**MINUTES**

**WARRICK COUNTY DRAINAGE BOARD**

**&**

**DEPARTMENT OF STORM WATER**

**April 11, 2022**

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; Jason Baxter, Deputy Surveyor and Dana Upton, Recording Secretary

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

**PLEDGE OF ALLEGIANCE:**

President Bob Johnson opened the meeting of April 11, 2022 with the Pledge of Allegiance.

**APPROVAL OF MINUTES**

President Bob Johnson: First up we have approval of minutes for the March 28, 2022

Commissioner Dan Saylor: I make a motion to approve

President Bob Johnson: I’ll second. All in favor 2-0

**Glen Meritt- Cash Waggner & Associates- A.M. HAWAII P.U.D**

President Bob Johnson: Mr. Meritt.

Glen Meritt: Glen Meritt with Cash Waggner. A.M. HAWAII is an 8 lot townhome project at the Southeast quadrant of Vann and Bell. Just have a private road coming off of Vann. Do you have something?

Morrie Doll: No, I was just trying to picture it.

Glen Meritt: I thought you were getting ready to try and say something.

Morrie Doll: Vann and Bell.

Glen Meritt: Yea, there’s been a lot going on there. Spring Creek Development with John Elpers right there adjacent to it. He was trying to buy the property originally and then Hawa is the owner. Adib Michael Hawa who bought the property and that is who we are developing the project for. It’s pretty straightforward. There is swales around three quarters of the property directing all of the runoff to the detention basin at the Northeast quadrant and it ties in or Northwest quadrant of the site and it ties into the existing storm sewer that was just put in on the Bell road improvements.

Commissioner Dan Saylor: So Glen, is there going to be a like a road. There has to be a road in there that services these people right?

Glen Meritt: Yea, do you want to see this?

Commissioner Dan Saylor: yea.

Steve Sherwood: It’s going to be a private roadway.

Glen Meritt: It’s basically a private drive. 24 foot drive.

Steve Sherwood: It will be a Commercial driveway and then a private roadway serving 4 duplexes.

Commissioner Dan Saylor: So guys, all of the P.U.D’s are going on. What happens when the road starts falling apart? Who pays or who foots that $20,000 bill to put a new road or a new surface?

Glen Meritt: I mean, it’s going to be in the lot owner’s responsibility to replace those roads.

Commissioner Dan Saylor: I just want to put that on record. I won’t be Commissioner then. That’s what’s going to happen.

Steve Sherwood: Glen, did you answer Bobby’s questions and resubmit what you were asked last week?

Glen Meritt: I didn’t resubmit anything. I sent something back to him. Bobby was questioning the radius on that drive and I sent him an email Thursday I believe and he’s never responded back to me.

Steve Sherwood: We didn’t know if there was any private street plans and if that would be covered on that or if it was going to be a Commercial Driveway. We’ve talked about both.

Commissioner Dan Saylor: I thought there were 6 lots.

Morrie Doll: It’s 8.

Commissioner Dan Saylor: 8? Oh, these are split.

Morrie Doll: They’re double.

Commissioner Dan Saylor: yea, double. So it’s going to be split between 8 owners.

Steve Sherwood: While we’re on the drainage for this. You might want to run down and talk to him before the 4:00 meeting.

Glen Meritt: Yea, I will. I mean.

President Bob Johnson: Oh I see it now.

Commissioner Dan Saylor: I don’t know Glen. People will never know I guess what they are signing when they buy real estate and stuff so.

Glen Meritt: It don’t matter if you need that, you can keep it. I don’t care.

Steve Sherwood: If you need it for the next meeting.

Morrie Doll: Once upon a time, Warrick County did not have private roads.

Commissioner Dan Saylor: I just think long term. Of course, I know Glen you get to the middle of this sometimes because of its timing but I don’t know I just think it’s going to be a can of worms at some point.

Glen Meritt: It definitely can be, I mean I’ve never been on the other end of it on what happens when the roads do start failing and what they have to do. Normally, it’s a bigger development then what we have here.

Commissioner Dan Saylor: so what do you think that road would cost today just to resurface?

Glen Meritt: to resurface?

Commissioner Dan Saylor: It’s going to be probably $25,000.00

Glen Meritt: It’s only 250 foot of road. I can’t remember what’s on my letter of credit, I did not revisit that before I came to the meeting.

Commissioner Dan Saylor: But your letter of credit probably is a cause for debt.

Glen Meritt: It’s the full amount.

President Bob Johnson: Is that asphalt?

Commissioner Dan Saylor: yea

Glen Meritt: Yea, my letter of credit is the full amount for the entire Street/Road or the 2 layers of asphalt and then rock.

Steve Sherwood: Our asphalt prices just went up 12.5% in the last month.

Glen Meritt: Did they really?

Commissioner Dan Saylor: Well sure.

President Bob Johnson: I don’t think it would be that much but it’s going to be substantial. It will probably be $10,000 based off my driveway.

Glen Meritt: I would assume that when they set up these associations that they are paying monthly fees

Commissioner Dan Saylor: dues

Glen Meritt: Dues into a little fund that is there, I mean with the duplexes it’s kind of different too because I mean, that one building has 2 units and so

Commissioner Dan Saylor: And this is Residential right?

Glen Meritt: It is Residential. Yes. Just single family so I mean they’ve got, if their roof needs to be replaced, I mean those 2 owners split it so I’m assuming all of that stuff is kind of set up with that as well and then the road is just added to it.

President Bob Johnson: these are going to be sold, they’re not leases or rentals?

Glen Meritt: Yea, that’s why they are the Townhomes, we talked about them being like condos where it was all just one piece of property but no, he wanted to do it. I mean, that’s what Combs is doing with the Villas and Holweger did several of them with Orchard View now Combs is a public road because it’s a larger development and I guess he could’ve done a public road here, the only problem I think we would’ve ran into with the public road is it would’ve had to been wider than the 24. It would’ve had to of been 30 feet and there really isn’t room on there to construct a 30 foot road and have a 50 foot right of way. That’s why we went with the 24 with the 40 foot right of way on them.

Commissioner Dan Saylor: I see

Morrie Doll: well the one is behind Kmart, that isn’t one of your projects is it Glen?

Glen Meritt: which one?

Steve Sherwood: The one on the west side of Walmart.

Morrie Doll: yea, I said Kmart. I showed my age. Behind Walmart

Steve Sherwood: The Morley project.

Glen Meritt: Highpoint Village?

Steve Sherwood: Cardinal Development.

Morrie Doll: That’s a private road.

Commissioner Dan Saylor: I just think people don’t realize potentially that they are liable for this. I don’t know.

Glen Meritt: at that point, I’m not really involved with it.

Commissioner Dan Saylor: I know

Glen Meritt: I don’t know I mean, yea I’ve kind of questioned that myself. I mean, I wouldn’t buy one. To be honest with you, there’s no way. You couldn’t pay me enough to buy one.

Morrie Doll: Well and one of the reasons the Developers are going with private roads is that they can put more development in because they don’t have as much right-of-way commitment to the roadway and that’s.

Commissioner Dan Saylor: Sure, and I understand that Counselor but that’s my point, it’s going to continue to get more and more

Morrie Doll: Cram more in.

Commissioner Dan Saylor: and then in 10 years when these roads start failing or 15 or whatever.

President Bob Johnson: These people are going to be coming to

Commissioner Dan Saylor: They are going to be saying well how are we, this is a public street.

Steve Sherwood: this is similar to Enclave off of Coal Mine Road

Commissioner Dan Saylor: I can favor, I know.

President Bob Johnson: Otter Creek, the same way.

Glen Meritt: There is a couple of them.

Morrie Doll: We didn’t have private roads in Warrick County and during my tenure I remember when it came in and I think it came in because the Developer said Vanderburgh County is doing this and it’s working really well in Vanderburgh County so we need to have the option to create a private road and that is when the ordinance was amended.

Jason Baxter: works good for the first few years.

Morrie Doll: well it works good as Glens testifying. It works good until repairs are needed and then you’re going to have a room full of people who are going to come into the Commissioners Meeting and they are going to say hey we have potholes.

Commissioner Dan Saylor: and you know so, we don’t govern the HOA

Morrie Doll: Oh no.

Commissioner Dan Saylor: so, you know one, what if the money is stolen out of an HOA?

President Bob Johnson: What if they use it for something else that fails

Commissioner Dan Saylor: what if they use it for something else.

Morrie Doll: I represent a couple of HOA’s in Warrick County, I’m a member of the HOA and the design of the HOA assessment is to keep it as low as possible during the year so that you have just enough money to pay ongoing expenses through the year.

Commissioner Dan Saylor: Right, you don’t accumulate any money reserves

Morrie Doll: You don’t accumulate any reserves for long term capital improvements.

Steve Sherwood: and to take it a step further. Polkpatch is just supposed to been weekends and camp reserves, then they started building homes and it said on the plat these roads will never be publicly maintained, now look where we are. We maintain every one of those roads out there.

Glen Meritt: I don’t know if there has been discussions on it, I mean if it is that big of an issue or concern, I mean, I have issues all the time with that 50 foot right of way in a 30 foot road and we’ve got 10 foot on either side. I mean you can’t get anybody anymore or utilities to go in that right of way. Its 20 foot of wasted space on the edge of the street. I mean yea, you can cross it. The water companies at least will allow you to lay 2 foot outside of it so.

Steve Sherwood: Well it accommodates the sidewalks if we require sidewalks.

Glen Meritt: Potentially sidewalks are in there. That is correct but they are only 6 foot total off of the roadway which Vanderburgh County has now shrunk their public right of way width down to 45 because of this issue trying to

Steve Sherwood: If it has curb and gutter

Glen Meritt: so, I don’t know if there is something that could be done to limit that 40 for the right of way width. Like I said, if it has sidewalks you can’t go down to 40 because then you are inside the sidewalk

Steve Sherwood: the trouble is for what you’re saying might be appropriate but the everybody wants to twist it and use it somewhere where it’s really not appropriate.

Morrie Doll: Well it’s like sidewalks. Every virtual, many developments ask for a waiver of sidewalks.

President Bob Johnson: They do.

Morrie Doll: or at least waive sidewalks on one side of the street and Guy Gentry who used to be chairman or President of APC was Transportation Director for The Vanderburgh County or Warrick County School Corporation and he just shivered at the idea that these kids are going to be walking in the streets to be picked up by the school bus. But, I mean to the Drainage Approval, is there a question for Glen?

President Bob Johnson: Steve you got any issues here?

Steve Sherwood: No, we went over it and Jason’s office and I, it meets all of our minimums as Glen purported it’s got drainage swales and a retention basin that meets our minimum numbers and drains to our Bell Road project.

Commissioner Dan Saylor: I make a motion to approve.

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

Glen Meritt: Thank you very much.

Commissioner Dan Saylor: And that was on the A.M. Hawaii P.U.D

Morrie Doll: Is the Hootie Hollow Subdivision continued?

Dana Upton: Next Month.

Morrie Doll: Not withdrawal but continued?

Dana Upton: Next Month.

Jason Baxter: They have to come back to AP or Site Review Wednesday for something.

Morrie Doll: Ok. He wants sidewalks waived

**DENA JACOBS-8241 BLAKE BLVD, NEWBURGH, IN 47630-“THE OAKS” SUBDIVISION-LOT 7**

President Bob Johnson: Mrs. Jacobs. Hello

Dena Jacobs: Good afternoon. I received the Hold Harmless and I appreciate that. Thank you.

Jason Baxter: Did you state your name for the record.

Dena Jacobs: Sorry, Dena Jacobs.

President Bob Johnson: thank you. Go ahead.

Dena Jacobs: I had a couple of questions. Is this Hold Harmless, will it forward to future owners?

Morrie Doll: yes

Dena Jacobs: Cause, is there verbiage in here that says that?

Morrie Doll: It runs with the land and by virtue, it would be recorded at the Recorders Office across the street and is cross referenced to the property and so when you sold it to someone else, it would show up on the chain of title.

Dena Jacobs: Perfect.

Commissioner Dan Saylor: It kind of protects her right Counselor?

Morrie Doll: Yea.

Dena Jacobs: And then does this address the public utilities as well as the drainage or just the drainage?

Morrie Doll: It’s the Easement and so it would revert back to what is the permitted use within the Easement.

Dena Jacobs: ok

Morrie Doll: So if public utilities are permitted within the easement it would address those, if drainage is permitted within the easement it addresses that, water, whatever, all of the permitted utilities within that easement would be benefitted by that.

Dena Jacobs:

Morrie Doll: But it’s designed to hold Warrick County Harmless. It’s one of mine?

Dana Upton: Yea.

Morrie Doll: It’s designed to hold Warrick County Harmless. Later on you couldn’t bring a claim against Warrick County because of that Easement in your back yard.

Dena Jacobs: I understand.

Morrie Doll: and neither could the future people you may sell your home too then.

Dena Jacobs: I understand. And then it mentions instructions that the improvement shall be performed pursuant Warrick County instructions. Do you guys know what those instructions are?

Morrie Doll: I thought we did that at a meeting?

President Bob Johnson: We did.

Morrie Doll: We decided, when you were here last we defined or described what might be permitted behind your home, do you remember that?

Dena Jacobs: uh huh.

Morrie Doll: I think that instructions.

President Bob Johnson: and you had drawings.

Dena Jacobs: ok so it was like a landscape type low grade ok, alright.

Commissioner Dan Saylor: So you can go in there and place you know 500 pound landscape block, you know what I mean.

Dena Jacobs: according to the pictures that I submitted.

Morrie Doll: yes ma’am. We have a problem in Warrick County where we permitted something to go into an easement, a use a pipe and now we have found out that they have raised the land what, 2 feet, 3 feet?

Jason Baxter: yea, minimal.

Morrie Doll: Built a fence, built a pool house in the right of way and so see it’s, it can’t happen because if it happens one place it, you let it happen over here, how come I can’t.. No, we can’t do that.

Dena Jacobs: alright, so what happens next? I haven’t signed it and I will do that right away but I wanted to ask my questions first.

Morrie Doll: Sure, and I am glad you came back to do that. We need to get that signed copy to the Surveyors Office. The lady over there and then we will see to it being recorded in the Recorders Office and then you are free to

Dena Jacobs: begin?

Morrie Doll: Yes, good word.

Dena Jacobs: After the rain. And then since this did not address the encroachment, I wanted to just come to you and ask if there is any middle ground at all. Of course, I am addressing it separately from this and what I have in my mind is the manhole is the furthest toward my house and it’s between 14 foot and 16 foot. My pictures I submitted last time showed those markings. The addition and patio begin at 18-4 which are in those pictures as well.

Morrie Doll: So, you are asking if the County can pass something that permits your encroachment to stay as it is. Is that what you are asking?

Dena Jacobs: Ideally, well yes, but ideally what I’m trying to request prior to that as an option is can we set the, can we vacate 2 or 3 feet of the Easement with the Hold Harmless?

Morrie Doll: Do we know where any underground

Steve Sherwood: The underground drainage structure is really close to her house in the Easement.

Morrie Doll: I know, are there any other utilities in the

Steve Sherwood: Yes.

Morrie Doll: It’s really difficult Commissioners. It’s really difficult for us to know without locating what’s in the

Commissioner Dan Saylor: All of the utilities.

Morrie Doll: Yea, we would have to locate all of the utilities and normally when you vacate an easement you get the consent of the utility company that is using that easement. You have to get them to sign off on Yes we don’t object.

Commissioner Dan Saylor: Is that Newburgh Sewer there?

Steve Sherwood: No, that is the Storm Drain

Morrie Doll: that is us.

Dena Jacobs: That’s yours

Commissioner Dan Saylor: No, I meant is the sewer running behind these houses or in front?

Steve Sherwood: Sanitary sewer is in front.

Dena Jacobs: There is pipes, oh, the sewer, yea. This was a picture taken by you guys back in 2017. This fence line is at 3 feet and the sewer runs right behind the fence and then there’s the bottom of the ditch here. All of the utility lines run south of the ditch line so the only thing between the ditch line and my house is your underground pipe.

Morrie Doll: we have always notified the utility companies of a purposed vacation or limitation of an easement on a plat and get a written consent as a requirement before we act on the plat.

Commissioner Dan Saylor: Is that like a telephone or wire utility there. These little red flags?

Dena Jacobs: No, those are mine. I marked like the 12 foot where it would be if I.

Steve Sherwood: But where she is wanting to reduce the easement would put the storm drain pipe outside of the easement which is not beneficial for the County.

Dena Jacobs: Originally yes, but not now. Those flags are at 12 foot which would put the pipe outside but I’m coming to you today with a request for 17 or even 18 foot.

Morrie Doll: Well, so you’re asking us to reduce the easement 2 feet?

Commissioner Dan Saylor: So reducing the easement going this way right?

Dena Jacobs: that’s my measurement of where the patio starts.

Jason Baxter: You couldn’t dig a trench and not get into that house.

Morrie Doll: We’d be, yea, a backhoe would be, we would be on the house side of this manhole. I don’t know that Steve.

Jason Baxter: I don’t know how you could do it, I mean the trench walls would fall in if we’d get against the foundation right now.

Steve Sherwood: I think her survey purported her addition is a foot and half into the 20 foot easement. I think you got a copy of that. Any reduction to the easement would in effect ruin our chances of replacing the structure in the future. We were already tight as it is to the current encroachment.

President Bob Johnson: Because of the overhand of the patio?

Steve Sherwood: I think her survey shows her addition is a foot and a half into the 20 feet easement and consequently the porch was just not shown on the survey but it’s there as you can see off the

Jason Baxter: I have a rough estimate, this is just digging the trench out, you know, it would be up against that addition.

Dena Jacobs: Now if it

Steve Sherwood: And if she wants to landscape over the storm sewer the Hold Harmless allows us to replace it at a future date at no cost for removing her improvements to the County. Again, the whole point of the Hold Harmless.

Dena Jacobs: Now if that structure needed to be removed, could it not be, like the new one put in at the location it was originally designed because

Steve Sherwood: The original location as designed was just a, it’s not an exact measurement. I know it favors the Southside of the easement but they put it in favor of the north side of the easement and it would take more money to replace it and move it where you would like it to be. You’re talking about.

Commissioner Dan Saylor: But that’s if.

Morrie Doll: That doesn’t fix the encroachment.

Steve Sherwood: Right

Commissioner Dan Saylor: But that’s if it doesn’t fail or needs. What is that plastic pipe Steve underneath there?

Steve Sherwood: Yes

Commissioner Dan Saylor: so, the likelihood that’s not going to be dug up or disturbed in the next 50 years.

Steve Sherwood: In the near future.

Commissioner Dan Saylor: In the near future

Steve Sherwood: Eventually all pipes fail, it’s just a matter of time

Commissioner Dan Saylor: Yea, but I mean, it’s.

Morrie Doll: The pipe there has longevity.

Dena Jacobs: It was just checked in 2017 too.

Morrie Doll: Well Steve looked at the pipe this week or last week rather on another project and it’s been there for

Steve Sherwood: It wasn’t the same type of pipe or the same

Morrie Doll: It wasn’t as good a pipe as this and it

Steve Sherwood: It was a thinner, single wall, not a double wall

Morrie Doll: And I think it was put in in 05’.

Dena Jacobs: So, I’m understanding what you are saying about it being difficult to dig a trench with that right there, is it not possible to go to an 18 foot easement with a Hold Harmless understanding that there would be some cave in and some damage?

Steve Sherwood: Well, the whole point of the Hold Harmless is to allow your encroachment to exist in it. So making a reduction of the easement is not really practical with a Hold Harmless or necessary on the County’s viewpoint.

Dena Jacobs: well, I guess it’s important for the sale of the home and my plead for that is that the majority of the easement are 15 foot here, these houses here all have 10 feet.

Steve Sherwood: There’s 20 foot all across all those right there where you just stroked your finger tip.

Dena Jacobs: These are the only ones with 20 foot and look at how big those properties are.

Steve Sherwood: I mean, what’s platted is platted.

Morrie Doll: You’d have to amend that plat

Dena Jacobs: I’m just trying to say the design of it is excessive. I mean the easement takes up 20 foot of 20 foot of my back yard.

Morrie Doll: You would have to amend the plat. And you would have to get an Engineer to redraw what you are holding in your hand and show a proposal to reduce that easement. Then you’d have to get consents from all of the utilities that are using the easement presently saying they do not object to that, now

Dena Jacobs: And that would include you guys and you’re saying you would object?

Morrie Doll: Well we know that the easement for the drain is close to the edge next to your home and so we would have to, I don’t know how we could consent if the Board asked my advice as it’s Counsel, I don’t know how we could consent because we would have to move the drain.

Commissioner Dan Saylor: are you wanting this for so it helps you or I shouldn’t say help but are you wanting this for the future if and when you sell your home, is that what you are asking this for?

Dena Jacobs: I guess, if you put it that way yes, but I have health issues and I had cancer and I know if my son had to take care, you know, I just want to right what is wrong so going forward, I mean, If I need to rebuild, I’ll rebuild. But I just thought that maybe

Commissioner Dan Saylor: I don’t think it’s to that point. I mean,

Dena Jacobs: It’s hard for me rebuild and it’s hard for you guys to relocate the underground ditch so I was just wanting, if there is any way at all we could meet in the middle.

Morrie Doll: Well, let me just say something, selling a home that is encroaching into a public easement is virtually an impossibility because Banks will not loan money that encroaches, Banks will not make loans on homes that are encroaching into a public right-of-way, okay? Because, at the discretion of the public, government, they could say tear it down. Tear down the encroachment.

Commissioner Dan Saylor: Not the whole house but what’s encroaching.

President Bob Johnson: Whatever is in the easement.

Commissioner Dan Saylor: How much is this building?

Morrie Doll: A foot and a half.

Steve Sherwood: foot and a half per the Survey.

Commissioner Dan Saylor: I don’t know whose drawings these are.

Morrie Doll: So, I guess maybe what would be helpful to you and I don’t know if this is possible Steve is an estimate of what it would cost to replace this pipe further down in the right of way and whether you would consider reimbursing Warrick County for the cost of moving this pipe if it agreed as consideration a reduction in the Easement.

Dena Jacobs: Well that’s

Morrie Doll: Now, let me say something, moving a pipe is not cheap and

Steve Sherwood: And 2 manholes

President Bob Johnson: And you still might have to

Morrie Doll: And you’ve got to get the consent of all of the other utilities, right, we’re only one.

President Bob Johnson: And they are not as nice as we are

Morrie Doll: So it would seem to me that you would want to know if the other utilities will give you their consent to reduce this right-of-way to say 15 feet and then you would want to ask Warrick County to give you an estimate of what it would cost me to have you relocate that pipe. I don’t know that Warrick County wants to relocate that pipe. I don’t think it does but that way what you’ve got is you’ve moved the easement, so your house isn’t an encroachment and all is right in the world but putting pipes in is not cheap. I don’t know what to compare it to.

Steve Sherwood: Reducing the easement to 15 feet puts our pipe currently outside of the easement.

Morrie Doll: I know, you’ve got to remove it.

Steve Sherwood: If she wanted to reduce it 2 feet to get her house out, it’s still going to be awful tight when we have to replace the pipe.

Morrie Doll: We couldn’t repair.

Steve Sherwood: Right.

Morrie Doll: So, do you an Engineer?

Dena Jacobs: No, do you have one to recommend?

Morrie Doll: No, we can’t, we’re not in the business of recommending Engineers. We can’t pick favorites. The gentleman that was ahead of you today is an Engineer.

Dena Jacobs: I can certainly find one.

Morrie Doll: Yes, I would, I really think you need to talk to an Engineer Mrs. Jacobs and say hey how do I fix this?

Dena Jacobs: ok and it would be an Engineer that deals with?

Morrie Doll: Drainage.

Dena Jacobs: Property?

Morrie Doll: A person that does real estate plats for Subdivisions and Drainage, you need to have somebody counseling you on what the possibilities would be. Not us. Ok?

Dena Jacobs: ok

Steve Sherwood: A Professional Engineer.

Morrie Doll: Yes, like Steve. But, not Steve. So find an Engineer, work with them and if you find a proposal that you think satisfies you. Bring it back. In the meanwhile, if you want to do this rear landscaping, get the right of way or the Hold Harmless back to Dana and we’ll take care of recording it. Ok?

Dena Jacobs: ok.

Morrie Doll: Have we answered your questions?

Dena Jacobs: Well, one last one. If doing the relocating the pipe and rebuilding, if we all opt to not do any of that. Is a hold harmless of you know?

Morrie Doll: It’s not a defense to an encroachment. We’re just holding or you agree to hold us harmless if we agree to let you landscape in the right of way.

Dena Jacobs: I’m talking about the encroachment. A separate Hold Harmless.

Morrie Doll: For the encroachment?

Dena Jacobs: Yea.

Commissioner Dan Saylor: You are earning your money today aren’t you Counselor?

Morrie Doll: Well, and it’s out of my element Commissioner, it’s, I’m really looking to Jason and Steve. If in the future we had to dig this pipe up, can you do it where it is without destroying Mrs. Jacob’s house?

Dena Jacobs: I will say that they did dig

Morrie Doll: Wait, Wait.

Dena Jacobs: Sorry

Jason Baxter: I mean, I believe that it can be done but it’s going to be right up against the foundation.

Steve Sherwood: Right up on the foundation

Commissioner Dan Saylor: How deep is this pipe? Do we know that?

Steve Sherwood: It’s about 4 feet, 4 ½ feet from the top of the ground to the bottom of the cut.

Commissioner Dan Saylor: Ok, so that’s, that’s borderline where you are going to stair step it but you’d probably have to do some stabilization to hold or make sure you are holding that dirt.

Jason Baxter: and then going back in and make sure the foundation and be liable for the house.

Morrie Doll: This is just, it’s a mess.

Steve Sherwood: This line is the primary basin outlet for the retention basin, plus there is an overflow for emergency situations that flow through the same swale that’s in the easement over the top of the ground.

Commissioner Dan Saylor: It just really stinks that she is in this situation and to me

Morrie Doll: who built your house?

Steve Sherwood: She bought it.

Dena Jacobs: Talberts did the plotting and Jagoe took over half of the

Morrie Doll: When was the home built?

Dena Jacobs: 2005ish.

Steve Sherwood: She is the second owner.

Dena Jacobs: Third.

Morrie Doll: I don’t think the second owner matters, but it has a 10 year statute of limitations on builder liability and so

Commissioner Dan Saylor: it’s outside that.

Morrie Doll: Yea but she could go back on the Seller and she could go back on the Realtor for fraud or misrepresentation.

Steve Sherwood: Now Jagoe built the house. They did not build the addition that’s encroaching the easement.

Morrie Doll: Yea, that’s true

President Bob Johnson: The first owner built the addition.

Dena Jacobs: The second owners built the addition. They didn’t even take out a building permit and it was a realtor that owned the home. They should’ve known better.

Commissioner Dan Saylor: So, Counselor, does the Contractor who built this addition, does he have any liability or does that all fall on the owner?

Morrie Doll: He should’ve had a permit. He should have a location of improvement permit.

Commissioner Dan Saylor: That’s what’s frustrating to me as a Commissioner. She didn’t do anything wrong. This young lady didn’t do anything wrong. There was a builder and a property owner that did something in my opinion wrong and they are gone, see ya later and she’s got to deal with it.

Morrie Doll: Well are they still in the Community? The Realtor that sold you the house?

Dena Jacobs: I believe so, yea.

Morrie Doll: Have you threatened them with a lawsuit for selling you a home that is encroaching?

Dena Jacobs: Well, I did pursue that issue and talk to a lawyer about it but they knew something when they were selling the house that I wasn’t aware of

Morrie Doll: It’s called Fraud.

Dena Jacobs: they had me sign extra forms and they brought in the head realtor and said are you sure you are interested in this house. And the form I signed was that I accept all conditions of the house as is.

Commissioner Dan Saylor: Yea, but did you know what those conditions, did you know

Morrie Doll: Did somebody tell you that it was an encroachment?

Commissioner Dan Saylor: Did they represent the encroachment?

President Bob Johnson: When you are buying a house, they just threw all of that in front of her and she signed.

Dena Jacobs: The Sales Disclosure said we don’t know if there is, it didn’t say yes there was an encroachment

Morrie Doll: yea they did. They knew there was an encroachment. I don’t know

Jason Baxter: They wouldn’t have the forms and everything signed.

Dena Jacobs: The only one thing that I can think is that when you measure from the property line to the addition, if you let the tape measure take in the slope of that ditch line

Morrie Doll: The swale

Dena Jacobs: yea, if you are measuring the whole length of the swale

Morrie Doll: Its 20 feet

Dena Jacobs: It’ll be 20 feet but if you go across the air and pull it straight then it’s a foot and half.

Commissioner Dan Saylor: But that’s the way the measurement is taken, it’s not, it doesn’t count terrain

Morrie Doll: We don’t recommend to people that they sue other people but

Steve Sherwood: She hired a professional Surveyor that did the report that shows her house encroaching. The addition of the house by a foot and half of that easement.

Commissioner Dan Saylor: This stinks.

President Bob Johnson: It does.

Morrie Doll: Well, Mrs. Jacobs, we can’t give you legal advice, but it seems to me that you need to talk to a good property lawyer and make sure there is no way to hold the Seller liable. A principle of waiver, where I waive a claim in the future is that I can’t waive something I don’t know. Okay? I have to have knowledge of the right that I am giving up. And that means

Commissioner Dan Saylor: If they didn’t, in my opinion. He’s the Attorney. I’m not but if they didn’t represent that, that is fraud right?

Morrie Doll: That’s right. Material misrepresentation of the facts. Fraud in the Commission or Fraud in the Omission. Material misrepresentation of fact which you relied upon to your detriment is a definition of classic fraud. Okay? You maybe need to get a lawyer that’s a different lawyer. Okay?

Dena Jacobs: Thank you Gentlemen and Dana.

Commissioner Dan Saylor: Good luck.

Morrie Doll: You will get her the Hold Harmless before you landscape?

Dena Jacobs: Yes, absolutely.

Morrie Doll: Thank you.

Dena Jacobs: It’s just as is. In the picture

Morrie Doll: Yes

Commissioner Dan Saylor: Good luck.

Dena Jacobs: Thank you.

**CLAIMS:**

President Bob Johnson: Next, we have claims.

Morrie Doll: All, that’s just all you got?

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

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

**OTHER BUSINESS**:

President Bob Johnson: Any other Drainage Board business?

Steve Sherwood: Just under Other Business. Morrie and I were discussing the Beard / Haisley. They were supposed to come back to today’s meeting. Just for the record. Morrie had issues for them to do some more research and push them off to April 25th, our next meeting. Just so the Board is aware of that.

Morrie Doll: And Dana is going to put them on the Drainage Boards Agenda.

Steve Sherwood: And just for the Boards information on Magnolia Subdivision, the Subdivision with the underground retention basin. As you recall they were granted a 6 month extension on the Drainage Letter credit. I believe, I’ve been informed that Mr. Combs has done a video inspection, but I have yet to be given a copy of the video. This gets back to the Letter we were going to draft and send all of the Homeowners, letting them know their responsibility was. I believe he said he did not want us to do that, he would do that. I have heard nothing

Morrie Doll: we haven’t seen it.

Steve Sherwood: I have heard nothing since then. That is for the record. That is all I have for Drainage Board.

President Bob Johnson: Might as well move on to Storm Water.

**STORM WATER DEPARTMENT**

Steve Sherwood: Thank you Mr. President. First item I have is just some informational data for you on the Tanglewood/Fuquay project. To go over the timelines. The notice to Utilities to proceed their relocation work was granted last week on April the 8th. The notice to the Bidders to paper will be going this week to the local paper. It will be published in the April 28th and May 5th edition of the local paper. The project bid date has been established as May 23rd. The project start date has been established as Monday June the 6th assuming we have a low bidder to award to and we will have a pre-bid meeting out in the field on May the 16th at 10:00 am at the site. If the Board would care to be present for the pre-bid meeting.

Commissioner Dan Saylor: Steve, what did you say May 16th?

Steve Sherwood: May 16th. That’s a Monday.

Commissioner Dan Saylor: at what time?

Steve Sherwood: 10 A.M. We will probably meet there at the intersection of Pleasant Ridge Drive and Fuquay.

Morrie Doll: Will shovels be provided for them to?

Steve Sherwood: No, just a pre-bid and to answer any questions for the Bidders.

Jason Baxter: what time was that again Steve? 10?

Steve Sherwood: And last on this informational. I asked Lochmueller Group to write us a Construction Engineering contract and they provided me an Amendment Number 3 to the project. If you recall Amendment Number 2 was to take in a certain amount of right-of-way Engineering and some other features that we did not have to use. It was a total of Amendment Number 2 was $232,360.00. They are going to reduce the amount of fee to cover Amendment Number 3 for items not used and they can do the Construction Engineering which grants us an overall reduction in Amendment Number 3 to $225,490.00. So by the money being saved in Amendment Number 2 because we got the Easements privately then they have to buy right away. We have an overall reduction and I can get them to do Construction Engineering on a part time basis for this project.

Morrie Doll: But the total estimated labor on the project is gone up.

Steve Sherwood: I really don’t want to say exactly what it is so the Bidders don’t know but it has gone up considerably as you recall, we have bought $233,000.00 worth pre-cast that is being constructed. The total amount of the project is greater than what you were told a couple of years ago. Just to install the pre-cast and do the rest of the work that is being written to exclude what we are buying separately.

Morrie Doll: You can go into executive session and hear this if you wish.

Steve Sherwood: The cost of pre-cast has gone up between 40-50%.

Morrie Doll: But the labor cost is much more.

Steve Sherwood: If the Board is so willing, I have a contract to get us the cost same as reductions and apply it toward the CE Contract this Amendment Number 3. I can ask you to sign that after the meeting if the Board would agree to it.

President Bob Johnson: Do you agree?

Commissioner Dan Saylor: Do I have a choice?

President Bob Johnson: it’s a savings

Commissioner Dan Saylor: oh on the savings, yea I don’t have a problem with the savings. It’s the other stuff I have a problem with. What are we going to do?

President Bob Johnson: Well, Steve is going to have to go to Council and get a lot more money.

Steve Sherwood: we are committed at this time and I am going to the Council in May to ask for the additional appropriations of monies we already have in our surplus funds.

President Bob Johnson: Yea

Morrie Doll: So, this Construction. We need to have a motion to approve this Amendment Number 3 to this project which does result into a Savings for Warrick County.

Commissioner Dan Saylor: I make a motion to approve Amendment Number 3 for the price reduction.

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

Steve Sherwood: Thank you. The other information I have for you is on the North Green Springs Valley. The Draft Study was completed by Lochmueller Group. I need about 20 minutes worth of presentation time at the April 25th meeting. They will be here to do a power point presentation to explain to the Board the merits of the Draft copy and then to hopefully propose a support 1 of 2 design options on that project. Currently option Number 1 was around 1.6 million. Option Number 2 was around 2.1 million plus both options have a 1 million dollar mitigation fee for us to rework that ditch with the various DNR and IDEM.

Jason Baxter: Yea get that.

Morrie Doll: We’ve got to pay a million dollars?

Jason Baxter: Yea

Steve Sherwood: Just in Mitigation fees

Morrie Doll: to the state of Indiana?

Jason Baxter: Yes sir

Morrie Doll: Oh I’d refuse to pay that.

Steve Sherwood: If you recall, that’s like creating the wetlands trade off of 3 to 1, 5 to 1, whatever the current rule is. They now have a bank that you can put money into as opposed to running out and creating a wetlands somewhere in the county.

Morrie Doll: And the downside is, if you don’t pay it we are disqualified from future grants and payments from the state.

Steve Sherwood: But this is why I asked Lochmueller to come present this to you so they can explain all these features to you.

Morrie Doll: I guess I would, does the Board know how much we have in the reserves?

Commissioner Dan Saylor: In reserves to what?

Morrie Doll: Money.

Commissioner Dan Saylor: Are you talking about the General Fund reserve?

Steve Sherwood: Stormwater?

Morrie Doll: Stormwater’s Reserves

President Bob Johnson: Oh, I don’t have a clue.

Steve Sherwood: No, She’s anticipated somewhere around $900,000.00 currently

President Bob Johnson: It’s not over a million.

Steve Sherwood: And I’ll have enough money to request that for the Fuquay/Tanglewood and still leave a little bit but that would draw that down significantly.

President Bob Johnson: Bobby, you got any money?

Commissioner Dan Saylor: Wait a minute so you’re telling me that the State is requiring us to pay a million dollars?

Jason Baxter: Yea, to use the land.

Steve Sherwood: In mitigation fees

Morrie Doll: For green

Steve Sherwood: North Green Springs Valley Project.

Commissioner Dan Saylor: We don’t have any credits anywhere. Can’t you swap those credits or buy credits from somebody. There’s no credits you can buy?

Bobby Howard: That is the credits that you are paying for.

Steve Sherwood: Bear in mind we are asking Debbie Bennett-Stearman to apply for State Revolving Funds and any other grants to assist us in this project. If we were lucky to secure those funds, they would pay these fees.

Morrie Doll: If they are permitted to be used in the grants for that purpose.

Steve Sherwood: Yep, that is exactly right. She would say Engineering, Construction

Morrie Doll: Mitigation fees

Steve Sherwood: may be covered if we were to get a grant.

Morrie Doll: When I came as Counsel to the Storm Water Board and Drainage Board, we had off the top of my head 3 million dollars in reserves and the Board reduced the assessment. Your Predecessors did, lowered the annual assessment for Storm water purposes.

Commissioner Dan Saylor: Yea, but that was because the Council wanted that in lieu of right? I mean they said we will do this if you do this.

President Bob Johnson: It was a trade.

Morrie Doll: And I will say that at that time Steve’s predecessor really wasn’t doing the repair projects that we are doing now.

Steve Sherwood: we have bank rolled 2 million dollars’ worth of surplus funds when I came back before and Council I think was urging Brent and Bobby to spend that money and that’s when we were doing the projects under designs of Canterbury Springston, Epworth Village and other large fee projects.

Morrie Doll: So we are doing the work that needs to be done. It’s costing money and so it’s depleted the reserves.

President Bob Johnson: To some degree, yea, but we are doing, at least we are doing some work.

Morrie Doll: Oh yea.

Steve Sherwood: And as you discussed, we dropped our Storm Water fee by 10% per the Council to (cannot dictate)

Morrie Doll: per the wheel (cannot dictate) fund

Bobby Howard: Bobby Howard, Warrick County Highway. Also, on that Storm Water fee, I think we probably charge the lowest in the County of any of the municipalities to the public at $54.00?

President Bob Johnson: It’s $54.00

Steve Sherwood: Yea we were at 60 and it was reduced to 54 which is lower than the Town of Chandler and the Town of Newburgh just increased theirs more than that.

Bobby Howard: Area wise

Steve Sherwood: Plus we’ve reduced or we’ve lost properties due to annexations as well.

President Bob Johnson: Oh yea.

Morrie Doll: I don’t know, I’m not going to predict what’s happening in Newburgh but I guess about to lose a lot of it.

Commissioner Dan Saylor: My thing, is we should be the, or at least the same as the other municipalities. I mean, that just doesn’t make sense that our projects are not cheaper. We got more geography. We probably have more,

Steve Sherwood: And with the cost and increase of material and labor.

Commissioner Dan Saylor: Well yea that’s just common sense. We should all be the same. How is that done or is that request done by us? This Board? But do we have to do have to do a Resolution or something before and then we send it to the Council?

Morrie Doll: It would seem to me that you would want somebody such as Steve or Steve’s department to do a calculation of what will a $1, what will $5, what will $6 and increase in assessments.

Steve Sherwood: I don’t know if by law, we have to do a rate study.

Morrie Doll: An informal rate study so they are operating on good information.

Commissioner Dan Saylor: I mean, just this one little project, what it’s done in what 2-3 years that this has gone up or probably less than that. Its nuts. I mean, I don’t know. There is a cap we charge right? Is there a max that we can charge?

Morrie Doll: I’d have to look at the statute again. It’s been a while.

Commissioner Dan Saylor: How much, do you remember Bobby, how much was it reduced for the trade off?

Morrie Doll: $6.00

Steve Sherwood: $6.00 per year or 10% roughly.

President Bob Johnson: When I first moved here it was $60.00 and then it decreased.

Steve Sherwood: Which is spread over 2 different property tax assessments. $27 per 6 month currently.

Commissioner Dan Saylor: so how much would $6.00 on an annual basis bring you? Do we know?

Steve Sherwood: we will run some projections. I’ll have Barbie work on that.

Jason Baxter: It will still be lower than the dollar it was 10 years ago.

President Bob Johnson: why?

Steve Sherwood: $6.00 more gets us back to where we were 4 or 5 years ago.

Jason Baxter: More projects to get done.

President Bob Johnson: Oh, I got you. More properties

Commissioner Dan Saylor: Not counting the annexations

Steve Sherwood: The annexations we are losing cost doing business, materials, labor

Morrie Doll: well but isn’t the Board going to result or in the result of this, when we do this Tanglewood Project, you’re going to be out of money.

Steve Sherwood: close to it. Yes.

Morrie Doll: And that shuts down projects. We won’t be able to tackle more projects because we won’t have the funds and the projects are costing more money now because of the inflation and the cost.

Commissioner Dan Saylor: Steve, didn’t you, I thought you encumbered money or you were holding money from previous years on this?

Steve Sherwood: It rolls into that surplus fund we are talking about.

Commissioner Dan Saylor: and that surplus fund, that million dollars could be paid out of that?

Morrie Doll: We don’t have it.

President Bob Johnson: It’s not quite that large but yea. I don’t know exactly how much it is but I’ve been told for several years

Morrie Doll: 900

Steve Sherwood: about $900,000.00

Commissioner Dan Saylor: Steve, I recommend you go to the County Council and just ask for a million dollars out of their rainy day fund to put it in your funds and see what happens.

President Bob Johnson: Yea, work on that Steve. Let me know when you’re going to do that because I want to be here for it.

Commissioner Dan Saylor: Yea, me too.

Steve Sherwood: I will be before them in May asking for the $750,000.00 out of our funds.

President Bob Johnson: Are you finished?

Steve Sherwood: Just one more item.

President Bob Johnson: Ok. We’re on recording.

Steve Sherwood: Last item I have is just an update on the Bluewater Court Project. Morrie did send the letters to the 6 property owners asking them to remove their encroachments out of their 10 foot platted easements on both sides of the property line. 20 foot total of easement. We had 1 person who is objecting now and did sign a temporary right-of-entry agreement. He wants to rescind it. I’ve had him send a bunch of his questions to Barbie who forwarded them to Morrie. It would be improper for Morrie to

Morrie Doll: he wanted legal advice.

Steve Sherwood: to answer those questions. He’s been instructed to appear before this Board but he has yet to approach Dana’s office.

Commissioner Dan Saylor: Who is it?

Steve Sherwood: His last name is Hawkins.

Dana Upton: David Hawkins.

Steve Sherwood: David Hawkins with a Bluewater Court address. He is also the same individual who built a swimming pool without getting a permit or improvement location permit through Warrick County.

Morrie Doll: Which is in the right-of-way.

Steve Sherwood: So my point, Morrie’s deadline is May 1st to get your encroachments out of the way so we can continue this project. To date, nothing has happened.

Morrie Doll: On any of the 6

Steve Sherwood: I went out and viewed it yesterday or last week and nothing has been moved.

Morrie Doll: What Steve asked me to inform them and I didn’t in my letter is that we gave them the courtesy of removing their encroachments within a 2 month period of time and if they didn’t have them removed by May the 1st, we would have the Contractor who is performing the contract work remove them and we are not compensating the landowners because they are in our right-of-way.

Steve Sherwood: And none of that work has been bid out yet because obviously I have to wait until May the 1st so that the Contractor knows what is going to be in his way that he can bid on.

Morrie Doll: So, we don’t think it’s going to delay the project but it will increase the cost somewhat.

Jason Baxter: It’s costing us

Morrie Doll: I recommended to Steve and Bobby is probably not going to like this but I think we need to have signage on our right-of-ways that say hey.

Bobby Howard: Through the Easements?

Morrie Doll: they are going to argue that we didn’t know. We didn’t see it at the site.

Commissioner Dan Saylor: I think we need to change our Subdivision Control Ordinance and require that the Developer put up signage and easements and if they move them and I think they need to be set in maybe a concrete thing so they can’t just pull up the pipe and then put the tamper resistant screws on there so it makes it a little bit difficult. But that’s my opinion or my 2 cents.

Morrie Doll: Everybody is encroaching and this is a repetitive problem that we are seeing over and over and over. We are all charge with knowledge of what’s in the Recorders Office. That’s a public plat and that public plat shows the easement hypothetically across my back yard and so I’m charged with that knowledge even though I haven’t went and physically looked at it. I agree with you, but it would be more convincing if there was a sign or something that says this is a public easement.

President Bob Johnson: I agree with that too.

Steve Sherwood: And we talked that Realtors don’t really educate the property buyers.

Morrie Doll: You don’t have to put them on every lot, maybe on the streets where the lots or easements cross the street.

President Bob Johnson: They just want to sell the property.

Steve Sherwood: and some Mortgage Companies don’t require a land surveyor in showing you where your 4 corners are at.

Commissioner Dan Saylor: I own property down on Barkley Lake and the Core, they maintain those markings and if you build in there, buddy you’ll get a letter.

Morrie Doll: The Core is the Core and they do everything by the letter of the book. But we have no such public marking in our Ordinance.

Bobby Howard: would you have to create some language to delineate the easements in the Subdivision Control Ordinance?

Morrie Doll: they are, they are drawn on the plat.

Bobby Howard: yes, but technically delineate the location

Morrie Doll: You mean, the Meets and Bounds describe it.

Commissioner Dan Saylor: like markers.

Bobby Howard: Markers out there.

Morrie Doll: Yea, that’s what we are talking about is a marker.

Bobby Howard: at its property corners for each one.

Morrie Doll: Well, I don’t know, that’s for the, I don’t set policy. That’s for the Commissioners.

Bobby Howard: Some kind of utility marker.

Morrie Doll: Not like the little corner post that the State Highway sets on the right-of-way lines.

Commissioner Dan Saylor: Even if you put something in the ground. You know, a big marker that’s just so they can mow over it.

Steve Sherwood: This same type of pipe we are talking about replacing is the same type of pipe that Dena Jacobs has in her back yard. Where it’s failed in 2 different places. People have tapped in illegally with yard drains. One gentleman drove 5 T-bar fence posts through it in a 3 foot section.

President Bob Johnson: I remember that, yea.

Morrie Doll: In Bluewater Court.

Steve Sherwood: In Bluewater Court.

President Bob Johnson: So, if this costs more money because of this one individual, what do we do? Shouldn’t he be responsible for that cost?

Steve Sherwood: Well, that’s one failure out of several and they have built elaborate encroachments that are 3 feet or 4 feet tall and landscaping and mature trees, sheds, fences, you name it.

President Bob Johnson: alright, are you done now?

Steve Sherwood: I am done now. Thank you Mr. President.

President Bob Johnson: Counselor?

Morrie Doll: Nothing

President Bob Johnson: Anything here?

Jason Baxter: No Sir.

**MOTION TO ADJOURN:**

Commissioner Dan Saylor: I make a motion to adjourn.

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