**MINUTES**

**WARRICK COUNTY DRAINAGE BOARD**

**&**

**DEPARTMENT OF STORM WATER**

**December 27, 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; Phil Baxter, Surveyor; Jason Baxter, Deputy Surveyor and Jennifer Curry, Recording Secretary.

Present in the audience: (none)

**PLEDGE OF ALLEGIANCE:**

President Bob Johnson opened the meeting of December 27, 2021 with the Pledge of Allegiance.

**APPROVAL OF MINUTES**

President Bob Johnson: First we have the approval of minutes for the December 13, 2021

Commissioner Terry Phillippe: I make a motion to approve the minutes

Commissioner Dan Saylor: Second.

President Bob Johnson: All in favor 3-0

**PRIOR APPROVAL-ACAPULCO RESTAURANT PATIO COVER-EASEMENT ENCROACHMENT-NOV. 22, 2021**

President Bob Johnson: Next we have prior approval from November 22nd, High Pointe North Sec. 4 PUD Lot 1 & Lot 40 for a proposed covered patio for Acapulco Restaurant easement encroachment. APC published agenda items…why are we doing this again?

Jennifer Curry: Area Planning published in The Standard that this was going to come to their meeting tonight and they asked that we re-approve it.

President Bob Johnson: Okay, so we need to approve it again?

Phil Baxter: Or acknowledge it.

Morrie Doll: Acknowledge the prior approval

President Bob Johnson: Okay, I will just acknowledge we approved this at the November 22nd meeting so it will be fine for them to take it to BZA tonight.

**WOODFIELD SUBDIVISION BASIN**

President Bob Johnson: Next we have Woodfield Subdivision Basin, package received in Surveyor’s Office from the HOA and home owners.

Jason Baxter: Are you familiar with this?

President Bob Johnson: I am familiar with the subdivision.

Jason Baxter: The basin had been modified by raising the elevation and they just petitioned to take it down to previously designed specs.

President Bob Johnson: Is that what they are going to do?

Jason Baxter: That’s what their letter stated.

**CLAIMS:**

President Bob Johnson: Next we have claims, minus the Tom Naas Homes for $15,180 due to not getting an invoice for that, so we have a gas bill for $98.18 and we have SJCA Surveying invoice #15144 for $2,587.50. I will entertain a motion to pay those claims.

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

Commissioner Terry Phillippe: Second.

President Bob Johnson: All in favor 3-0

**OTHER BUSINESS**:

President Bob Johnson: Any other Drainage Board business?

Morrie Doll: I am unclear, what did we just do with Woodfield? Has the HOA agreed to lower to original specifications?

President Bob Johnson: They want it back to the original specifications.

Morrie Doll: Original specifications, because when Jim Morley Jr was here he was talking about some half-way point

Commissioner Dan Saylor: They don’t want that, they want it taken down to the original specifications.

Morrie Doll: Okay, so we don’t have to approve that because we already approved it this just acknowledges that they are fixing the problem and coming into compliance?

President Bob Johnson: Correct

Steve Sherwood: Further question, is there a time schedule when this will be restored to the original approved pool elevation?

Jason Baxter: The letter didn’t state any time frame on it.

Morrie Doll: Is this the letter we had last meeting? That is not from the HOA

Jennifer Curry: This is from the HOA they put together this letter to present for us, I thought that Jim was supposed to bring back a study on that basin, but we didn’t receive anything further from that.

Morrie Doll: That was if they compromised any higher than the originally approved pool elevation, he was going to do the engineering work to show that it works and we were going to hold them liable for water backing up into the sewer system the surface water…

Steve Sherwood: Storm sewers

Morrie Doll: Storm sewers because we don’t want to use tax payer dollars to maintain that if it is storing water in those pipes, but if they are not doing that then we don’t need any of those things, but my question was some of the neighbors don’t want a higher elevation some of the neighbors sent you a letter that said to take it back to the original level.

Phil Baxter: That’s what we got

Morrie Doll: But that is not the HOA

Phil Baxter: The HOA is stated in there

Jennifer Curry: It says “concerned residents of Woodfield HOA” and they have the residents’ signatures on it…

Morrie Doll: That is not all the residents, that’s 100 houses in there

Jennifer Curry: This is the ones that wanted I guess want it to be corrected…

Morrie Doll: I just want the Board to be clear, this is a group of home owners that I have some knowledge of who are objecting to a modification of that lake or that detention, they are not the Home Owners Association, they are disgruntled neighbors who don’t agree what the HOA and Morley is asking to do.

President Bob Johnson: Okay

Commissioner Dan Saylor: Because they are concerned with the liability

Morrie Doll: Yeah, so I don’t…I just want the Board to be clear this is not the HOA making this request this is neighbors

President Bob Johnson: So, really we cant do anything right now because we don’t have the information

Steve Sherwood: You still have a group of people out there that want it to be reduced to what Morley presented and then you have a group of people who want it back to the original, so we still don’t have a clear answer to what is going to happen and when.

Morrie Doll: Right

Phil Baxter: I’d like to say something; I wanted to see a motion that says if we don’t see something by May 1st we’d like to see it go back to the original design.

Morrie Doll: That makes sense

Phil Baxter: It’s been what, two or three months ago they were going to present us with something and we haven’t heard from them since.

Morrie Doll: My understanding through the grape vine, I could be wrong, is that Morley gave them an estimate to do the calculations to come back and the HOA said they cant afford that and wont do that and that’s where it all just stopped so it is not moving in any direction what so ever.

Phil Baxter: So, they are just going to wait us out?

Morrie Doll: I don’t know, Phil, I cant speak for them but I don know that is what the neighborhood is saying happened.

President Bob Johnson: Why May 1st?

Phil Baxter: Gives them four months.

President Bob Johnson: Okay

Phil Baxter: I’m just allowing some time; I was just using that as an example

Morrie Doll: We will need to send a letter either me, or you, or somebody to the Home Owner’s Association saying you have until May 1st to bring us the Engineering work to substantiate or support your request to change the pool elevation and if you don’t you have to return it to the originally approved pool elevation by that same day. I don’t care where the letter comes from, but the letter ought to come.

Steve Sherwood: Does Morrie have a copy of that petition?

Morrie Doll: I do, I think it’s in my briefcase.

President Bob Johnson: So, say that they come back with some engineering notations that say yes this is feasible and it will hold all the water and should work, you’ll still have some remonstrators?

Morrie Doll: You do, it wont be completely clean either way it goes, but at least if you have an Engineer, Steve can evaluate this and say yeah this does work or this doesn’t work

Steve Sherwood: The other condition that Morley presented that they are also supposed to get a “Hold Harmless Agreement” to allow those pipes to retain the water.

Morrie Doll: Because right now we would be responsible for maintaining pipes that were never designed to hold water year round.

Steve Sherwood: As I recall when they were here two or three months ago they had a directive on what to do if they wanted to proceed, but they’ve not fulfilled is what Phil was saying.

Morrie Doll: It would be in the minutes

President Bob Johnson: Okay, we need to make a motion that states we need some type deadline for the HOA to bring us some type of Engineering information or a plan on what they are going to do by May 1, 2022 or it goes back to the original drainage plan

Phil Baxter: If you agree

Commissioner Terry Phillippe: I make that motion

Commissioner Dan Saylor: Second

President Bob Johnson: All in favor 3-0. Who is going to draft the letter? Morrie?

Commissioner Terry Phillippe: So, just a quick tally on the remonstrators here that we’d been handed there are only five physical addresses represented here.

Morrie Doll: I think there is 100 or more in that subdivision

Commissioner Dan Saylor: But those are the five houses that are around the waterway

Morrie Doll: I don’t know that Commissioner, every house drains into that waterway I don’t know….

Commissioner Dan Saylor: Right, but I thought these were the houses that were directly around…. I thought, I don’t know.

President Bob Johnson: Some reason I thought that as well, but I don’t know I could be wrong. Jennifer, do you have something to add here?

Jennifer Curry: For this? No, but Morrie gave us the 2022 Drainage Board Attorney Contract.

Morrie Doll: It is identical to the 2021 Contract, not a period or comma has changed except the date. Same compensation, same everything and that compensation has never been changed.

President Bob Johnson: Why is that?

Morrie Doll: I think it’s fair, it doesn’t offend me. Drainage doesn’t have a lot of money and I knew that when we started it, that’s why Steve pays much more in legal fees than Phil does. I feel it’s fair, I’m not complaining in any way shape or form

Commissioner Dan Saylor: I make a motion to approve the 2022 Drainage Board Attorney Agreement with no changes

Commissioner Terry Phillippe: Second

President Bob Johnson: All in favor 3-0

Morrie Doll: Thank you

Steve Sherwood: One other item if I may under Drainage Board, I just want the Board to be noticed that on December 17, 2021 Cash Waggner submitted drainage and street certification for Magnolia Place. Talking with Molly the letter of credits will expire sometime in January, but I just want the Board to know that he is asking release of letter of credit and acceptance of maintenance of the streets and drainage

Morrie Doll: Well, the drainage we don’t accept the maintenance on, the home owners will.

Steve Sherwood: Correct

Morrie Doll: Right now they have a …it’s a Chris Combs project and they have $22,500 and a letter of credit with First Bank, they want to take it to $0, and that’s as to…is this drainage or roads?

Steve Sherwood: There’s one for each

Morrie Doll: Yeah, one for each, but I was trying to see…

Commissioner Dan Saylor: Morrie, do you think the home owners know that that underground retention basin will be their financial responsibility?

Morrie Doll: It’s on the plat, Commissioner. My experience has been the folks buy lots with houses on it the last thing in the world they do…none of the Realtors provide them with a copy of the plat and the last thing they do is go to the Courthouse, Recorders Office and pull the plat on the subdivision they are wanting to buy a house on. I am deducing they do not know that, and we have two $22,500.00 letters of credit, one for streets and one for drainage, this was the first drainage system in Warrick County that the Board approved in my tenure for underground chambers. We had a series of chambers that are all connected and when they went in there was some contention about siltation that they may have silted up in the construction period, but they cameraed it, brought us photos of it…

Steve Sherwood: Their camera only went 1 or 2 feet and it doesn’t really show anything

Commissioner Dan Saylor: Morrie, my question as a Board member to you is, would it be in this Board’s best interest to somehow notify the residence, all residence of this that we Storm Water, Drainage Board do not and are not responsible for this drainage?

Morrie Doll: Absolutely. What I really think Warrick County should have is an Ordinance for Subdivision Development that says when you are asking for the release of your performance bonds on streets, sidewalks, or drainage or whatever you have to notify the home owners in the subdivision of that. You have to tell every home owner in the subdivision…

Commissioner Dan Saylor: So they are aware of the responsibility they are getting ready to assume.

Morrie Doll: Think we are done and either your Home Owners Association is now going to be responsible in the future or you are, but we are done and we are letting you know and you got to tell the appropriate Warrick County Board, Commissioner’s for streets, Drainage Board for drainage and what have you when you have a problem with that. Steve sent on December 20th a punch list…

Steve Sherwood: Of 2019

Morrie Doll: Two years ago…we’ve never heard back and it has a whole series of questions about what about this, what about that, what about the cracks, what about this and they have never responded…Cash Waggner?

Steve Sherwood: Correct

Commissioner Dan Saylor: Here is my concern, and I know there is fences in back and I know the fences are probably on the other side of that drainage system, what happens when they start putting the separating fences in? I know that that thing is not 2 to 3-feet below ground level and ink now when you are running an auger those things go down and they have 48-inch blades on them or depth…

Steve Sherwood: The Covenants/Restrictions address fencing and the basin and surface drainage, but does the average lot owner know any of that?

Commissioner Dan Saylor: I just think if something comes up on separate heading, separate letter from this Board just making you aware of what you are…you know what is attached to your property or underneath your property…

Commissioner Terry Phillippe: Council, to elaborate on your idea of the Ordinance, that’s great for the new property owners but I have always said since I have continued to learn here as my time as Commissioner about these issues that the Realtors somehow in the closing process be required to inform the new home owner…

Morrie Doll: You can work that into the same Ordinance, Commissioner. If it is an existing home that is no longer being maintained by the Developer in a development being maintained by the Developer that the Realtor be the ones to notifies that they have certain responsibilities as an owner of a lot in this subdivision, you have to maintain this and maintain that. We have this problem with detention, we’ve went into subdivisions where they have actually passed or carved out the responsibility to maintain detention facilities.

Steve Sherwood: Retention and detention

Morrie Doll: For everybody

Steve Sherwood: Either by the HOA or the adjoining property owner.

Morrie Doll: If it is the adjoining property owner you may have one detention that is all grown up, silted up, needs to be cleaned up which we have done and then you have five people who are responsible, or six people or seven people who are responsible for that because it adjoins their lot and it’s a mess.

Commissioner Dan Saylor: Here’s my thing, when you sell a house you are to fill out a disclosure form listing all the known disclosures and you know, that could come up with a house. I guarantee you those people are not putting anything on there because there probably hasn’t been a lot of sales by the first home owners there, but they are not disclosing that information. It’s probably not known to them, so how do you disclose something you don’t know to where if you notify every owner in there that you know…and this should be disclosed to the next buyers put that verbiage in there, but I like the Ordinance too, but I would like to see all those residence notified especially before we release the letter of credit. What if every one of those home owners show up here demanding we do something?

Morrie Doll: Or they say something isn’t finished, something is not done, in my yard the drain was never finished and I want it finished.

Phil Baxter: We had a couple come in our office six months ago they were complaining about the drainage, they done some work themselves, they talked to Combs and he wouldn’t do anything.

Morrie Doll: In Magnolia?

Phil Baxter: Yes.

Commissioner Dan Saylor: Really?

Phil Baxter: Yes. I know the people, real nice people, he’s in first stages of dementia and they are just nice people. I told them the drainage would be coming up to release and I would notify them when this happened simply because of knowing the problem and being courteous.

Commissioner Dan Saylor: Can you elaborate what the problem was?

Phil Baxter: They had water standing…a swale between them and another house and the home owner next door and these people got together and hand done it themselves, dug a pipe out

Commissioner Dan Saylor: To where it drains?

Phil Baxter: Yeah.

Commissioner Dan Saylor: Nothing to do with the underground system, per say?

Phil Baxter: Well, I don’t know. I don’t know if that water was supposed to go in that underground there or whether it was supposed to drain to the rear yard

Jason Baxter: That system has got to be loaded with silt, Steve and I after the rain storms they didn’t protect the inlets and I mean, it was just mud sliding in the drains.

Steve Sherwood: I put them on notice before they even turned shovel #1 out there on any dirt that this would have to be handled with kits, gloves…

Morrie Doll: This is the first of it’s kind in Warrick County, is it not?

Steve Sherwood: First time we have done it for a subdivision

Phil Baxter: First time in a subdivision, yes, but we’ve got developments that are like the Commercial buildings down on 662 is done underground.

Steve Sherwood: This chart here illustrates who has them in their back yard here to here and from here to here, and this part here is a 30-inch pipe that outlets everything through a 6-inch pipe into the drainage and Bell Road. All these people that you don’t see pink don’t have a basin behind them, to our discussion earlier that the percentage of lots do and percentage of lots don’t, but there is over 17 drainage swales, to Phil’s point, that were supposed to be built to a certain percent grade and these have to be verified yet in the field before we would release that and it’s eluded to in my letter.

Morrie Doll: December 20, 2019 is when the punch list was sent

Commissioner Dan Saylor: Their Engineers to Cash Waggner to do that right?

Steve Sherwood: Yes, and I sent this to Glen Meritt saying you know, what about this December 20, 2019 punch list? Have you verified that all these items, 3 pages worth, have been corrected? I haven’t heard anything yet, it is the holidays…

Morrie Doll: When did you send it to them again?

Steve Sherwood: I emailed it last week and copied Phil when I sent it, but Phil’s Office, my office, and Bobby will have to go out and walk this development, check these items, and then check against the drainage plans I just showed you to make sure all the swales are operated.

Morrie Doll: I would recommend a Resolution by the Board saying we are not going to release the drainage letter of credit until the December 20, 2019 punch list has been addressed.

Phil Baxter: Well, there may be more to do thought.

Morrie Doll: At least, the December 20, 2019 punch list is addressed.

Steve Sherwood: That’s assuming I caught everything in 2019, there might be some other issues that have developed since then.

Morrie Doll: The problem with it is do you trust…..Glen is a nice guy, I like him…but my point is it’s like asking the fox who is guarding the chicken coop….

Commissioner Dan Saylor: Exactly

Steve Sherwood: Well, and then here is the certification letter and it says quoted “The drainage improvements required for Magnolia Place are in place and have been constructed in relative conformance with the approved drainage plan. That is a similar notice that Morley and everybody else submits, they say “relative conformance”, who’s opinion is of what “relative conformance” is? So, you know, if the swale was supposed to be .5% and if it’s not…in a grass swale…how particular do you get?

Morrie Doll: What do you want to do? They are going to be asking….in your capacity as Commissioners; they are asking for the road bond be released as well, we are just talking about drainage.

Commissioner Terry Phillippe: What would happen if we were to just say “no”?

Morrie Doll: They would have to renew the letters of credit…

Steve Sherwood: Or you would have to tell them to extend their letter of credit by “x” number of months until they can get these improvements done and assurances made to us that everything is operating as it is supposed to be designed to.

Morrie Doll: If that is what you want I would suggest a motion to that affect, with a letter to Glen Meritt saying until these are addressed we are not about to release your bond.

Steve Sherwood: That needs to go to the Developer as well as the Engineer

Morrie Doll: Yeah, I agree to vote.

Commissioner Terry Phillippe: At the same time if we were to do that then there is still potentially unknowns because it’s all underground.

Morrie Doll: At the very least, great words, at the very least until the punch list is addressed. You are right Commissioner, two years has passed since that letter was written who knows what it looks like now…Phil has testified to that just from what he knows through his office. I would give them notice now that we are not going to release these in January, they have not responded to the December 20, 2019 punch list and until at the very least those defects or omissions have been addressed we are not going to consider releasing your performance bond.

Steve Sherwood: Only half the houses were constructed at that point in time, so I don’t know what has happened to the drainage swales behind the rest of the development.

Commissioner Terry Phillippe: Yet another case for an inspector.

Morrie Doll: Yeah, I think an Inspector salary could save the County tax dollars. They cant close the ditches until they have been tagged by the Inspector’s compliant and all that.

Steve Sherwood: To Morrie’s point, the expiration dates of these two letters of credits are both January 26, 2022 and the Plan Commission needs at least 10-days before that to act on it. Technically we only got the next meeting in January to take some type of action.

President Bob Johnson: Councilor, what kind of action do we need to take? We need to do a motion?

Morrie Doll: Motion or Resolution, either say…a motion would be better. Say we anticipate the request to release; we are not going to release those until at the very least the punch list items on the December 20, 2019 correspondence for Magnolia Place have been complied with.

Commissioner Terry Phillippe: I will make that motion and I will make it now in this meeting because I think that if I were them I would appreciate as much heads up as possible.

Commissioner Dan Saylor: Second.

President Bob Johnson: All in favor 3-0

Morrie Doll: Who is sending the letter? The drainage issue, do you want Phil’s office to send a letter? Do you want me to send the letter; do you want to send the letter?

President Bob Johnson: Councilor, is that something you can do?

Morrie Doll: I can do it.

Commissioner Dan Saylor: I just think it needs to come from you.

President Bob Johnson: Is that all you had Steve?

Steve Sherwood: Under Drainage Board, yes.

President Bob Johnson: Okay, real quick on the contract. I went ahead and put today’s date in as I signed it, but at the end of it, it says 2022

Morrie Doll: Just make it 2021, thank you.

President Bob Johnson: Just was letting you know.

Morrie Doll: I saw it when I did it, and I didn’t know if it would be approved today or if you were going to hold it until January.

President Bob Johnson: Okay. Mr. Sherwood.

**STORM WATER DEPARTMENT**

Steve Sherwood: I have a similar contract for our Council’s employment for Storm Water 2022 and I believe the same criteria applies, as it is essentially the same contract.

Morrie Doll: It is identical to 2021, except for the date.

Steve Sherwood: If the Board would so approve that, you would have to cross out the 2022 at the end and similar make it 2021

Commissioner Terry Phillippe: I make a motion to approve Council’s contract for Storm Water.

Commissioner Dan Saylor: Second.

President Bob Johnson: All in favor 3-0

Steve Sherwood: Thank you. Morrie is working on from the last meeting the Blue Water Court notices for the six parcels with the…

Morrie Doll: Steve and I need to get together and talk about that again.

Steve Sherwood: Right, we will get together. We are talking about notifying them of removing their encroachments I think by May 1st so we have a little bit of time.

Morrie Doll: Can we talk about that in depth after the meeting on Monday?

Steve Sherwood: Yes we can, that was just to report to the Board, no motion necessary. Just for the Board’s notice the mini-excavator that was supposed to be delivered, I was told, did not get delivered because a hydraulic thumb did come in it is being attached last week and it is now ready for delivery. Most of my crew is still off the rest of this week or end of this year and we are trying to set up delivery the first week in January. It should be complete and delivered all at once with hydraulic thumb, which I was told earlier may not be available until February so it looks like it is going to happen a lot sooner. That is all that I have unless the Board has any questions for me?

President Bob Johnson: Anything else for Storm Water? Anything else for Drainage Board?

**MOTION TO ADJOURN:**

Commissioner Terry Phillippe: I make a motion to adjourn

Commissioner Dan Saylor: Second

President Bob Johnson: All in favor 3-0