonight, Dr. Stone, and the developer on October 10th, and to be honest with you, any attempt to correct the problems at this site within the remainder of the year would be futile. The owner is operating under a temporary C of O and essentially boxed in a corner. I suggested that the owner bring a request to the Board to ask for an extension to complete the work until next spring. My suggestion, however, is conditioned on these suggestions, first, that proper erosion control be maintained throughout the winter; second, the temporary cover be installed, either wheat or rye or something else; and, third, that the owner understand that while the Board may approve the extension, that he still may have issues with the Town of Darmstadt, as well as the appropriate State or federal entities. This is the basin, this again is the basin, the outlet is up here. The basin liner is underneath the mud. There’s an inlet pipe off the drive, so the basin would be back here. The water coming from the north, and it’s actually coming through and eroding this area right here. So, he’s got some problems. He also wants to move forward with another barn this spring. Like I said, I know he’s had some contractors out there, they actually buried a piece of equipment. There’s no sense in him going out there and trying to do anymore, but I do think he needs to make sure and control the erosion. Dr. Stone is here if you’ve got some questions for him. Dr. Stone, if you would like to make a comment?

President Musgrave: You’re not required to make a comment, if you don’t want to make one.

Jeff Mueller: So, you’ve got that letter in your file.

President Musgrave: Alright, is there a motion to approve the extension letter, and understanding that the Surveyor had three conditions, or that there needs to be erosion control between now and the end of the year, and a temporary cover, and that any waiver that we grant, in the form of an extension, does not protect the landowner from actions that Darmstadt or anyone else might take.

Commissioner Ungethiem: Before I make that motion, just a point of legal clarification, since this is inside the Town limits of Darmstadt, and maybe Joe can speak to this, do we have jurisdiction?

Jeff Mueller: We have a working agreement with the Town of Darmstadt.

Commissioner Ungethiem: Okay.

Jeff Mueller: That was signed, I think at Darmstadt’s request, several years ago. So, we review the drainage plans for Darmstadt. The drainage plans I actually forward to Town Board, and usually Steve Kahre takes a look at them. He did look at this one when it came through, and actually requested one of the sizes of the pipe over the driveway be enlarged. So, we did communicate on the few projects that have come through.

Commissioner Ungethiem: Okay, then I make the motion to, for the extension letter.

Commissioner Shoulders: Second.
President Musgrave: We have a motion and second. Any further discussion? All of those in favor signify by saying aye.

All Commissioners: Aye.

President Musgrave: The motion carries, and the extension is granted.

(Motion approved 3-0)

The Enclave at Eagle Cliff Update

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, there’s a thick little binder, and a big stapled document. 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, it essentially says, “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 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 drawings, 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.

Commissioner Shoulders: Yes.

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.

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, 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, if 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.

Jim Johnson: It’s a year, right?

Jeff Stemaly: Which letter of credit.

President Musgrave: Any letter of credit.

Commissioner Shoulders: The one that relates to… I mean, there’s a maturity on that letter, unless—

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.

President Musgrave: We move now to the Warrick-Vanderburgh Joint Drainage Board meeting.

Commissioner Shoulders: Yeah.

Jeff Mueller: Just a notice that next Wednesday, November 15th at 2:00 p.m., Room, what is that 305?

Joe Harrison, Jr.: I think it's in here.

Jeff Mueller: Oh, it's in here? Okay.

President Musgrave: What time?

Jeff Mueller: Two.

Commissioner Ungethiem: 2:00.

President Musgrave: Okay.

Jeff Mueller: Okay.

President Musgrave: Alright, so, we're going to have another meeting to discuss the failure of that land to drain.

President Musgrave: The ditch maintenance claims are next on the agenda.

Jeff Mueller: I'm not touching that one.

President Musgrave: The ditch maintenance claims, it looks like you have a short list.

Jeff Mueller: You have six claims for a total of $6,771.74. All for work that was previously approved by the Board. I do want to point out that one claim was for 100 percent, and that's because the vendor did not notify us that the work was completed, until sometime after completion. So, they've already met all of the requirements. So, and we're only asking for the 100 percent payment, it's $256.02. So, I would ask for approval of those six claims.

Commissioner Ungethiem: So moved.

Commissioner Shoulders: Second.

President Musgrave: We have a motion and second. Is there any further discussion?

Commissioner Shoulders: No.

President Musgrave: I'll 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)

Other Business

President Musgrave: Do we have any other business?

Jeff Mueller: Just one quick comment, I did meet with a group, a working group from the Indiana County Surveyor’s Association last Friday in Greenfield. The meeting was between a group of about eight or nine of us, along with four people from the Indiana Department of Environmental Management, concerning the new Stormwater General Permit that is proposed that will eliminate Rule 5. Specifically what the Surveyor’s Association is interested in is the requirement on whether the new permit would cover the work being done by the Drainage Board on legal drains. I think the group is making progress on essentially saying that IDEM would take out the requirement for this permit activity for work that was done on rural legal drains, which are most of our drains. It wouldn’t be some of those on the east side, but instead of having to meet these permit requirements, we would kind of be back where we were before. Obviously, we just couldn’t go out and do anything, but we would not fall under these strict restrictions of this proposed Rule 5. So, that’s a plus, if that gets done.

President Musgrave: Okay.

Jeff Mueller: But, anyway, it was, I was there more as an observer. There’s been a couple of County Surveyors that have been very active in this process. Like I said, if we have to sit here and start filing permits every time we want to dredge a channel, let’s just hope we don’t have to.

President Musgrave: Okay. Anything else?

Jeff Mueller: I have nothing else.

Public Comment

President Musgrave: Eldon, did you have any comment tonight?

Eldon Maasberg: (Inaudible. Not at microphone.)

President Musgrave: Eldon being the only member of the public here.

Eldon Maasberg: Maybe Jeff’s got a comment to go with it. You passed that law a minute ago on going to be tax exempt, where’s that ground lay at?

Joe Harrison, Jr.: That’s not us.

President Musgrave: Let me give you the map.

Joe Harrison, Jr.: It has nothing to do with the county. That’s city.

President Musgrave: Come on up. This is city.

Commissioner Shoulders: That’s city.

Joe Harrison, Jr.: The county has nothing to do with it.

Eldon Maasberg: Okay, well, then that answered my question.

Joe Harrison, Jr.: Yeah, no, it’s a city deal.

Commissioner Shoulders: It’s city.

President Musgrave: It’s essentially downtown. Do you want the map?

Commissioner Ungethiem: It’s basically downtown and a little bit north.
Madelyn Grayson: Before we adjourn the meeting, can I get one point of clarification? On the waiver and release of Lot 20 in Blue Heron, did you also approve the drainage easement encroachment agreement?

Commissioner Shoulders: I thought we did.

Jeff Mueller: I requested both.

Joe Harrison, Jr.: Yes.

Madelyn Grayson: Okay, I just wanted to make sure. I missed that. Okay.

President Musgrave: Alright. Any other public comment? Any further business?

Adjournment

President Musgrave: Is there a motion to adjourn?

Commissioner Shoulders: Motion to adjourn.

Commissioner Ungethiem: Second.

President Musgrave: We are adjourned.

(The meeting was adjourned at 5:54 p.m.)

Those in Attendance:
Cheryl Musgrave
Jeff Mueller
Jim Johnson
John Stoll
Members of Media

Ben Shoulders
Joe Harrison, Jr.
Ted Zimer IV
Eldon Maasberg

Bruce Ungethiem
Madelyn Grayson
Barbara Bolin
Others Unidentified

VANDERBURGH COUNTY
DRAINAGE BOARD

Cheryl Musgrave, President

Ben Shoulders, Vice President

Bruce Ungethiem, Member

(Recorded and transcribed by Madelyn Grayson.)