**MINUTES**

**WARRICK COUNTY DRAINAGE BOARD**

**&**

**DEPARTMENT OF STORM WATER**

**December 13, 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; Morrie Doll, Attorney; Steve Sherwood, Storm Water; Phil Baxter, Surveyor; Jason Baxter, Deputy Surveyor and Jennifer Curry, Recording Secretary.

Commissioner Terry Phillippe: Absent

Present in the audience: Jim Morley Jr, Glen Meritt, and Michael Stevenson

**PLEDGE OF ALLEGIANCE:**

President Bob Johnson opened the meeting of December 13, 2021 with the Pledge of Allegiance.

**APPROVAL OF MINUTES**

President Bob Johnson: First we have the approval of minutes for the November 22, 2021, Terry is not here.

Commissioner Dan Saylor: I make a motion to approve the minutes

President Bob Johnson: I will second that, all in favor 2-0

**JOEL PARKER----10644 ELBERFELD ROAD, ELBERFELD, IN 47613**

President Bob Johnson: First we have Joel Parker, come on up please, sign in, and state your name?

Joel Parker: Joel Parker

President Bob Johnson: This is a request to cross Legal Drain Bluegrass Creek to build a small bridge for property access

Joel Parker: Yes, Sir.

Jason Baxter: We looked at this and our…do you have the picture in front of ya…..i’m not for sure if you’ve seen this or not Joel, but our requirements for the ditch stop here. Where were you planning on putting the bridge?

Joel Parker: Here, along Elberfeld Road…

Jason Baxter: And you’re wanting access right there?

Joel Parker: A bit of background on this and I hope it’s not too personal but recently suffered a heart attack back in September, I have 35 acres, my wife and I bought this property in 2005. We’re wanting to downsize our property and sell off lots or even the whole entire property and downsize for health issues. Looking at that and researching our options and wanting to make good choices going forward and so that one lot is isolated and not able to get to without crossing that ditch.

Jason Baxter: Here is where he’s talking about, our responsibility stops here and he is wanting access right in here

Commissioner Dan Saylor: Your responsibility stops where the blue line is?

Jason Baxter: Yes, Sir.

President Bob Johnson: So he’s going to cross from here

Phil Baxter: On north of that it’s just some field ditches, not much low at all really

Commissioner Dan Saylor: So that creek kind of ends on his property so to speak?

Phil Baxter: So to speak yes

Joel Parker: That’s not really accurate because it’s 7 to 8-feet deep all the way across the northern end and then goes on and picks up all the area drainage north of my property on these other fields that funnel in there and it is quite a bit of flow.

Phil Baxter: Yes, we can see the field ditches here.

Steve Sherwood: We have a substantial corrugated metal pipe crossing Elberfeld Road that takes that drainage from the north to the south

Joel Parker: Yeah, that was just replaced within the last 6 months

Steve Sherwood: When you say you want to cross it, you say a bridge, do you know exactly are you wanting to build a bridge across it or another pipe or?

Joel Parker: Doing a bit of research about Warrick County I found out that we are not exactly in favor of field culverts or culverts of types because they are high maintenance and a bridge that is a free span bridge may be more suitable or more easily to get approved. Looking at the…going forward on getting utilities across it my property does butt up against the south lane subdivision there and there are some easements that come through for utilities and I don’t know how many of those are readily available to me but I may just be looking at residential traffic coming through there and not having to carry any utilities such as gas and electric.

Steve Sherwood: You state that you possibly want to develop acreage on the western side of the ditch in the future, bare in mind the bridge you may build now may not be suitable for County road traffic if you sub-divide it to building lots you may get into a whole different type of bridge requirements…

Joel Parker: I’m not wanting to develop a subdivision, I am thinking of selling the whole 6.5-acres to an individual that might want to build a home and all I am wanting to do for that purchaser to secure finances through a lending institution so they have good and antiquates access to their property.

Steve Sherwood: I would just caution you if you are planning on selling the 6 acres you probably need to talk to the Area Plan Commission to make sure you have a buildable lot with proper amount of road frontage. Would you concur Council?

Morrie Doll: Yes.

Joel Parker: I will consider that, I am just starting the process so thank you.

Morrie Doll: Do we have any drawings?

Steve Sherwood: That was what I was going to suggest something needs to be submitted for review.

Commissioner Dan Saylor: That is what I was getting ready to ask what do we have to look…you want to cross but we don’t know with what or how or that kind of thing so we would need some kind of proposal and an Engineer drawings, Steve?

Steve Sherwood: Yeah, stating dimensions, type of bridge, and height relation to the top of banks so we can make sure for the event of a large rainfall through a storm it doesn’t get washed away.

Commissioner Dan Saylor: Yeah, you don’t want to build a bridge then it gets moved.

Joel Parker: Absolutely, I’ve seen that happen. So, would you consider a culvert?

Steve Sherwood: Again, the same Engineering requirements apply; it would have to be sufficient for the watershed.

Morrie Doll: If it is in a Regulated Drain, and that is a private road? It will be a private road?

Joel Parker: Yes, Sir.

Morrie Doll: State Statue recorded a Public Right of Way if it is in a Regulated Drain you have to have a hydraulic study done by an Engineer, which looks at the capacity, the volume of water that is coming down there has to be handled with, the culvert size would handle that flow or not. Everybody likes a bridge compared a culvert, but it has to do with the volume of water that is going to come through this ditch and so if it can be handled by a culvert then the culvert can be approved by the Board if it can be handled by a bridge then the bridge can approved by the Board. Until you get somebody to tell you how much water is really coming down this thing…

Joel Parker: Been looking at approximation the bridge that was just put in about a year or so crossing Elberfeld Road which is probably about 20-feet away from where I would be starting mine I could probably use that as a starting base?

Morrie Doll: Maybe. Off the top of my head I don’t know, but you’d have to look at your ditch what the amount of water is flowing through it and present a proposal to the Board that Steve would look at as an Engineer I’m the Lawyer, but he is the Engineer, to see if it meets the specifications to take care of that water. That still doesn’t mean it cant be used for public route, there’s a difference.

President Bob Johnson: That’s where I would start, you would probably need to find an Engineer and do that study and have something drawn up to present to us and at the same time I would check with APC downstairs to make sure your frontage and meet all the requirements to sell that off.

Joel Parker: Okay.

President Bob Johnson: Anything else Mr. Parker?

Joel Parker: I just want to say thank you for your time, information, and have a good day.

President Bob Johnson: Thank you.

**JIM MORLEY JR---MORLEY & ASSOCIATES**

President Bob Johnson: Mr. Morley

Jim Morley Jr: Hey Everybody

President Bob Johnson: So, we have prior approvals from Drainage Board?

Jim Morley Kr: Yeah, those three projects got approved at the last meeting and we actually we were a meeting ahead of schedule so to speak, and when the advertisement went out for public notice they technically set this meeting so I think Plan Commission wanted it to come back to this meeting just in case somebody showed up to remonstrate.

Morrie Doll: So, it would need a motion recognizing there are no remonstrators here for each of these and reaffirming the prior approval.

President Bob Johnson: Okay, so we have zero remonstrators, so I need a motion to approve these three.

Morrie Doll: High Pointe Center, Golden Pond Estates, and Deer Creek Subdivision to re-affirm the previously approved.

Commissioner Dan Saylor: I make a motion to re-affirm the previous approval

President Bob Johnson: I will second, all in favor 2-0. Next we have Willow Pond Ditch request to relax the Legal Drain from 75-foot to 50-foot along the west of right of entry.

Jim Morley Jr: My client Ben Bush owns this piece of property, it’s on the south side of Willow Pond Road and Willow Pond Ditch is there on the south end of his property and he is wanting to put a lake back there in the back and he is just trying to get the lake as close to the ditch…

Steve Sherwood: Approximately what the blue triangle represents the location of the lake?

Jim Morley Jr: Yup, the blue roughly on the paper I passed out would be what the lake would look like and he is trying to mow his grass between the lake and the ditch as possible so he is asking to reduce that down to 50-feet from 75-feet. You’d still have 50-feet of ground between the lake and the top of bank reserving the right to do maintenance and I talked with Phil about this a couple weeks ago.

Phil Baxter: Jim can you refresh my memory, is this close to…it’s on Willow Pond

Jim Morley Jr: Halfway between wasn’t it Frame…and the next one to the ease Ellerbusch?

Phil Baxter: Ellerbusch, the short one?

Jim Morley Jr: Yeah this is basically half way to it.

Steve Sherwood: This is west of Ellerbusch, but yet east of Grimm on all south of Willow Pond Road. That was the drain I think you just cleaned about a year or so ago.

Jim Morley Jr: Yeah, the right of entry is still preserved; it’s just a little smaller in that area just allowing a little more room to build his lake.

President Bob Johnson: Any concerns?

Phil Baxter: I think we’re good.

Steve Sherwood: I think Phil has allowed 50-foot in some of these areas in that area in Warrick County in the past so I believe it’s okay.

President Bob Johnson: Commissioner Saylor?

Commissioner Dan Saylor: If these two Gentleman are okay with it I can live with it.

President Bob Johnson: Councilor?

Morrie Doll: Sounds fine

President Bob Johnson: Okay, I’d entertain a motion.

Commissioner Dan Saylor: I make a motion to relax the legal drain from 75-fee to 50-feet along the west side of the right of entry

President Bob Johnson: I will second, all in favor 2-0

Jim Morley Jr: Can I ask a question for Morrie? Morrie, do we have a good way to memorialize when we reduce the Legal Drain right of entry? I think in the past we kind of typed up a letter and had the Drainage Board sign that then we record it? Are you okay with that?

Morrie Doll: Yup

Jim Morley Jr: Okay, I will go ahead and prepare that and I will just submit it. Thank you all I appreciate it.

**GLEN MERITT-CASH WAGGNER & ASSOCIATES—OAK GROVE INDUSTRIAL---OAK GROVE ROAD, NEWBURGH IN 47630**

President Bob Johnson: Next we have Mr. Meritt Cash Waggner & Associates

Glen Meritt: Glen Meritt with Cash Waggner & Associates, Oak Grove Industrial is a Commercial Industrial Subdivision at the southwest corner of Oak Grove Road and Epworth Road, 19 lots fairly good size like a 100 acre frontage on the lots we have a detention basin that is capturing water from the 18 lots because Howard Ditch runs through this site we have 3-4 acre parcel on the west side that is basically just going to be a stand alone parcel they will come back when somebody decides to develop that to Site Review. The basin say is collecting water from the 18 lots on the east side of the ditch that basin can handle the 100 year storm.

Steve Sherwood: Glen was your basin outside the 75-foot setback or are you going to increase the reduction?

Glen Meritt: Correct, it’s outside we shifted it over.

Steve Sherwood: I think Glen is also reporting to you that the basin overall design…the basin capacity is larger than what is necessary I think you could just use the extra dirt.

Glen Meritt: Correct

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

Commissioner Dan Saylor: How wide are the lots Glen?

Glen Meritt: Averaging 100-foot wide, some of them are a little bit bigger the lot there on the south east corner that has double frontage it is a little bit wider I think its 130-feet in that range and of course the ones on the west side of the road are a little bit bigger but then they have the detention basin on the Legal Drain on the back side of those they have similar buildable area. That is the emergency spillway

Commissioner Dan Saylor: Is that concrete or something, or is that all dirt?

Glen Meritt: No, that’s just dirt. At the site review meeting Steve requested rip-rap to be put at the bank at the ditch to keep it from eroding and I have about 15 tons of rip-rap at the end of that spillway to keep it from…

Commissioner Dan Saylor: On the west end?

Glen Meritt: Correct

Steve Sherwood: Just to prevent erosion, just in case…

Glen Meritt: But all that line work is just showing the path of that emergency spillway

Steve Sherwood: I believe it will be grass after completion

Glen Meritt: With the basin being sized for the 100 year storm we are going to have to get a really large storm even before that spillway will ever be used, you know, I’m sure it will happen occasionally, but it is going to be very uncommon.

Steve Sherwood: That is being proposed as a wet basin, Commissioner

Commissioner Dan Saylor: Who maintains it?

Glen Meritt: The development

Commissioner Dan Saylor: So, this is going to be having an Association?

Glen Meritt: Well, you know now that I said that I don’t know how it will be set up with it being a Commercial like that, I’ll have to ask that question I don’t know the answer to that one. It may stay in the owners name or it may go to those 8 or 10 lots that are on the lake. I don’t know for sure, I’m used to dealing with residential a little bit more often when they do the Home Owners Association, I’m not sure.

Commissioner Dan Saylor: I just don’t want them to think this is our responsibility.

Steve Sherwood: It will be stated on the plat that says Warrick County is not responsible for the retention basin, that’s standard

Glen Meritt: No, that will be recorded and stated on the plat

Commissioner Dan Saylor: Is there something on there that this has to be maintained to a certain standard? I know this is not…it probably wont be able to be seen but you know the complaints we get with the cattails and it looks bad….I don’t know…

Steve Sherwood: That is an issue we have yet to address.

Jason Baxter: We have them everyday

Glen Meritt: It’s a pretty large basin I cant remember the exact acreage, but I got a design to be dug out 10-foot deep and I mean, it’s an acre and a half I believe almost 2 acres I mean, its not your little dinky detention basin you see.

Commissioner Dan Saylor: Okay, are you okay with that Mr. Baxter?

Phil Baxter: Yes

Commissioner Dan Saylor: Mr. Sherwood?

Steve Sherwood: Yes, the plat meets all our minimum criteria past the pipes he has installed within the easements and meet our 50 year criteria, he has an outlet structure with a trash guard and in the event as he stated the water would have to get to the 100 year level before it would breach the emergency overflow.

Commissioner Dan Saylor: So, we’re good with everything. I make a motion to approve the drainage plan for the Oak Grove Industrial Park

President Bob Johnson: I will second, all in favor 2-0.

**CLAIMS:**

President Bob Johnson: Next we have claims, several claims here for a total of $15,057.91.

Commissioner Dan Saylor: Can I ask a question? We have two sets of…oh; I see one is for ATV tires?

Jason Baxter: Yeah. I got a 2002 four-wheeler that might need some new wheels.

Commissioner Dan Saylor: This surveying for $12,937.50, that has been completed?

Morrie Doll: That is the Section Corner; we are required by state law…

Steve Sherwood: I confirmed that earlier with the representative in the back of the audience Mr. Michal Stevenson

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

President Bob Johnson: I will second, all in favor 2-0

**OTHER BUSINESS**:

President Bob Johnson: Anything else for Drainage Board? We have a Beaver Trapper for Wade Taylor

Jason Baxter: Yeah, we spoke with Council earlier and Wade is wanting to have somebody with him, he doesn’t want to be the only one out there for safety reasons and this that and the other, so Council asked me to have just those people involved sign this agreement. You can read that, that’s something we prepared.

Phil Baxter: I think it is coming before you in your Commissioner’s meeting.

Morrie Doll: Jennifer has put in your packet a letter for the Council for the Economic Development Commission, Mr. Davis has delivered to us a copy of the notice of the Public Hearing pursuant Indiana Code 36-7-14-17B he is required to provide us specifically with a notice of the Public Hearing which he has done as an attachment. We just need in the minutes to reflect the fact that we have received the require statutory notice of the hearing set for December 16, 2021 at 4 o’clock in the afternoon at Freidman Park concerning the creation of the new TIF District on 61.

President Bob Johnson: Okay. So, Councilor there is nothing we need to do with this Wade Taylor agreement?

Morrie Doll: I looked at it, and I told Jason I think it looked fine. I think it is on your agenda at the Commissioner’s meeting to be approved tonight?

Commissioner Dan Saylor: It is, I think I remember seeing that on it.

President Bob Johnson: So, do we need to do anything with the acknowledgement of the SR 61 Economic Development Area?

Morrie Doll: No, just in the minutes just reflect that we received the official required notice of the public meeting.

President Bob Johnson: We have received quite a packet here. Okay, anything else for Drainage Board.

Jennifer Curry: I have one thing; I had a homeowner from Woodfield Subdivision she brought in from her neighbors and signatures of that basin…

President Bob Johnson: I thought we were going to address that next meeting.

Jennifer Curry: I just have it here to pass out.

**STORM WATER DEPARTMENT**

President Bob Johnson: Mr. Sherwood, do you want to go ahead?

Steve Sherwood: With my business? Yes, thank you. First item I have is the tabled business from the previous meeting concerning the Old Hickory Estates waterfront issue with the six parcels on Blue Lake Court. If you recall there is basically three parcel owners on either side of a 20-foot wide drainage easement, utility easement, with 10-foot on each of the adjoining properties for a total of 20-feet of easement. Basically we tabled it last meeting trying to discuss how we were going to approach the land owners with their various encroachments within said platted easement, do we request that they remove their encroachments and give them a time line and then I can pursue getting a contractor in 2022 to replace a structure once the encroachments have been removed? Or do we make it part of the Contractor’s project for them to do with the various land owners and their encroachments? I don’t know if you all still have the package from the last meeting, but I have one copy if you wish to look at it again. There is a bunch of above ground landscaping and fences, yard barns, and then some documentation where they have put their own private drains, attached it, driven fence posts through it, excreta. They have all signed Temporary Right of Entry Agreements allowing us to be on the property, but I have not determined how we shall deal with these encroachments, as I am sure they are very curious as well.

Commissioner Dan Saylor: Shouldn’t they be responsible for removing them?

Steve Sherwood: The plat says they shouldn’t even be there to begin with, but we run into this issue in subdivisions in Ohio Township quite frequently. The plat clearly states they should not be in there, but here we are. I can send them letters giving them a deadline to have this removed in April or May of 2022

President Bob Johnson: That’s fine, but then it brings up the other issue that concerns me is who is going to be responsible for the cost of the repair? It’s one of those where I don’t think the County should have to pay for it.

Morrie Doll: What is the estimated cost? What do you think…

Steve Sherwood: I haven’t approached that yet, if it is supposed to be done by the County it would be just time an material with our forces, but I’m thinking I would probably want to prepare a contract to replace 410-feet of 15-inch pipe and there is a couple area drains involved, so I would say we are probably approaching about $35,000 to $45,000 as a minimum if not more depending on the complications involved with encroachments.

Commissioner Dan Saylor :What are you thinking Bob?

President Bob Johnson: That is a big number and I can see where citizens are going to balk and have trouble paying that and I can see where it is going to be a liability for the County, so I am kind of stuck here.

Steve Sherwood: If its continued to keep failing, eventually it will hold water in the roadway and wont be able to drain from the roadway from the retention lake.

Morrie Doll: The problem I have is let’s say we go in and fix it and we make them take their fences our or we take them out or whatever, how do we stop them from putting them right back up again in a year or two and damaging the new pipe?

Steve Sherwood: If Morrie would recall basically when we did the Canterbury Springston we wrote in the contract that the Contractor was responsible for removing the fences and reinstalling them as part of the cost of the contract.

Jason Baxter: Reinstalling them in the same place?

Steve Sherwood: If the fence is in the easement and in the way they take out the offending portion, do the work, then reinstall the portion back where it was.

President Bob Johnson: That’s kind of like saying “it’s okay to break the rules and ordinances”

Morrie Doll: Or it would find we are giving them permission to trespass.

President Bob Johnson: It’s a tough one.

Steve Sherwood: In this case we have an above ground landscaping feature 3 to 4-feet high and covers the entire easement.

President Bob Johnson: It’s nice looking too and I hate to see it go, but it’s going to. I just..I don’t know what the right answer is here.

Commissioner Dan Saylor: Steve, where is that, is that right here in this drawing?

Steve Sherwood: Yes, that is the end at the end of the lake then it begins on left hand side on Blue Water Court, as you are looking at the page it drains from left to right. There is copy of the plans, subdivision plat of the easement, other photos involved. We could table it again; I just have to bring it up.

President Bob Johnson: I understand

Steve Sherwood: I just have to put them on notice

President Bob Johnson: I just don’t know to tabling it again is going to get us anywhere because I wont have a solution in two weeks to begin with.

Commissioner Dan Saylor: To me, I think if we have a Contractor do it I think we just put them on notice that they cant put their fence back where it was. The other thing if we put in a poly-pipe correct?

Steve Sherwood: Yes

Commissioner Dan Saylor: If we put in a concrete pipe it’s going to be pretty hard for them to dig a post hole through it, is that a solution?

Steve Sherwood: That would drive the cost up of the previous sited figures too.

Commissioner Dan Saylor: How do we keep this from happening again? You tell the residents it cant be installed, but….

Morrie Doll: Well what happens is most of the residents say they didn’t do it, they bought the house, and somebody else has already done it when they bought it, they were unaware it was an easement at the time, and as you know ignorance is no excuse, and they are going to say we wouldn’t have done it, but we’re going to be made to pay now. One thing about it is these six property owners will now be aware if we go in and fix this problem they can not do it, so that argument doesn’t work anymore, I don’t know if you have a home owners meeting with them out there and say here’s the deal we’ll split this cost with you 50/50, or you clean out the right of way and get all the stuff out of the right of way and install the new pipe, but you cant put anything back. The other thing you could do is as you have all seen utility companies sometimes post signs on their right of way that say “no digging or burring” or anything like that and we can have Steve develop some kind of signage that goes out to places like this and says “Warning: You are in the right of way of an underground drainage system and you are not allowed to encroach”

Steve Sherwood: To Commissioner Saylor’s point, how do we prevent future, most of these problems I am dealing with have already happened and they have yet to be a problem, but it is a matter of time. We had at one time as we discussed the previous meeting, a permitting procedure for fences which had been done away with, but people say they have the right to use their land and they will remove the fence if it ever comes into question. The problem we are now having is with the smaller and smaller lots in these larger developments people want to maximize their space. Even if Jagoe puts on their improvement location permit do not encroach these easements, no fences or obstructions, people still do it anyways and people claim they didn’t even see it or they don’t understand it, or whatever excuse. It’s a problem.

Commissioner Dan Saylor: I think it’s a little bit of both of those.

Jason Baxter: We discuss this every time.

Steve Sherwood: People in this instance still put a fence down the common property line knowing there is a 10-foot easement on either side and either share the cost of fence or one person does it and the other gets the benefit of having a fence in their backyard with no cost to them. Nobody wants to put a fence down the easement and leave a 20-foot strip that may need access in the future.

Morrie Doll: Well, then that creates a maintenance issue.

Steve Sherwood: Then they have to build a gate to get in and mow it.

President Bob Johnson: What do you want to do here? Table it? You know, Councilor mentioned something about a shared cost and maybe that is the way to go to have them feel a little bit of it and a shared portion of it.

Morrie Doll: The problem is if 5 of them say it’s okay but then the 6th one wont or cant, then what do we do?

President Bob Johnson: Then we put a lean on their taxes…

Morrie Doll: Yeah…but

Steve Sherwood: The problem the Contractor has some of these fences are so old when they go to take them down you cant put them back in the same condition that they came down…

President Bob Johnson: Well, I don’t agree that they should go back and allow them to break the law again…

Commissioner Dan Saylor: I like Morrie’s suggestion of posting signs, like on this strip you could post 3 or 4 signs right in the center of it.

Morrie Doll: If Warrick County passed an Ordinance saying “if you encroach on a right of way and damage the utility in the right of way then the property owner where the encroachment occurs is liable for those costs” and you have that on the sign and you reference the Ordinance number and you post that sign somebody goes back there and puts a fence up, landscape structure, or something, they can not argue that they didn’t know.

Steve Sherwood: The other issue is it’s not a question if it is damaged, some of these structures have a certain life span, and it’s not a question of “if” it’s a question of “when” they have to be replaced in 30 to 50 years whatever the case may be.

Morrie Doll: The damage part could or couldn’t be in there, you could leave it out if you want to. It’s a condition that they cant encroach in the easement, period.

Steve Sherwood: Do we want to go in the Subdivision Control Ordinance and have the Developer responsible for that sign placement on every easement and every lot?

Morrie Doll: I don’t know that it would get put up if you do that, I don’t care who puts the sign up but somebody ought to put the sign up.

Steve Sherwood: Or if it’s put up it’ll be taken down by the land owner at some point. All good points and issues

Commissioner Dan Saylor: You know, like what Steve said, you hear the excuse they didn’t know and that kind of thing, I think in an Ordinance it seems like we could request that there be a document being signed with the purchase of every lot by the home owner that they understand that there is an easement…I don’t know.

Jason Baxter: Does that go through the realtor?

Steve Sherwood: What you are saying makes sense and it could be issued by the Planning Commission at the time when an approved location permit is granted for that parcel for the building of the improvement on the site…

Commissioner Dan Saylor: When you go get a permit, but a lot of the times that’s the Developer and not the home owner right? Like in Jagoe’s case.

Steve Sherwood: Sometimes the Contractor will get the permit and not the actual owner.

Commissioner Dan Saylor: Right, because you don’t own a Jagoe home until it is built and accepted, so they don’t have a construction loan to deal with.

Morrie Doll: But a lot of these are installed by the home owners themselves years after they bought the property, they want a backyard and be private with the kids, dogs, or whatever and they take their pickup truck and pick up post sections and they put them up or they call the fencing company if they don’t know how to do that then they come in and put them up. So, it’s not Jagoe who is doing this, I don’t think Jagoe has done any of these as an example.

Steve Sherwood: We’re dealing with a property owner now at a corner of an intersection and a Jagoe development and the only reason we saw it is because we are alerted there was a string line down the right of way line and the water company called us and said “hey, they are getting ready to fence across our easement and fence the center of a drainage ditch” she did not understand why she couldn’t do that when she called to question my letter in warning her about what she was about to do. It would’ve created a site distance with a 6-foot fence at the intersection corner, another safety issue. So, yeah we see a lot of different issues involved, but it doesn’t prevent the ones that are already problematic.

President Bob Johnson: Well, like you said let’s table it.

Steve Sherwood: We can table it until January and I can bring it up the first meeting in January if the Board so desires.

Commissioner Dan Saylor: Would it be best just to put them on notice that there is a project coming and you need to get your personal property out of the easement?

Steve Sherwood: They have already been put on notice there is a project coming, it just wasn’t decided as to how their encroachments would be resolved. So they know the project is coming, one even called me and asked why it wasn’t done yet, you said it would be done in 2021 and I said well, I didn’t get all the property owners until just about a month ago online. Then I still have to have the funds that is coming in rank in other projects at the Boards pleasure.

Morrie Doll: Is this handicapping or negatively affecting drainage now, presently?

Steve Sherwood: The street is not flooding at this point; will it at any time soon? It could restrict the flow, it could cause a blockage, it just hasn’t happened yet this is the same line where the utility box sunk in and Vectren was able to move the utility box and we were able to repair at that point, but these other fence post and other encroachments are further down the line. I have another project in the same section and we’ve had water pond in the road, but it seeps away over time and one lady will not sign a TROE and says she will get an Attorney and fight it if I insist on going forward, so that project lays dormant because of that land owner. So, yes, we have more this one is just at the front of the line.

Commissioner Dan Saylor: My thought is…

President Bob Johnson: There’s a bunch more, I guarantee it. Whatever we do on this one we need to set a president.

Commissioner Dan Saylor: What I don’t like, if we take down these structures we could be held liable for damage of the 30 year old fence that’s not worth firewood…

Morrie Doll: We could fight about it Commissioner, but they would lose that fight because they had no legal right to install that structure in the right of way.

Commissioner Dan Saylor: So, are we better to say we will remove it and not be responsible for damage, you can put it up but you can not put it up within this area.

Morrie Doll: My advice would be you give them notice, give them a limited period of time to remove it if they so desire with the understanding if they fail to remove it within that time we will remove it from the right of way. We are not responsible for lost, damaged, inconvenience, or cost associated with the removal, then at that point of time whether Steve’s employees or folks do it or we make it part of the bid process with the Contractor. I mean, they take a skid steer…

Steve Sherwood: I’d say give them a date that Morrie is proposing and send them on notice. The question for me would be would this question be better coming from Morrie than it would be from me at my office.

Morrie Doll: It doesn’t matter who the notice comes from, I’d be happy to send it.

Commissioner Dan Saylor: I think to Steve’s point your office will be taken as more weight, so to speak.

Morrie Doll: I’d be happy to send it.

President Bob Johnson: As far as cost of the project Councilor, how would we handle that?

Morrie Doll: I don’t understand the question Commissioner.

President Bob Johnson: Who pays for it?

Morrie Doll: Well, unfortunately all I am getting…my solution I just given you just gets you on the right of way either at no cost, either you are taking it out and you don’t know the land owner’s improvement with the skid steer or whatever or they have removed it themselves, but they have to understand they cant put it back in the right of way that does not address the issue on who is paying the cost on replacing the pipe.

Commissioner Dan Saylor: If it’s moving water off a street…

Steve Sherwood: That has always been our preference before if we are impounding water in a public right of way causing a street flooding issue.

Morrie Doll: That is to the degradation of the quality of the street too

Steve Sherwood: We haven’t gotten to that point yet in this particular one, but it’s going to happen at some point when the line collapse

Morrie Doll: We did that project off Vann, you and I walked neighbor to neighbor to neighbor and what we saw in that point of time where there were drains out of homes whether they were gutters, or sump pumps that were pumping water underground, to the street, then discharging the water to the street. You remember all the green algae you and I stepped and walked around we talked about that, the problem with that is it’s going to damage the street it’s a matter of when. At some point in time if somebody falls on the ice, because some of it was discharged and rolled across the sidewalk and then entered the street they will sue us. We knew about it, didn’t enforce the ordinance that they can not discharge like that, and as consequence of that someone breaks their leg when they slipped on the ice that we were aware of existed there, water was there, and now the person is incapacitated and the max recovery is $700,000? So, I mean, we cant catch everything, every time, every place we just cant and as fast as we catch one how many out there are doing the same thing.

Commissioner Dan Saylor: Obviously this structure needs to be fixed or Steve wouldn’t have brought it to us, I think if we require them/request them to remove their personal items and we fix it, but then we notify them and say if they are reinstalled they need to be installed out of the easement…

Morrie Doll: No trespassing in the right of way

Commissioner Dan Saylor: Right, and then we post that from this point on this is what we are doing different and now we are posting that, we are physically putting up whether it’s Jason, or we’re putting up two or three signs that say you cant do that.

Morrie Doll: You’d pass an ordinance provided for the posting and a fine or punishment if they violate the posted notice not to trespass in the right of way, they do, and you post those signs out there and you cite the ordinance on the sign….

Commissioner Dan Saylor: This is really…

Jason Baxter: Can we not make the Developer do that?

Morrie Doll: Developer is long gone, many of them are dead.

Jason Baxter: I mean, going forward.

Morrie Doll: Going forward is a different can of worms; there are great ways to deal with these problems. When somebody brings us a new plat we can say okay you have to post this right away, okay, we’re talking the difficult situation where we have an existing subdivision that is failing a drain is failing, how the heck do we fix it but then ensure we don’t have to come back in 15 years and do this again because they reinstalled the post in our new drain.

Commissioner Dan Saylor: So, in that ordinance you could fix existing problems, but within the same ordinance you can fix going forward.

Morrie Doll: You could

Commissioner Dan Saylor: I like the idea that we’ll move it….some people if it’s a 20 year old fence they may take the opportunity to say hey let’s put up a nicer fence.

Morrie Doll: My advice to you is you give them the opportunity for a limited period of time to remove the encroachment themselves, okay. It may have been sentimental to them, maybe some part of that was their dads or moms or something they want to save, but if it is not removed within the time period we will remove it without liability as part of the improvement contract…

Steve Sherwood: Or restoration…

Morrie Doll: Either way nobody puts whatever the encroachment is back in the right of way

Commissioner Dan Saylor: So, this really only truly only affects District I, does everyone agree?

Morrie Doll: Predominantly, yes

Commissioner Dan Saylor: So, my thing is I would like to see the Commissioners, us, do the ordinance…Terry is not here….but if we talk to Todd could you work with…could you write the ordinance?

Morrie Doll: Todd and I can work together on the ordinance if that is what you want

President Bob Johnson: That is what I would like to see

Commissioner Dan Saylor: We’ve dealt with this kind of issue, I have, for 4 to 5 years, but we haven’t done anything to fix it. We’re sitting here dealing with these things multiple times a year and there is more out there and more to come, but let’s put a solution together moving forward that deals with the current issue at hand and the future.

Morrie Doll: We just did the same thing in Lakeridge, remember the pipe didn’t get all the way to the lake, we had to extend the pipe, there was a putting green built in the right of way.

Steve Sherwood: Yeah, the one that we lined the pipe.

Morrie Doll: A professional, thousands of dollar putting green on an elevated plateau….we put a liner in it.

President Bob Johnson: But we paid for the repair.

Steve Sherwood: That was a lot cheaper than avoiding having to dig up everything that may or may not have been in the easement.

Commissioner Dan Saylor: There was also utilities in that box

Morrie Doll: There was, AT&T ran their conduit on that same pipe on the other side of the road, but that went under a driveway, an exposed aggregate, artistically pleasant driveway built in the drainage easement. A big concrete driveway.

Steve Sherwood: If the Board would concur that Morrie and Todd work on an ordinance and in the meantime if the Board would concur if Morrie and I work on a letter to address this issue based upon what Morrie has just described, we set a time table for them to move and the Contractor and the bid to come will deal with whatever is in his way at no repercussions to Warrick County.

Commissioner Dan Saylor: I don’t think it’s fair, you know, I don’t have a problem fixing the pipe, owners are paying property taxes and that is going to be their argument, however they put the fence up whether it’s them or they bought the house that way I don’t think it’s fair for taxpayers to be putting up fences.

Steve Sherwood: To date we have spent money on fixing or replacing drainage structure in the approved drainage plans on subdivisions in Warrick County, we have done that traditionally in the past that’s always been that way until I am directed otherwise. That is how we judge these is if that structure shows up on the approved drainage plan that was approved by Drainage Board we are responsible for that structure. They have a certain life time, some of them will last 30 and some will last 50 years but at some point it will fail for whatever reason.

Commissioner Dan Saylor: People pay, there is a separate fee the Storm Water Fee that people pay and that is what will make the argument that they are paying for that ,I don’t have a problem with paying for the pipe, but I do have a problem for paying for stuff that they put in the right of way. They take it down, just like what you guys said I kind of like that, we are not responsible for putting it back up. Bob?

Morrie Doll: When they put it back up they cant put it back in the right of way.

Commissioner Dan Saylor: I like the idea of posting it, that way if you go out there 5 years later…..here’s the other thing too when you sell a house you have to sign the disclosure

Morrie Doll: That you do not know of any encroachments…

Commissioner Dan Saylor: Yeah, and if that sign is posted that would be pretty hard to argue in court of law that they didn’t know about this.

President Bob Johnson: That sign would be the first thing to disappear.

Commissioner Dan Saylor: What you do is you would photograph it and you make record of that and you guys would probably have to make a file for every one of these drains, but I think…

Morrie Doll: So, would you like for me to reach out to Todd and work with him on this posting process and then reach out and work with Steve on these six house on this particular one and get back to you in January?

Commissioner Dan Saylor: Yup

President Bob Johnson: Yes, Sir.

Commissioner Dan Saylor: Does that need a motion? Sole moved as stated by Councilor

President Bob Johnson: Second, all in favor 2-0. What else do you have?

Steve Sherwood: Morrie and I worked with Lochmueller Group last week Morrie, his firm reviewed all the parcel easements on the Fuquay Tanglewood Project, basically 5 of them, Saylor, and I met with these owners this past fall. Everything is in order now according to Morrie to have Lochmueller prepare the final agreements and at some point when their agent goes to meet with these 5 parcel owners Warrick County, being Morrie, myself, and Commissioner Saylor if he would like to be a party to it can meet with them to get these easements signed.

Morrie Doll: We are talking about which person to approach first, which one seems to be more in support about it, we went through and made them all alike, there was some differences between parcel #1-3 and so everything I think is now in order and I am willing to go out after p.m. or whenever it is to meet these people.

Steve Sherwood: Or maybe during work hours he said as well

Morrie Doll: And sit down with them and explain what we are doing, what it means, and notarize the signatures.

Steve Sherwood: Assuming they will all still donate the easements.

Morrie Doll: This will save us a significant amount of money for the County on this project if we don’t have to pay for the right of way.

Commissioner Dan Saylor: So, since it’s doing that there was a couple home owners or at least the one on that north end, Steve

Steve Sherwood: That one has the large pipe that is really out of our easement area

Commissioner Dan Saylor: Yeah, we can…

Steve Sherwood: We don’t need an easement from them, but they ask if we could help re-line the ditch coming into our projects zone.

Commissioner Dan Saylor: I think they are kind of afraid of it; it’s kind of a bridge that they use…

Steve Sherwood: A large concrete pipe

Commissioner Dan Saylor: Yeah, big pipe that probably needs to be protected, is that what they are wanting to rip-rap around that or something?

Steve Sherwood: Yes

Morrie Doll: They don’t need the pipe replaced, they just need the shoulder

Steve Sherwood: Because it crosses their driveway in an angle, it really should’ve been longer, but they want their corner protected so to speak, the pipe itself is not the issue.

Morrie Doll: But do we accept liability if we touch it? If we go in to protect the corner…

Steve Sherwood: They are not one of the five parcels we are addressing, but this would be a temporary right of entry agreement outside the contract and it’s something our Storm Water crew can do outside the project

Morrie Doll: I am wanting a Hold Harmless if we touch it

Commissioner Dan Saylor: And noted you are right, I guess I assumed that project touched them somehow…

Morrie Doll: It’s next to them, but not on them. Is this the one that goes under Fuquay?

Steve Sherwood: No, that’s upstream. The next driveway upstream.

Morrie Doll: Okay

Commissioner Dan Saylor: Steve, what was she? Was she a sister, sibling, or something of one of them? There is three or four of them like they are related there.

Steve Sherwood: They are of some relation; I think they would like us to be more involved with their driveway than what our project is actually responsible for.

Commissioner Dan Saylor: Right, but I just wonder if we don’t facilitate that a little bit with rip-rap, will she upset the apple cart?

Morrie Doll: If we have a definite understanding of the quantity of rip-rap that is being installed and who is installing it and how we are installing it and where we are installing it with a Hold Harmless Agreement you can do it and it probably helps keep silt out of the pipe we are about to bury in the ground, there are justifications I guess that can be made for that.

Steve Sherwood: Yes.

Morrie Doll: I just don’t want to own that pipe, I don’t want to own that concrete bridge and then hold future maintenance responsibilities on Warrick County is what my caution to you is. We can do that with a temporary

Steve Sherwood: If that needs to be addressed with these five parcels.

Morrie Doll: And I just don’t know when we will know whether it is or isn’t.

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

Morrie Doll: Clean up. So, Commissioner…I guess who is going to reach out to the Commissioner when we’re going to go out and start knocking on doors?

Steve Sherwood: When we know of that I will send Commissioner Saylor a notice that if he wishes to join us he is more than…

Morrie Doll: You went out and met them before…and I have told Steve I am willing to go, I am not begging to go, it is up to you and Steve as to whether you want me to go you will need a Notary… I think Jennifer is a Notary….how the heck did that happen you are not a Notary?

Steve Sherwood: Barbi in my office is a Notary.

Commissioner Dan Saylor: She’s bonded under us…

Morrie Doll: I know, she should be a Notary. So…to finish that thought I don’t have to go if you think I am going to be handicapped to getting them to agree to give us a right of way then don’t take me, if you think…

Steve Sherwood: We don’t have to be at all, Lochmueller said he could handle this by himself, I just thought Warrick County should just have some representation.

Morrie Doll: I really recommend somebody from Warrick County be in the room with a pair of ears, what was promised and when was it promised and to whom was it promised.

Commissioner Dan Saylor: You are the expert in this, I have no problem with going, but if I’m going I think I would like you there by my side.

Morrie Doll: Somebody let me know if you expect me to be there when, where, and how.

Steve Sherwood: Next item Mr. President, I have been told by the awarded dealership for the mini excavator it is to be delivered this week, I am not holding my breath but I am told it will be delivered this week. Last item I have is I need to put in the record the proposed Encumbrances from 2021 to forward these monies into 2022, first is “Projects” I am anticipating about $124,000 out of this years project budget, I would like to Encumber that into 2022…

Morrie Doll: About?

Steve Sherwood: I might have a few expenses…

Morrie Doll: Not to exceed, I just don’t know what “about” means.

Steve Sherwood: I am anticipating in this item by Barbi’s budgetary figures $124,000 plus or minus to be air marked for 2022 for the Tanglewood Fuquay budget. According to Auditor I must mention and state what project those Encumbrances are to be fore.

Morrie Doll: Yes, and the amount of the Encumbrances.

Steve Sherwood: The second Encumbrances which has already been transferred every year is $300,000 is from the Storm Water budget to the Prospect Building Project, we have done that for a few years now I just need to get that in the record. Last but not least the “Equipment” budget I am thinking $32,000 plus or minus from those funds to be Encumbered into 2022 and I wanted to note that for a new Foreman truck as a piece of equipment as this time as I can air mark that money for in the event we are going to pursue the new truck in 2022. If those items are agreed upon by the Board I ask for you vote as discussed.

Commissioner Dan Saylor: Okay, do you feel comfortable with those figures that you stated are those to not to be exceeded figures?

Steve Sherwood: Well, it’s plus or minus $1,000 I can make them not to exceed, we are not going to lose the money it wont leave Storm Water Department I just want to mark those amounts and we will transfer…

President Bob Johnson: Keep it simple.

Commissioner Dan Saylor: So, your prospect is a good hard number

Steve Sherwood: It has been for a couple years, and your equipment..

Commissioner Dan Saylor: Is that a hard number?

Steve Sherwood: $32,000 hard enough.

Commissioner Dan Saylor: Your $124,000 does that need to be not to exceed $130,000?

Steve Sherwood: I would stay with the $124,000

Morrie Doll: Not to exceed

Commissioner Dan Saylor: I make a motion to go with Steve’s numbers to Encumber and not to exceed as stated by Steve to be encumbered for 2022

President Bob Johnson: I will second, all in favor 2-0

Commissioner Dan Saylor: Is that okay Councilor?

Morrie Doll: That’s fine, I would have preferred the individual motion per account, but it’s clean. The Auditor can take issue with whatever, but it’s clear.

Steve Sherwood: That is all that I have. For the Board’s information why I don’t have precise numbers is because we are still paying anticipated amounts out of that and that is what we anticipate for those monies at the end of this month.

President Bob Johnson: Well, it’s not going to go up, it’s going to go down. Correct?

Steve Sherwood: We anticipated that much based upon we know

Morrie Doll: We already subtracted…

Steve Sherwood: Yes, that is why we are comfortable with those numbers.

**MOTION TO ADJOURN:**

Commissioner Dan Saylor: I make a motion to adjourn

President Bob Johnson: Second. All in favor 2-0