**MINUTES**

**WARRICK COUNTY DRAINAGE BOARD**

**&**

**DEPARTMENT OF STORM WATER**

**November 8, 2021**

Regular Session

Old Historic Courthouse

107 W. Locust St. Suite 303

Boonville, In 47601

812-897-6170

The Warrick County Drainage Board and Department of Storm Water met in regular session with Bob Johnson, President; Dan Saylor, Vice President; Terry Phillippe, Secretary; Morrie
Doll, Attorney; Steve Sherwood, Storm Water; Jason Baxter, Deputy Surveyor and Jennifer Curry, Recording Secretary.

Present in the audience: Dena Jacobs, Jim Morley Jr, Glen Meritt, and Bobby Howard

**PLEDGE OF ALLEGIANCE:**

President Bob Johnson opened the meeting of November 8, 2021 with the Pledge of Allegiance.

**APPROVAL OF MINUTES**

President Bob Johnson: First we have the approval of minutes for the October 25, 2021.

Commissioner Dan Saylor: I make a motion to approve

Commissioner Terry Phillippe: Second.

President Bob Johnson: All in favor 3-0

**DENA JACOBS-8241 BLAKE BLVD. NEWBURGH, IN 47630-THE OAKS SUBDIVISION**

President Bob Johnson: Next up we have Ms. Dena Jacobs 8241 Blake Blvd Newburgh, IN The Oaks requesting to vacate portion of the Public Utility and Drainage Easement for a retention wall and landscaping erosion control. Ms. Jacobs, could you come up? State your name please.

Dena Jacobs: Dena Jacobs.

President Bob Johnson: Okay, you are wanting to put in a retention wall? Is that what you are wanting to do?

Dena Jacobs: Yes, I have two situations really. When I bought the house I was unaware and later discovered that a addition and patio encroach a foot and a half into the easement so I started to look into what to do about that and then also I am dealing with an ongoing of…I mean…since that part of my house is so close to the retention ditch I am having erosion so I am seeking an option to help control that for the benefit of maintenance of the retention ditch as well as maintenance of the foundation of this house. I do have some extra pictures I brought and possibly some additional information. My preference would be a vacate and I guess, I have some pictures to show that most of the utility line…I mean the utility line is all within the first 12-feet and I’ve taken the fence down to open up the back 4-feet for additional if things need to be put in later.

Commissioner Dan Saylor: Dena, I have a question it says you want to put a retention wall in…

Dena Jacobs: Retaining wall

Commissioner Dan Saylor: Yeah, a retention retaining wall?

Dena Jacobs: May I hand out some additional?

Morrie Doll: Yes, just please watch the step we have people that trip.

Steve Sherwood: If you want just hand them to Jennifer at the end so you don’t have to get up top of the platform.

Dena Jacobs: I have four copies of the pictures, my printer started to run out of colored ink, so…

Commissioner Dan Saylor: Steve, what pipe is under ground?

Steve Sherwood: There is an 18-inch pipe that drains the retention…

Dena Jacobs: Picture #8 has a drainage pipe and a line drawn in to show the 2 stone wall….so there is the bottom of the ditch I put in a corrugated pipe so it’s kind of down in the grass and that helps the flow of the water. Picture #8…oh you didn’t all get pictures…

President Bob Johnson: No. Ma’am, you said you have something encroaching on the easement already by a foot and a half?

Dena Jacobs: I do, do you have this survey that was, I think Jennifer had a copy of the survey…

Commissioner Dan Saylor: Is that your patio?

Morrie Doll: No

Dena Jacobs: The very last page is the survey I had done, yeah the patio and the closet addition

President Bob Johnson: So, that closet addition is already in the easement?

Dena Jacobs: Mmhm

Morrie Doll: The picture is from US Survey is the one that depicts the very tip of this addition of the building and crosses the public utility and drainage on the line.

Dena Jacobs: Also in the pictures I have the boards lining up at the 20-foot line and I have yellow tape measures lined out on the 12-foot line which I would like to propose and then Picture #8 shows all of that with the two walls that I would like to put up and then to the bottom of the ditch there is the corrugated pipe that really helps the flow of water.

Commissioner Dan Saylor: Can I ask just an irrelevant question? Why is your siding off the house?

Dena Jacobs: I was going to put some reflective house wrap on to help with the energy bills. So my preference is a vacate because my lot is so small compared to the other lots and most of the other lots have just a 10-foot easement, I mean, they are a lot larger than mine and they only have a 10-foot easement in the back and mine is a lot smaller with a 20-foot easement and I think a 12-foot is adequate. There is only four properties that have a 20-foot easement in our neighborhood and the other lots that have a 20-foot are significantly bigger than the average, significantly bigger than mine and really my main purpose is maintaining the retention ditch and doing what I need to do maintain the retention ditch.

President Bob Johnson: Mr. Sherwood do you have any suggestions here?

Steve Sherwood: The drainage plan shows an underground 18-inch pipe that drains the retention basin, you can see in her picture #6 she has one of the grates circled and I cant tell if that underground drains within the part she wants to vacate or not. The reason why there are the four lots with the 20-foot easement because that is the overland flow, emergency overflow relief from the retention basin, I think there was a detail I handed down that way that illustrates.

Dena Jacobs: He is correct that is the only thing that is over the 12-foot line.

Steve Sherwood: So, in case of the failure of the 18-inch pipe the basin is to overflow through the 20-foot easement through that swale that you see there in detail that says the swale varies the easement width of 15-20-feet to the west. There is several overland drainage swales, but that is the one that handles the retention basin on the southwest corner of the subdivision.

Dena Jacobs: So, I was looking into, I guess I don’t know exactly what was legal back when the house developed but I know 6,000 square feet is the minimum lot size and my lot is 5841 and I also discovered that on this Jagoe sheet there is a minimum allowable footprint of 30% and they have a calculation error and so when that house was built it was already, you know, not according to the ordinances.

Steve Sherwood: For the record, you are not the original owner of the original house, you bought it second?

Dena Jacobs: Correct, third.

Commissioner Dan Saylor: Third owner?

Dena Jacobs: Yes

Commissioner Dan Saylor: Was that an addition on later or was that built with the house?

Dena Jacobs: That was an addition that was put on by the second owners and they did not get a building permit for that.

Commissioner Dan Saylor: That was my next question Steve

Dena Jacobs: And on the sales disclosures asking if there was any encroachments they said we don’t know, its probably something that should’ve been…

President Bob Johnson: Should’ve been disclosed.

Steve Sherwood: So, to answer your question Mr. Johnson if we ever have to replace that 18-inch pipe underground I don’t recommend any reduction of the easement without knowing exactly where it is an how much space there is for us to replace that pipe.

Dena Jacobs: The grate is on the neighbor’s property, I think one of those pictures I drew..

President Bob Johnson: Picture #6?

Dena Jacobs: The manhole is on my property between the 12 and 20, so it would be on that side of the easement.

Commissioner Dan Saylor: That pipe runs underground in that easement behind your house right?

Dena Jacobs: It does.

Morrie Doll: East and west.

Dena Jacobs: I uhm…this is one of my drawings, okay so the dark blue here, like, okay so this is the patio addition of the patio and this is…the green is the retaining wall that I want to put in, this is the current ditch line and this is where the underground goes.

Commissioner Dan Saylor: So, your retaining wall would be on top of the pipe?

Dena Jacobs: Yeah

Commissioner Dan Saylor: That’s probably not good.

President Bob Johnson: How long have you owned this home, may I ask?

Dena Jacobs: 2016…well, I guess the purchase was in December of 2015 and I moved in February 2016.

Commissioner Dan Saylor: So, you say there is erosion going on, is that what I understand here? There is erosion going on affecting…

President Bob Johnson: Is it affecting your home or?

Morrie Doll: Patio?

Commissioner Dan Saylor: Patio, the addition, or what’s it affecting?

Dena Jacobs: Yeah, its….well, it’s mostly the addition of the patio but under the house as well. Every year I’m adding dirt around my foundation and digging dirt up out of the….

Commissioner Dan Saylor: Your downspouts, have they always been piped? Or is that just recently been done?

Dena Jacobs: Uhm…there is two in the front that were piped when I moved in and the two middle front, the two front sides I piped after I moved in, none of the four back ones were piped.

Commissioner Dan Saylor: Okay

Dena Jacobs: And they are not yet, I was just doing some foundation work, sealing my foundation, filling in mortar holes so while I had that open I figure I might re-route the downspouts, but it’s not complete yet. It would help.

Commissioner Dan Saylor: Are you doing that work yourself?

Dena Jacobs: Mhm.I have, well, years ago I married into a builders family and him and I built a couple homes ourselves, I know a little bit. I mean, I took the contractors class.

President Bob Johnson: Counsel, do you have anything to add?

Morrie Doll: This retaining wall you want to build Ma’am, it’s landscaping rock, landscaping bricks, is that accurate?

Commissioner Dan Saylor: It’s probably that stuff right there correct?

Morrie Doll: Right what looks like what is in the photographs, so you are not planning on putting a concrete foundation in the soil?

Dena Jacobs: No, I just want to put like, 3 bricks high on the lower wall and 3 bricks high on the upper wall.

Commissioner Dan Saylor: Would you put anything under those bricks or would you just put them on top of the soil?

Dena Jacobs: A sand base.

Morrie Doll: Can you tell me…the photographs look like your patio some of the soil has washed away from the edge of your patio and I take it graphs the back of the addition to the house?

Dena Jacobs: Mhm.

Morrie Doll: Okay, that begs the question where did the water come from that did that? Did it come down this drainage way, the swale behind your house or where or what caused that erosion to occur?

Dena Jacobs: Well, I guess a lot of it is the rain coming down the patio and washing off the patio carrying the dirt down both sides of the addition have down spouts that the…

Morrie Doll: Have you ever seen this swale?

Dena Jacobs: I guess just rain is laying on the ground….

Morrie Doll: Have you ever seen this swale hold any water?

Dena Jacobs: It used to all the time, really bad, uhm…

Morrie Doll: What do you mean “really bad”, Ma’am?

Dena Jacobs: It would come up almost to the patio, but that was in 2016 or 2017 when the drainage…when you guys came out and kind of….well we have a sink hole so they came out to check the sink hole and kind of recreate the ditch path for me.

Morrie Doll: Since then what is the history with the drain and the water in this swale? What have you observed?

Dena Jacobs: Sure. When it was regraded the flow was better, it still backed up some as I got erosion and it built up in some spots, well, it was minor compared to what it was before you guys regraded it I could tell it was going to be an ongoing issue, but since I put in that I dug out the path at the bottom of the ditch line and put in that corrugated pipe and I don’t have much backup anymore.

Commissioner Dan Saylor: Dena, let me ask you this. Would laying fabric down and putting 3 or 4-foot ribbon around your house with river rock would that help versus a retention wall?

Dena Jacobs: I’m not sure what a ribbon wrap is.

Commissioner Dan Saylor: Well, putting sown a fabric…well, Steve?

Steve Sherwood: Geotextile

Commissioner Dan Saylor: Yeah it’s that water is going to land on it and a little bit permeates through but you can get those gully washers then lay river rock on top of that real small, something that you know still looks…you don’t want the big 8 to 10-inch stuff there…

Steve Sherwood: So it quits eroding the soil, the geotextile would protect the soil and the river rock would disperse the water as long as you have something at the bottom to tow the river rock and hold it in place.

Commissioner Dan Saylor: I’m thinking that would help you maybe versus a retaining wall, ultimately you know I want to see your house protected that would be my concern, I always try to put myself in people’s positions on what would I do. If I couldn’t build that retaining wall I think I would at least surround my house with 3 or 4-foot band of fabric down to 1. Make sure it slopes a little way and put river rock on top of that I think that would…Steve what are your thoughts?

Dena Jacobs: The other issue I am addressing that I didn’t put down is kind of a safety issue, there is no steps or anything and I’ve slipped slidded a couple times stepping off of my patio and I had a building out walking around to give me some suggestions and he almost twisted his ankle stepping off from there so I have safety issues as well. So if I could put steps in and guide people in a safe way off the wall, I mean, off the patio…some of it is usable you know, being able to use some of that space for (?)

President Bob Johnson: Why haven’t you went after the people that sold you the home for non-disclosure?

Dena Jacobs: We had talked about having a survey done and the…I don’t know I thought the sellers typically paid for the survey and they refused to have one done. This was my third house and for health issues I had to back out of a couple so this was my third and finances were just so short and the realtor said the boundaries…

President Bob Johnson: Yes, but now you know you are in the easement you home is in the easement…

Dena Jacobs: Some explaining when I bought the house and I opted not to pay for a survey I feel like I am responsible, I signed papers that accepted responsibility…

President Bob Johnson: But they should have disclosed to you that part of this house was in an easement and they didn’t do that and I don’t think you have met your statue of limitations on that either, I think you have 7 years.

Steve Sherwood: It’s in that drainage ditch detail I showed you earlier…

President Bob Johnson: I know you are just trying to fix the problem..

Dena Jacobs: I’m trying to fix the problem and I don’t want a bunch of legal fees…

\*All speaking at once, can not dictate\*

Dena Jacobs: So, instead of a vacate what about permission to encroach?

Steve Sherwood: That would take a Hold Harmless Agreement with the Board would it not, Council?

Morrie Doll: I want to understand about his fence, there was a wood privacy fence, who’s fence was that? It seems to run behind many houses in a row

Dena Jacobs: Well, it is only me and my neighbor to the west and according to them they said Jagoe put it up I guess there was the lot behind us that had a bunch of trash along the back of the property so they put that up to ease the view…

Steve Sherwood: There is two neighbors that asked for survey reports, one is a wooded fence and then there is a wired fence more or less on the rear property line

Commissioner Dan Saylor: Is this the Jagoe Development or Talbert Ridge?

Steve Sherwood: It’s a Talbert Ridge Subdivision, but Jagoe built a number of lots in it.

Commissioner Dan Saylor: Okay

Dena Jacobs: Right, The Oaks

Steve Sherwood :It was originally all done as Talbert Ridge and then they divided it to the Oaks and Talbert.

Dena Jacobs: So, I’m told that Jagoe put it up, but when I checked with Jagoe they didn’t now anything about it and I checked with Talbert’s family too and they didn’t know anything about who put it up.

Steve Sherwood: My concern is there is an underground pipe that we will probably need to maintain at some point in time and there is an overflow easement for a retention basin which is the only dedicated access legally that this is supposed to drain out through. It is unfortunate that her house encroaches the easement and the improvements before she owned it, but all I can revert back to is The Oaks Subdivision plat which says you can not do anything in these easements as far as fencing, structures, planting, landscaping, and etcetera.

President Bob Johnson: Jason, do you have anything?

Jason Baxter: Nothing that hasn’t already been said.

Dena Jacobs: In regards to the underground pipe, would that take a drain to be responsible for the repair and maintenance of that underground pipe?

Commissioner Dan Saylor: No, I think what he is referring to, if you ever have to get in there and maintain it, the wall is going to be in the way so the wall would potentially have to come out and that kind of thing.

Dena Jacobs: Yeah, see I am totally understandable about that and that’s why I want to do something simple.

Commissioner Dan Saylor: The other thing you have to be concerned about, and this is where Steve and Bobby would need to come in, you know, how much weight can that pipe withstand and probably could do it, but you know…

Morrie Doll: Is it plastic?

Steve Sherwood: Yeah, I’m sure it is HDPE double walled plastic it’s probably not more than 2 to 3-feet of cover on top of it, I don’t recall seeing inside the manhole but looking at the basin outlet in one of those photographs I passed down there it surely not 3 to 4-feet of cover at the most.

Dena Jacobs: I thought it was concrete down there?

Steve Sherwood: I’m pretty sure it’s plastic, it’s concrete right at the mouth of the pipe, but it switches to plastic they have a concrete flared in section…

Commissioner Dan Saylor: I cant imagine them putting concrete on it…that’s too expensive.

Steve Sherwood: It says on the plan what the type of pipe was.

Morrie Doll: Well, let me ask this of you…it seems to be the building is what worries me the most, okay? Perhaps some sort of encroachment with a Hold Harmless Agreement to the extent that the building protrudes into the right-of-way, that would be considered by the Board, it apparently isn’t this home owners fault, but I am really concerned sort of the “Me Too” problem here. If we go back and allow more than the building to encroach into the right-of-way, then the neighbors to the west can come in and say they want more space in their back yard as well…

Steve Sherwood: Or any other development in the County with a similar situation , once we let someone encroach one easement it opens up Pandora’s Box.

Morrie Doll: We sort of have a standard as to the width of these easements and there is a reason why, particularly when they drain as an emergency overflow detention that detention area, if the pipe fails, flows over the land and the land is your backyard unfortunately.

Dena Jacobs: I guess a difference from any other home in the County is that the square footage of my lot is smaller than the minimum…

Morrie Doll: But that hasn’t changed and that, again, shouldn’t be the facts, but that hasn’t changed since you’ve owned this property since 2016

Steve Sherwood: It was platted that way

Morrie Doll: Yeah, it’s been that way for almost 20 years.

Dena Jacobs: Well, I guess what I am trying to say if you are afraid of the “Me Too” I guess…I don’t think a lot of the other properties have the same what I would call “hardship” I mean, I’ve looked at the applications for variances and vacates and permission to encroach and you have to have a type of a hardship to be able to do it and I think I meet a lot of those hardship criteria where other properties wouldn’t.

Morrie Doll: Well, it is up to the Board to decide whether they are interested in giving you a remedy for the building and the patio which encroach into the right-of-way or whether they are wanting to give you further remedies beyond that. I think the Engineer has said he is concerned about maintaining that pipe.

Steve Sherwood: It’s not a question of “if” it’s a question of “when”

Morrie Doll: Yeah, pipes fail its just the way it is, maybe 20 years from now but at some point in time that pipe may need to be repaired or replaced. I agree that you are not proposing a permanent structure, you are proposing almost like a landscaping type structure in that right of way, but we have in fact thinking off the top of my head if I can name one of them but we have prohibited other land owners for doing those types of things in the right of way because that is a dedicated public easement it’s not just to benefit your property it’s to benefit the other property that drains that direction as well. So, the Board has the authority to do whatever the Board deems as Just and Proper, it’s just always concerning to me as the Attorney for the Board to worry about a slippery slope, and I don’t mean that in the sense of what you have testified to a literal slippery slope. Once we start giving acceptions to the easements there is a never ending process that people come in and say, “Well, you did in The Oaks you did this or did that. How come you are not willing to do that for me?” and it’s a problem so a strict construction of the right of way is generally the best and safe way to do it. Now, my heart goes out to you, you bought a house that is a foot and a half into a drainage easement somebody should have paid for that I know you didn’t want to spend the money but that is the reason you are in this mess you should have either had it surveyed or you should’ve had title insurance company or somebody should’ve said to you “Dana, there’s a problem here and this is going to haunt you and this is going to maybe even impact your ability to sell your house someday in the future. Okay?

Commissioner Dan Saylor: Council, shouldn’t that have shown up on the title?

Morrie Doll: It should, but the title can only show when it is surveyed displays and what you need is an Indiana Minimum Standard Survey which has all of the improvements precisely drawn on the survey. This is how many feet from the boundary in this direction and that would’ve reveled this house sticks in a drainage way, well it’s not just the house it’s the house and the patio both stick in the drainage way and somebody could’ve said “Dana, this is a red flag you need to be careful here because this is a problem…”

Commissioner Dan Saylor: Buyer Beware. Dena, can you think of any other remedy other than the wall?

Dena Jacobs: No, but I might suggest something that is lighter weight I mean I thought of something easier to remove.

Commissioner Dan Saylor: So, you build a retaining wall, do you want to backfill to your house to make it level? Is that what you are after?

Dena Jacobs: Uhm, not level, no.

Morrie Doll: But you are going….less of a slope.

Dena Jacobs: Less of a slope.

Commissioner Dan Saylor: Okay

Morrie Doll: Just for me Dena, how far off the edge of your patio are you proposing to build the landscaping stone wall?

Dena Jacobs: How far off from the patio?

Morrie Doll: Yes, Ma’am.

Dena Jacobs: There would be about 2.5-feet. Actually, it would be like, the first wall would be about 3-feet the second wall about 3-feet and then the width of the wall in there.

Morrie Doll: Now I’m confused.

Commissioner Dan Saylor: What she is wanting to do she is wanting a stair

Steve Sherwood: 3 block high wall

Morrie Doll: Twice.

Dena Jacobs: Well, I said about 2.5-feet well that is where I would put the block, but the block is 6-inches so it is about 3-feet from the edge of the outer edge…

Morrie Doll: Is there a second wall? Two Step?

Dena Jacobs: Yeah.

Morrie Doll: So, it’s really going to be 6-feet 3 + 3.

Commissioner Dan Saylor: Bob suggested timbers, but normally how we anchor those timbers we take rebar and drive it down through…

Morrie Doll: Not a good idea.

Steve Sherwood: If the Board wanted to consider any type of encroachment in it you really need some type of an Engineer drawing with an Engineer cross section with dimensions that show the underground pipe, the depth of it, and the horizontal parameters off of her existing rear of her porch and add on to where they would finally rest in relation to the underground pipe, that has to be known anyhow. I would hate to send her to do all this expense if it’s not going to be permitted. To Council’s point it says clearly in the plat easement dedication certificates.

President Bob Johnson: You know, if I was in that situation…I want to help her out and do something, but I’m just confused on what would be the right approach.

Morrie Doll: Even putting dirt in there is going to impair the flow of the swale.

Commissioner Dan Saylor: Yeah, I don’t think we would want her to block that whole…

Morrie Doll: Coming off 6-feet off the edge of the patio, if you somewhat level that off you are impairing and closing off pretty much a 3rd of the swale. If the easement is 20-foot wide…

Steve Sherwood: That is assuming the center of the swale is center easement, to me I think the center of the swale is closer to her house than it is the 20-foot easement.

Commissioner Dan Saylor: Yeah, that’s where it looks at right there you can see it better here.

Morrie Doll: 6-feet may be darn near to the center of the lowest point of the swale.

Commissioner Dan Saylor: That looks like she is about 4-feet here based on these stepping stones, 4 to 5-feet

Steve Sherwood: I think Terry has the full sized pictures.

Morrie Doll: It’s a conundrum.

Commissioner Dan Saylor: You can say that again.

Dena Jacobs: Oh, I actually brought a thumb drive with the actual pictures…

Commissioner Dan Saylor: I think we have enough you have a lot of drawings, your pictures are good..

Dena Jacobs: There is a lot of pictures of my measurements on here…

Morrie Doll: It seems to me there is really a two-prong question. One is the encroachment as is of the structure and the patio and the other would be any further modification of the swale.

Commissioner Dan Saylor: You know, I’m inclined to help her control any erosion in or around her house and patio I don’t know if I’m inclined to sit there and say “yeah we can let you go all the way out here just because maybe it’s easier to walk around or that kind of thing”, but my main objective would be to protect your home and your patio. Terry?

Commissioner Terry Phillippe: So, is it “yes you can encroach or no you can not encroach” or can we tell her what she can do?

Morrie Doll: It would be a motion to encroach and what conditions that would entail. I would recommend to the Board it would entail the execution of a Hold Harmless and for the property own benefit I would highly recommend that it be recorded, the encroachment to be recorded so it is noticed to the world or somehow…I don’t want this lady to be sued for something she didn’t cause and if the purpose of the encroachment is to fix that problem then it needs to be recorded…

Steve Sherwood: And run with the property

Morrie Doll: And run with the property so that future buyers are put on notice before they step into the same problem that the present owner did and buy a house that violates the plat. Now, I’m not trying to diminish the value of your home I’m trying to save you from being sued because the next owner, buyer, may be more aggressive than you were and say, “Hey, wait a minute here somebody is liable and I bought it from you I have puerility of contract so I am looking to you”

Commissioner Dan Saylor: You aren’t going to be able to check that box “Unknown”

Dena Jacobs: Yeah and I wouldn’t feel good about it either

President Bob Johnson: Ma’am, just bare with me for a moment, instead of coming out with two layers and coming out 6-foot could you come out with 3-foot maybe make your slope and for the stairs to step down come off the side of your patio instead of coming out the front side? Does that make sense to you?

Dena Jacobs: So your saying to raise one wall at 3-feet and the steps going off to the side?

President Bob Johnson: Yes Ma’am.

Dena Jacobs: That’s possible

President Bob Johnson: That would stop the erosion and protect your home and your patio a little bit and I don’t think it would divert the water in the ditch, I don’t know it’s just something to consider. Do you understand what I am saying Steve?

Dena Jacobs: I do….oh, you said Steve? I have that I measured from the wall of the house to the beginning of the manhole 12-feet

Commissioner Dan Saylor: From the corner of your patio?

Dena Jacobs: From the edge of the house to the beginning of the manhole I have that it’s 12-feet and so that puts it 2-feet beyond the patio

Commissioner Terry Phillippe: So, in other words the wall is going to sit on the pipe regardless whether it is 3 or 6-feet.

Dena Jacobs: Well, I cant know exactly where the underground is…

\**Everyone speaking at once, can not dictate*\*

Morrie Doll: Is there a question?

President Bob Johnson: No, Sir.

Commissioner Dan Saylor: I like to help her out, I like the idea of a Hold Harmless, I like the idea of the encroachment being recorded, but I don’t know if I could sit here and say I would like to see her get some kind of or hire some kind of Engineer and have somebody draw this up, bring it back to us, and I think we can get on board with it. Someone say here’s the pipe, if she does this this would work.

Dena Jacobs: Do you guys have an Engineer…

President Bob Johnson: There is two sitting behind you.

Steve Sherwood: We cant recommend.

Morrie Doll: Yeah we cant recommend.

President Bob Johnson: I didn’t recommend anybody, but I know a couple of them.

Commissioner Dan Saylor: There is actually four in the room.

Dena Jacobs: I was going to ask if you, is there is drawing that exists on where that underground pipe is on the plat?

Steve Sherwood: Well, the plans show it in one place but they can build it anywhere in the 20-foot easement.

Morrie Doll: That’s a pretty easy thing to figure out

Steve Sherwood: Your Engineer will tell you it’s a straight line between the inlet and the manhole, but they would have to verify that.

Morrie Doll: You will be able to probe that pretty quickly and figure out where it is. It’s not very deep.

Dena Jacobs: It’s not very deep?

Morrie Doll: No, Ma’am.

President Bob Johnson: So, at this point what kind of motion would you like to make there Mr. Saylor?

Commissioner Dan Saylor: Do we need to make a motion or?

Morrie Doll: Well, it would seem to be what you want to do is set out the parameters so this lady knows what she is expected to do. She can ponder it, decide if she is going to do it and if she does if she brings us back an Engineering drawing that shows where it would be safe to put this temporary retention wall and how far out you would rather it only be 3-feet away from the existing structure and the existing structure is a foot and a half in already so it’s really 4.5-feet into the easement perhaps and if an Engineer can demonstrate that that is not going to interfere with that pipe, damage, negatively affect that pipe that is buried there then you would be willing an encroachment with a Hold Harmless, which I can prepare, and which we would then we would want to record so we don’t have this problem in the future with another owner.

Steve Sherwood: So it should have an accurate plan view looking down and an accurate cross section showing where the pipe is and where the wall is so if we have to dig down and remove the pipe we don’t interfere with the proposed construction.

President Bob Johnson: Are you okay with that? Do you understand what we are asking?

Dena Jacobs: I’m following some of it, but I am also okay with removing the wall if something needs to be done I mean, that is something I am going into this willing to do.

Steve Sherwood: That is the purpose of the Hold Harmless.

Morrie Doll: The Hold Harmless would say that if in fact in the future we have to dig up that pipe, which would be the County’s responsibility to do it, we wouldn’t owe you any money for damaging your wall or removing it or changing it or anything.

Dena Jacobs: Would I get notice to remove it or something?

Commissioner Dan Saylor: Oh yeah, you’d have plenty of that.

Steve Sherwood: We wouldn’t be responsible for removing it either.

Morrie Doll: Right.

Steve Sherwood: It’s easier for us to dig through dirt, dig out the pipe, and not have to dig through any fences, walls, patios, landscaping. The whole purpose of the easement.

Morrie Doll: Okay?

Dena Jacobs: Yeah, I guess it’s also an option to you guys that I know somebody suggested at one time that if the house was burn down and be rebuilt that it gets rebuilt outside of the easement…

Morrie Doll: Yes, you are not going to burn your house down are you?

Dena Jacobs: No! Somebody suggested putting that

Morrie Doll: We’re just permitting as an emergency the current circumstances, if in fact it gets destroyed we are not saying you can put it back in the right of way, okay? You cant. We’re just trying to help you out; the Board is trying to figure out a way to help you out with a circumstance that you didn’t cause.

Dena Jacobs: Right, well I guess I want to pass this on to future owners…

Morrie Doll: I understand that, it would run with the land that is what Steve said earlier which as you know means this encroachment permission would stay with your house infinitum to whoever owns it.

Steve Sherwood: It would have to be recorded and run with the deed.

Morrie Doll: It would, the problem is in your question “What if it burns down?” and you know July 3, 1959 my parents house was struck by lightning and the electrical storm burnt to the ground in 15 minutes…that happens. Okay? So as a consequence of that you cant put it back in the right of way.

Dena Jacobs: Okay, well yeah just so that is clarified in whatever we write up.

Morrie Doll: Okay, I am the guy writing it out so we will work that out. Fair enough?

Dena Jacobs: Mhm.

Morrie Doll: Okay. She should decide she is doing it and bring us back an Engineering drawing saying it’s not harmful to do…

Dena Jacobs: As part of…well I don’t know if this goes into the Engineering drawing or whatever but, with the dirt seeming to sink and I am thinking it is eroding I was checking…anyways I was digging for something and there is a whole bed of rock down there and I don’t know if Jagoe put that down or if that’s because your drainage pipe is it surrounded by rock?

Steve Sherwood: Could be.

Commissioner Dan Saylor: Sometimes they backfill with rock.

Dena Jacobs: I think that is part of the problem too is that dirt is settling and filtering in through that rock.

President Bob Johnson: Mr. Morley did you have a question.

Jim Morley Jr: Maybe this would try to help her out and maybe you on both sides, instead of her paying an Engineer to do something, Steve, would there be an opportunity for her to basically put the retaining wall on the house side of the pipe and take the retaining wall all the way to below the bottom of the pipe? If you ever had to dig up the pipe you wouldn’t affect the retaining wall?

Morrie Doll: That’s a heck of a retaining wall

Steve Sherwood: We would let her and her Engineer…

Jim Morley Jr: To be honest the fee she is going to pay an Engineer…I just don’t want her pay an Engineer X-amount of dollars and then she still has to build the retaining wall I was just wondering while she was here if there would be an opportunity…

Morrie Doll: That is her choice.

Steve Sherwood: My suggestion is that is her choice with her Engineer.

Morrie Doll: I think we need to be shown that is not going to detrimental to the pipe to drain, otherwise…

Jim Morley Jr: I was just trying to get her out of hiring an Engineer…I just rather see her put money into the retaining wall…

President Bob Johnson: Ma’am, do you have anymore questions for us?

Dena Jacobs: Where do I go from here?

President Bob Johnson: I think you need to find a qualified Engineer to look at your issue, come up with a solution, show us some drawing on what they would do and make sure it is not going to interfere with the pipe and the drainage swale and come back to us and we can work something out.

Commissioner Dan Saylor: Dena, to do all of that what Commissioner Johnson just said, would that take you two weeks or four weeks?

Morrie Doll: Who knows.

Steve Sherwood: A couple months.

Commissioner Dan Saylor: I can make a motion to table…

Morrie Doll: Indefinitely.

Commissioner Dan Saylor: Just make a motion to table until she calls Jennifer and puts it back on? I make a motion to table this indefinitely until Dena does some more research and she gets back with us to set a date.

Commissioner Terry Phillippe: I will second.

President Bob Johnson: All in favor 3-0. I really wish we could come up with a solution for you; this is just a tough one.

Morrie Doll: We have though

Commissioner Dan Saylor: Yeah, we have not told her no so she can get her ducks in a row.

Dena Jacobs: I have an idea of what I need to, thank you.

President Bob Johnson: Thank you

Commissioner Dan Saylor: Good luck.

President Bob Johnson: Mr. Morley do you have something for us today?

Jim Morley Jr: I do, do you have other things on your agenda?

Steve Sherwood: We have claims.

**CLAIMS:**

President Bob Johnson: Okay, we have claims of $356.07 for Gas.

Commissioner Dan Saylor: I make a motion to pay the claims…

Jennifer Curry: We actually have two more on there I’m sorry I will have Jason explain the other two claims we have to add.

Jason Baxter: Yeah we have the Tanglewood Ditch came in and mowing at Gateway so we have total of $49,848.07.

President Bob Johnson: Well that certainly went up a little bit.

Steve Sherwood: Those are both within your bid parameters?

Jason Baxter: Yes

Morrie Doll: They are part of Drainage Board?

Jason Baxter: Correct.

President Bob Johnson: Okay, so we have some extra claims with the gas as well, do I have a motion.

Morrie Doll: Are they broken down Commissioner?

Commissioner Dan Saylor: Gateway ditch is $1,500.00 and the Tanglewood Ditch Project is $47,992.00 payable to Tom Naas Homes. Are both of those Tom Naas Homes?

Jason Baxter: That is correct.

Commissioner Dan Saylor: Jason, just to reiterate that $47,992.00 was within the bid specs?

Jason Baxter: Yes, Sir.

Commissioner Dan Saylor: Okay, I make a motion to approve the claims as presented.

Commissioner Terry Phillippe: Second.

President Bob Johnson: All in favor 3-0

**OTHER BUSINESS**:

Jim Morley Jr: I promise I will be quick I was not on the agenda. Out at Victoria Woods Subdivision while they are in the field they have come up with a couple minor tweaks they want to do. I talked with Steve, Jason, Phil, and Bobby about this but it is coming to Plan Commission tonight. I just wanted you all to be aware of it so you all didn’t hear well, what’s it doing in APC because it didn’t come here first, I am not seeking any kind of approvals or anything like that it is literally just an FYI deal from my conversation and tech review that changes are minimal enough they can be approved in house. I just wanted to let you all know about it because it is going to the Plan Commission public meeting so this is just new information for acception, fair enough?

Steve Sherwood: Are these all the same? There is not addition or changes to what we talked about in Site Review? Because I believe we required revised street and drainage plans?

Jim Morley Jr: Yup.

Morrie Doll: Does this deal with the covered bridge deal?

Jim Morley Jr: Yup

Steve Sherwood: This is the covered bridge and if it was going to be a covered bridge Bobby is going to have to have a Hold Harmless Agreement.

Bobby Howard: It is not an official covered bridge

Jim Morley Jr: Yeah, it is not a real covered bridge.

Morrie Doll: What is an unofficial covered bridge?

Steve Sherwood: The County will not maintain it as a covered bridge…

Jim Morley Jr: It’s a concrete bridge with a barn built on top of it to make it look like a covered bridge. So, real quick, I gave you three pieces of paper pieces A and B, you will see they look basically identical that is the before and after if you can look at that and tell me the difference without looking at the cheat sheet which is page 3.

Commissioner Dan Saylor: I see the difference right here.

Jim Morley Jr: The cheat sheet which is page 3 I just wanted to let you guys know there is a couple places that we tweaked the road alignment to save some trees and to stay out of the lake a little bit, if you can see there are some places in the road where we are going to tweak the road alignment and when I say tweak it’s like 10 or 15-feet one way or another. I had a general discussion with Steve and Bobby on that and then down here at the bottom we are going to install a concrete bridge, it used to be a couple box culverts, big box culverts now it is going to be a concrete bridge and now they are going to build a wooden covered bridge looking on the top of it, it’s going to be an entrance feature and stuff like that and the yellow area here at the bottom we kin of tweaked a little of the lot lines. All the purple lots we made larger and so we made them larger and got rid of a couple lots, we relocated those lots to where the green is, but ultimately we are one lot smaller than we used to be so we don’t have any new building sites on the length of the road about a foot of what it was when we turned it in. They are pretty minor changes, but I wanted you all to be aware of it so if you heard this came back to Plan Commission and ask why it didn’t come to Commissioners, Road Plans, or Drainage Board, so for the most part you all wanted the same for the road plans I figured I maybe needed to say the same thing at the Commissioner’s meeting since I am not actually looking for a vote or anything because this is just an FYI

Steve Sherwood: Bobby, do you have any comments to add to this?

Morrie Doll: You have seen all of this Bobby?

Jim Morley Jr: He didn’t see these pictures, but we discussed it

Bobby Howard: Bobby Howard, County Highway Engineer, the main thing he mentioned is that yes these are minor changes, but if the Plan Commission has them re-file a primary then they will come back before the Board because they automatically put street and drainage plans on. It really depends on what happens tonight on if they need Street and Drainage Plans

Morrie Doll: And we don’t know the answer to that, but that question has been raised.

Jim Morley Jr: Right, that’s why I’m planning to come to Plan Commission tonight.

Morrie Doll: There is a Preliminary Plat that has been done and the question gets to be which asks if we can make these kinds of changes which we admit are minor, okay? Can we just incorporate them into them into the Secondary or Final Plat or not or I don’t know what the Board is going to vote, the Board could vote either way and that is up to the Planning Commissioner to decide whether they are going to make them come back with a new first plat or let them make changes to the final plat.

Steve Sherwood: If you recall the Board made them do a new Primary Plat off Coal Mine to reduce the 18 to a 10 which we thought was a no-brainer and they are going to come back for a new Primary on that.

President Bob Johnson: We did

Jim Morley Jr: True enough if I need to redraw a Primary I will come back, my hopes is I don’t have to re-file a new Primary, but either way I wanted to let you all know that, since I was going to Plan Commission and it is a public meeting I didn’t want anybody to say hey, how come they didn’t come here first.

President Bob Johnson: Thank you

Steve Sherwood: If they do not make you do a Primary Plat, Bobby do these come back as Amended Street and Drainage Plans for the Board to review?

Bobby Howard: They wont come back to the Board we can approve them administratively in-house.

Steve Sherwood: Okay

Jim Morley Jr: They are pretty minor changes, so.

President Bob Johnson: Okay, is that it Sir?

Jim Morley Jr: That’s it for me unless you have any questions? Thanks everybody

Steve Sherwood: There is another member in the audience that may want to speak?

Glen Meritt: Glen Meritt with Cash Wagner, I apologize I was a little late I had a wreck out at Walmart it slowed me down…

Morrie Doll: Do you need a card?

Glen Meritt: Was the Enclave on the agenda tonight? Did it come back through? Or no?

Steve Sherwood: This is on the APC agenda.

Morrie Doll: This is on the APC agenda tonight, is that your question?

Glen Meritt: This is the same situation, Jim Morley was talking about we come back through..

Morrie Doll: It’s on the agenda

Glen Meritt: They told us we had to come back through roads and drainage again which we just did a month ago and that would be the third time we came back through here…

Bobby Howard: I saw Area Planning put it on the agenda too for Street Plans so I guess they probably didn’t tell you to add it to this agenda. It was approved on October 12th for the drainage plans?

Steve Sherwood: Yeah, and there were no changes since then.

Bobby Howard: There is no changes between now and then so; could this Board just agree to approve it?

Morrie Doll: Standing on the prior approval. It is on the agenda for APC tonight, I don’t know if Commissioner got one, I didn’t get an agenda for APC and call this afternoon and say hey, what are we doing today? They said there wasn’t very much on there and it was like, two and half pages. I don’t know what happened, but you are on it.

Glen Meritt: I got the agenda for that one as well, I apologize I was late here this afternoon, but that works for me. Thank you.

President Bob Johnson: Mr. Sherwood.

**STORM WATER DEPARTMENT**

Steve Sherwood: Thank you Mr. President, I will try and be brief as well. Tanglewood/ Fuquay Project Lochmueller is proceeding with a meeting with the land owners to pursue private or rather to pursue easements or right of way at no cost for the land owners. We had a site meeting October 6th, Commissioner Saylor and I attended that was the temper mate we asked for at that time and now we are going to find out if they will acquire easements. The reason I bring that up is because I am not authorizing Lochmueller to proceed with appraisals, I have cleared this with Council, there is no need to spend money on appraisals if we can get the easements or right of way donated. The other issue with the Tanglewood Fuquay Project Lochmueller Group also forwarded me the section 401 General Permit which is the IDEM Water Quality Permit, it requires a signature and I can sign off on behalf of the Board if so granted by the Board.

Morrie Doll: Need a motion for that.

Commissioner Dan Saylor: I make a motion to give Steve the authority to sign off on the 401 General Permit

Commissioner Terry Phillippe: I will second.

President Bob Johnson: All in favor 3-0

Steve Sherwood: I will do so on behalf of the Board. Wessler Engineering we talked about in January of this year a consensus to proceed with them at the proper time for the new General Permit that is about to come out, there are some things we can work on in attending the last MS4 Conference earlier in October. I want the Board’s approval to proceed with getting a proposal from them so we may start working on the new requirements that are going to be required by IDEM and the new General Permit especially #1 starting with the updating of our Ordinances which have not been updated since our creation of 2006 which we are supposed to update every 5 years. If the Board is in agreement I would like to proceed with getting a proposal from Wessler, they have done most of our MS4 work to date and as you all recall we did the audit not too long ago and it passed. Again, either a motion…

Morrie Doll: It would be a motion, but we are not spending any money at this point?

Steve Sherwood: No, just to get a proposal

Morrie Doll: Request for proposal

Commissioner Dan Saylor: I make a motion

Commissioner Terry Phillippe: I second

President Bob Johnson: All in favor 3-0

Steve Sherwood: The last item, I have spoke to each of the Board members, we agreed the last November of 2020 to roll over some funding for a purchase of a new mini excavator. We decided on a John Deere 50G and we can get it from a Sourcewell which is Government pricing, it’s about 15% less than what the public can acquire it for. The cost that I have for that…

Commissioner Dan Saylor: That was a “G” not an “E”, right? We don’t want any “E” models anymore.

Steve Sherwood: The excavator with two buckets, one being a ditch bucket and one being a general excavating bucket, a hydraulic thumb, and then a 4-way dozer blade on the front came to $69,365.16, that comes with a standard 2-year warranty, getting an extended 3-year warranty for a total of 5-years of warranty came at a cost of $460 through Sourcewell which I believe is a no brainer to get another extra 3 years of warranty protection so that would bring the total price up to..

Commissioner Dan Saylor: $69, 825.16 if my math is correct

Steve Sherwood: I’m sorry, the original price of the excavator was $68,905.16 so the original price is the correct price with the warranty at $69,365.16, I apologize. SO, if the Board would allow us we do have the money in our funds to proceed with the purchasing the John Deere 50G.

Commissioner Dan Saylor: I make a motion to approve the purchase of the John Deere “G” with the extra equipment for $69,365.16 and that would include the extended warranty for total of 5 years.

Steve Sherwood: Once we acquire this piece of equipment we will retire our current John Deere 35 to the Highway Department.

Morrie Doll: Under the Lend Agreement

Bobby Howard: That was what my question was if it could be for our Mutual Compact Agreement and go from there.

Commissioner Dan Saylor: Sounds good.

Bobby Howard: Great.

Morrie Doll: We put that in place a number of years ago and it’s been around ever since.

Steve Sherwood: We have done that with previous equipment with Storm Water in the past.

President Bob Johnson: Do we have a motion?

Commissioner Terry Phillippe: I will second the motion.

President Bob Johnson: All in favor 3-0

Steve Sherwood: That is all that I have unless the Board has anything else?

President Bob Johnson: No, Sir. Councilor?

Morrie Doll: No, Sir.

President Bob Johnson: Mr. Baxter?

Jason Baxter: No, Sir.

**MOTION TO ADJOURN:**

Commissioner Dan Saylor: Motion to adjourn.

Commissioner Terry Phillippe: Second.

President Bob Johnson: All in favor 3-0