**MINUTES**

**WARRICK COUNTY DRAINAGE BOARD**

**&**

**DEPARTMENT OF STORM WATER**

**June 24, 2019**

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, Jason Baxter, Deputy Surveyor; Steve Sherwood, Director of Stormwater; Morrie Doll, Attorney; and Jennifer Curry, Recording Secretary.

Present in the audience was Julie Steinsultz, Doug & Julie Freyberger, Beth & Dan Katz, Bobby Howard.

**PLEDGE OF ALLEGIANCE:**

President Johnson opened the meeting of June 24,2019 with the Pledge of Allegiance.

**APPROVAL OF MINUTES:**

President Bob Johnson: First, we have the approval of the June 10,2019 minutes.

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

Commissioner Dan Saylor: Second.

President Bob Johnson: All in favor. 3-0

**JILL STEINSULTZ-ALVEY’S SIGNS-THE WINE DOWN**

President Bob Johnson: First up we have Jill Steinsultz Alvey’s Signs for The Wine Down.

Jill Steinsultz: Hello, Good Afternoon, Jill Steinsultz with Alvey’s Signs, we have submitted a revision of the sign from two weeks ago, we are moving the base of that sign 5-feet toward the parking lot so that we are at the 25-feet from the edge of the drainage ditch, as requested. The base of that sign now will be 4-feet, and I moved those stakes and took that measurement to show that change.

President Bob Johnson: Mr. Baxter are you okay with this?

Jason Baxter: I’m good with that.

President Bob Johnson: Mr. Sherwood?

Steve Sherwood: Yes, if they meet Jason’s set-back requirements we should be fine.

Commissioner Dan Saylor: So, you are good Jason?

Jason Baxter: Yes, sir.

President Bob Johnson: Do you (Jill) have anything else to add?

Jill Steinsultz: Nope, if that’s great we are very happy with this change.

President Bob Johnson: Do we need approve this my motion Council?

Morrie Doll: Yes.

Commissioner Dan Saylor: I make a motion to approve the new layout and scale of the sign for The Wine Down.

Commissioner Terry Phillippe: I will second that motion.

President Bob Johnson: All in favor. 3-0

Morrie Doll: We will get you the traditional Hold Harmless Agreement, concerning these.

Jill Steinsultz: Yes, in fact I do have, I knew I would need a Hold Harmless, so I’ve already gone to our customer and I have that paperwork completed also.

Morrie Doll: If I could take a look at it, let them go ahead and do other things I can take a look at it. You can continue to do other work while I’m doing this.

President Bob Johnson: We’ll go ahead.

(*Hold Harmless for The Wine Down- reviewed, and signed by Morrie Doll*)

**BETH KATZ- 5322 N. PARK DRIVE, NEWBURGH, IN 47630**

President Bob Johnson: Next up we have Beth Katz, from 5322 North Park Drive.

Beth Katz: Good Afternoon, I am Beth Katz and this is my husband Dan Katz, we live at 5322 North Park Drive in Newburgh, we are in South Broadview Subdivision. Dan and I purchased the home in October of 1998 and over this nearly 21 year period we have noticed an amount of erosion that we were not expecting when we bought the home that is due to a stormwater ditch in our back yard. If you would please take a look at the pictures and I am going to need a little bit of information from Steve. Picture #1 shows you that this is our actual ditch area behind our yard barn, and the reason why I am showing you this is because this is pretty much on a calm day. The creek is always filled, it does not drain unless there is a drought, we also notice we have a problem with mosquitos. So, over this period we have noticed that, on picture #2 the green unit in front is the Spectrum WOW cable and behind that is Vectren. These are right on the creek now, so we are concerned because there were exposed wires up until about two weeks ago when they came and put in a little bit of dirt and grab some of the riprap from the neighbors next-door to the West of us.

Commissioner Dan Saylor: Who did that?

Beth Katz: (*Speaking to Dan who is seated away from podium*) Dan, who did that? Spectrum came in and did that, because we have made countless phone calls to them because we were having problem with our signal, so we noticed the wires were exposed at the time. On the third picture you will notice again they put a few rocks there, but these have washed out now because of the recent rains. Moving on to picture #4, as you will notice they are numbered at the top, this is during a rain about 4 days ago, the creek is very high and close to the yard barn. We extend on both sides of this creek, we have this side of the land on the bottom of the picture and then it goes into the tree section for another 10 to 12-feet. Here is a close up shot, as you can see on picture #5 these utility units are now sitting in water. The next picture goes to show that the creek needs to be cleaned up, because the amount of debris that has floated down from West to East. Picture #7 shows the same thing, #8 it will show you it has even gotten higher and at the bottom left hand corner of the picture, that is one of our plants we have there and that area between that plant and the water is approximately 4 ½ to 5-feet. Again, this picture #9 shows the same thing, #10 I wanted to show you because we do want to thank the Stormwater people, a few years ago they did come in and put a new Stormwater pipe in our yard that extended from the creek to the front of the house, they dug up our land and put in a new pipe because the other one had deteriorated. If the water gets high, and which it does in fact over the past two days its gotten so high that it covers that Stormwater pipe and it’s going nowhere except going onto the street then and flooding our street. You will notice there is grass clippings that are sitting there on top of the pipe, Dan and I have tried to keep our land from eroding so we have been putting clippings there to try and shore up as much as we can. The next picture shows you Brook Hollow, and this is the Brook Hollow pipe that was put in, and I am not sure when it was, Steve may be able to help us with that.

Steve Sherwood: In the 70’s is when that section of the development was constructed.

Beth Katz: So, this pipe is on both sides of it to show you from on the far West and on the East side of it to let you know that is a large pipe there. The satellite view that I have provided on the next page shows you where the riprap was placed for our neighbors to the West of us at 5311 and 5300, they have riprap there, but we do not. That is why we are asking for your consideration today to have the area excavated, and have riprap placed so it can help shore up our land.

President Bob Johnson: Who placed the riprap Ma’am?

Beth Katz: Steve?

Steve Sherwood: Some of the riprap is done by the landowners, some has been done when we’ve been in there to do various work, remove blockages, replace sections of pipes, such as we placed a section of pipe and their yard, we replaced I think two other sections of pipes that has since deteriorated from when the development was constructed in the late 70’s. A lot of it is done by the landowners to protect their property from eroding away, if you see the plat of the subdivision there is a 50-foot wide drainage and utility easement running along all those back yards on the South side of the ditch, and it is about 1400-feet between Brook Hollow and Jeffries which would be the next pipe downstream which is a little larger than this one, bare in mind that the structures again were originated in the 70’s and their designed for what is called a 25 year storm back then.

Beth Katz: The placement of the riprap for 5300 and 5311 were done by someone from the county.

Steve Sherwood: It was done by Stormwater.

Beth Katz: Stormwater, they came in, do you know when that was? What year they did that?

Steve Sherwood: Probably within the last 3-4 years we’ve been into maybe 4 or 5 different properties between Jeffries and Brook Hollow for similar situations.

Beth Katz: Now, Steve told us at the time that they first came out, Bobby and Steve came and looked at it. Bobby Howard. They said to us that the parcel of land behind us, which is 5444 Jeffries is actually just a parcel, and it not part of the subdivision, so we would need to get the permission of the land owner to cross his land to have them be able to excavate the area. Well, at that time the owners which was I think about four years ago, they said no, but we have a new land owner now. Jennifer what is the gentleman’s name, please? Zedic?

Jennifer Curry: It is…

Beth Katz: Zedic Birchler?

Jennifer Curry: Yes, Zedic Birchler. On our GIS map if you bring up the subdivision it does not state that he is in the subdivision, it shows he is in another area so I wasn’t sure.

Steve Sherwood: Yes, there is actually three parcels along the North side of that ditch from Jefferies West that are not platted basically South Broadview was created around those parcels, that is why it is not part of the subdivision. You can pass that down if you would like to Morrie. Which is approximately 40% of the North side of the ditch along that 1400-feet is what is called Non-platted or meets and bounds the description which there were no easements dedicated. For the most part, the ditch does fall within the 50-foot platted easement in that portion of South Broadview on the South side of the ditch which contains most of the ditch. On the North side of the ditch along the platted sections of South Broadview Subdivision West of these meets and bounds lots is a 25-foot dedicated public utility and drainage easement, but the bulk of the ditch exists on the South side of the line, or the Northern side of the lots that the Katz live on with adjoining neighbors on the South side of the ditch.

Morrie Doll: So, the only reason the owner of the adjacent property would have to give consent would be to access?

Steve Sherwood: For access to get to them..

Morrie Doll: Not for excavation?

Steve Sherwood: There is a lot of large mature trees up and down through the ditch, we’ve tried to remove blockages as they occur when we get notification that’s when we get in.

Morrie Doll: Is this is a mini home project? Or a larger?

Steve Sherwood: We’d have to use, maybe a larger machine, but we could use our mini excavator if we can navigate around the trees that are there, but mainly we respond when there is blockages in the ditch which is what our Storm Ordinance Law allows us to do. We’ve worked Brook Hollow up-stream, and West of Brook Hollow within the last 2-3 years, all the way back to what I believe is Ironwood, where we got permission from 28-30 land owners to access and remove. Back then, large accumulations and blockages to the ditch, we have from time to time through this section Mrs. Katz is addressing between Brook Hollow and Jefferies to remove blockages, usually we get in there if we are repairing pipe and if we have to put riprap because of what we disturbed to keep it from washing out further. I believe Mrs. Katz is asking that the entire ditch, from Jefferies to Brook Hollow, be cleaned out and riprap line to protect embankments on both sides of the ditch. We have other issues other than the ditch too such as the Town of Newburgh’s sanitary sewer, if you would pass this down, the ditch is eroded to the point where it’s exposed their sanitary sewer line, incased in concrete just upstream of the Katz’s, that necessitates some of the pooling, but there are pockets of pooling throughout the ditch because it doesn’t have a constant uniform grade as what Mrs. Katz is here talking about today. That, among the erosion issues and..

Morrie Doll: Is this within the CORP’s jurisdiction?

Steve Sherwood: No, this is the upstream of the CORP’s jurisdiction.

Morrie Doll: But, the erosion issue that you are concerned about Mrs. Katz is the South side of this stream?

Beth Katz: Yes.

Morrie Doll: Do you care about the North side? I know you own property on the North side.

Beth Katz: No we don’t, but as Steve eluded to there are mature trees there, it wouldn’t break out heart if the trees had to go.

Steve Sherwood: If you would, show these pictures to The Board too, you can see that it is not a uniform ditch, it has some turns which cause the erosion issues, also because there is a 50-foot wide drainage public utility easement, people have a lot of obstructions within the easements, such as, I should say encroachments which makes it difficult for us to get into particular sections from one end to the other. As you know, the subdivision plat prohibits, it states it in the dedication certificate that you are not supposed to put anything in the easements to prohibit maintenance, but they own the property lots of homeowners encroach the easement because they just simply either don’t see or understand the language on the plat when the realtor sells them the property. That makes it difficult for us to get in and maintain the ditch as well, but I am sure they are interested in continually loosing portion of your back yard.

Beth Katz: Yeah, and we did not place our yard barn there, this was done by the prior homeowners, so I have no idea, but just looking at it now we can not abide by that ruling that was emplaced because it wasn’t 25-feet.

Steve Sherwood: We get that a lot, people buy this, they are not told that these condition existed, the barn existed, the fence existed when they procure the property from the previous land owner. As I said, this development was originally done in the late 70’s it is now 2019, properties have changed, here we are dealing with these as they continue to crop up.

Morrie Doll: But, it is also a utility easement besides a drainage easement?

Steve Sherwood: Yes, it is a 50-foot wide platted…

Morrie Doll: Do we know what utilities are in the easement?

Steve Sherwood: As they eluded to, Spectrum WOW, which when we came out a few weeks ago to look at their problem about the utility boxes. It is the utilities responsibility to protect their utilities.

Morrie Doll: But, gas, electric, any of those?

Beth Katz: We don’t have gas there.

President Bob Johnson: Sir, if you are going to speak you need to come up please and state your name.

Steve Sherwood: Please introduce yourself.

Dan Katz: I am Dan Katz.

Morrie Doll: So, you don’t have natural gas, but you do have electricity, is it buried back there?

Dan Katz: Yes.

Morrie Doll: Sewer and water?

Dan Katz: Yes.

Beth Katz: Yes.

Steve Sherwood: Sewer and water lines cross the ditch at different locations.

Morrie Doll: It’s got everything.

Steve Sherwood: Which makes it difficult for us to…

Beth Katz: Thank the Ubelhor’s.

Morrie Doll: Plus, I don’t know how you get the refuge out if you remove trees…how are we going to get it out of there?

Dan Katz: I don’t know how many trees you’d need to remove, there are some dead areas of trees that are big dead branches hanging around it.

Beth Katz: But, he’s talking about right on the line, that is why I mentioned the gentleman that lives behind us that gave us verbal permission to do this. He is in the midst right now of clearing his land to place a pole barn.

Morrie Doll: He’s the new buyer?

Beth Katz: Yes.

Morrie Doll: And he’s verbally told you he has no objection to access.

Dan Katz: It has been kind of a small talk situation.

Steve Sherwood: As you know we would have to secure written temporary right of entry agreements from the effected areas we would need to work.

Commissioner Dan Saylor: Steve, what is causing that? Sorry, Council.

Morrie Doll: What we would have to have also, even if we have a right-of-way, we’d have to have consent.

Steve Sherwood: Typically make landowners responsible for the fences or any encroachments in these easements to remove the encroachments at least temporary and they could put it back once the work is completed.

Morrie Doll: How many lots are involved Mrs. Katz?

Beth Katz: Our house, the Weinzapfel’s, I don’t know how many other people are on that other side of it, but it would at least be 2-3 homes.

Morrie Doll: Okay, I’m sorry Commissioner.

Commissioner Dan Saylor: I was going to ask Steve, what is going on down stream of this, this backing up is obviously it’s a large amount of water, but is there blockage or a clog downstream of this?

Steve Sherwood: Downstream it would cross Jefferies which is the next corrugated metal pipe arch down stream it is a little bit larger than the one at Brook Hollow, but it ultimately drains through what is termed to be Esche Ditch which becomes a legal drain somewhere downstream of Sharon Road? Right along Sharon School it is still another drainage easement, it is the same ditch but it’s just a little downstream of there.

Commissioner Dan Saylor: Is that all open Jason? There aren’t any trees or debris down there blocking that up?

Jason Baxter: I cant tell you right now about it.

Commissioner Dan Saylor: Have you guys walked it?

Beth Katz: Yes, there are.

Commissioner Dan Saylor: Yes, what? Is there loose debris in there that has been clogging this up?

Beth Katz: Yeah. I mean, I have notice that since our son went to school there it is very clogged.

Morrie Doll: Does it ever enter Newburgh jurisdiction? Don’t think so?

Jason Baxter: I don’t think so.

Steve Sherwood: Normally, we don’t do what most people do what most people perceive as routine maintenance to this ditch is because the plat clearly says the landowners responsibility is for the maintenance of ditches and easements they boarder, however Stormwater rules, regulations, and ordinances allow us to get in there and remove these blockages as they occur because once you get a blockage at some point it is going to cause flooding. As she showed you in those photographs, these ditches are running bank full during periods of high rainfall intensities. I don’t know if you can tell The Board if you have seen it higher?

Beth Katz: Yes, we have seen it higher.

Dan Katz: Yes, we’ve seen it higher than that to the fence.

Beth Katz: It’s come up to our fence.

Morrie Doll: Does it ever dry up?

Dan Katz: Yeah it dries up, if we have two weeks or three weeks of no rain in the middle of the summer, but obviously we have had an unusual June with the amount of rain.

Commissioner Dan Saylor: Unusual June? Unusual last couple years its seemed. So, the water will come all the way up, does it ever come..

Dan Katz: No, I have not seen it come on the other side of that fence.

Beth Katz: We pray all the time.

Dan Katz: But, it comes up.

Steve Sherwood: Asking about the CORP question earlier, we would have to talk to DNR because this is something that they would not want you to manipulate the bottom of the ditch because it will be considered waters of the state, it may not be under CORP jurisdiction but it would be an issue to get involved with the DNR, similar to issues we have addressed in Tanglewood.

Morrie Doll: I mean, somebody needs to take an inventory of this I think to determine if there are trees that have to come out.

President Bob Johnson: Jason, would it be alright, would you be able to go down and check this out and see if there is some downstream obstructions, what is creating all this backflow?

Morrie Doll: And if there are trees that would have to come out, because we would have to get DNR’s consent.

Jason Baxter: That’s no problem.

Commissioner Dan Saylor: Do you feel this has gotten worse, the water level over the course of years or?

Dan Katz: Not necessarily, but the erosion.

Beth Katz: For the backup, yes most defiantly.

Dan Katz: I mean, we are losing our land there.

Beth Katz: When they came in and did the Stormwater excavation for the people next-door to us, West of us, the land was bowing, so they fixed that bow, but now it bows to us, so its just kind of like a domino effect. The reason we came today is because we are concerned that the gentleman behind us is clearing his land, he is knocking down a hill and he is planning to place a pole barn in the area that could be the most accessible to your machinery to get across that. Not only for our land, but for our next-door neighbor and the people on the other side of them. Of course he is facing some problems right now because its so muddy that he cant really do much more.

Commissioner Dan Saylor: That parcel land you were just talking about that is on the other side of the trees?

Beth & Dan Katz: Yes.

Morrie Doll: North

Steve Sherwood: That one aerial I handed that shows about 40% of the ditch has his parcels, it’s an aerial image…

President Bob Johnson: So, I guess out next step would be to go out there and take a look at it and see what needs to be done and get some information.

Commissioner Dan Saylor: So, this guy is going to build back in here correct?

Beth Katz: Yes, right here is our home on Park Drive right there, and he has this parcel right here, there is another parcel here and I don’t know who owns that one. We were told he was not in a subdivision, these two pieces right here.

Steve Sherwood: I will check with Plan Commission and see if an improvement location permit has been issued for a pole barn construction in those properties, and then I will get with Jason and we will assess the down stream from Brook Hollow down stream through there.

Morrie Doll: When do you want to target to report back?

Steve Sherwood: I’d say give us about 30 days.

Morrie Doll: I know you want something quickly because of the neighbor’s construction. Your estimate is that it will take 30 days to do this Jason, Steve?

Steve Sherwood: Probably the second meeting in July.

President Bob Johnson: July 22nd

Dan Katz: The neighbor said he was going to be working on that through the summer into the fall, so its going to be a while.

Morrie Doll: Well, we could call him, we have stuff to get ahold of him on the GIS?

Steve Sherwood: Yes, that would be on the parcel cards.

Morrie Doll: So, you are suggesting, when will you report back?

Steve Sherwood: Second meeting in July.

Morrie Doll: July 22nd.

Beth Katz: It’s a date. I go back to school I am a teacher so..

Morrie Doll: July 22nd are you in class again?

Beth Katz: No sir, I am not.

Morrie Doll: 2:30 July 22nd.

Beth Katz: Thank you very much for your consideration.

Morrie Doll: We may have to have easements, temporary rights of access, something for that guy behind them on the North side of the ditch, plus consensus from all the utilities, consents from the lot owners.

**JULIE & DOUG FREYBERGER- 10411 LAUREN CT. NEWBURGH, IN**

President Bob Johnson: Next up, Julie and Doug Freyberger. State your name please.

(*Both Doug and Julie Freyberger are standing at the podium*)

Doug Freyberger: My name is Doug Freyberger, this is my wife Julie. We live at 10411 Lauren Court in Newburgh, it is the Huntington Creek Subdivision, unfortunately we don’t have all the great graphics that the Katz’s had here, we didn’t know to bring handouts.

Julie Freyberger: But, we do have some pictures and video as well.

Doug Freyberger: So, this is going to be kind of hard to do with the mic and everything. This is our address here on Lauren Court, this is Pollack Avenue out here, Newburgh Healthcare is right across the street from our subdivision. This is 10422 Huntley Court, this is what the property did look like, it was pretty flat, obviously grassier.

Julie Freyberger: To go back, we built the house in 2005 we put the pool in in 2009, roughly, its been in for 10 years, never had any problem or problem with water or nothing like that. The lot behind us, which you can see was flat, they built this house in about 2016-2017, they move in, they start to put a pool in..

Doug Freyberger: In about April of this year.

Julie Freyberger: April of this year, what they did was when they dug the hole, I don’t think they removed the dirt, they built their land up. So, they probably built it up probably at least..

Doug Freyberger: Yeah, I don’t know what the amount it.

Julie Freyberger: Its a lot, maybe 20-inches more probably?

Doug Freyberger: Yeah, probably 12-18-inches I would say they built up. There’s a runoff now, off of the North side of their property and then also to the East and West sides of their property, and all that water runs down and now, basically floods our residence where our pool is. May 26th we returned home and our entire in-ground pool was like the Ohio River, it was full of dirt and mud.

Commissioner Dan Saylor: Your pool was filled?

Doug Freyberger: Yes, I have video here that, I would like to show you the video if you would take just a second, it wont take long, I can speed through it.

(*Doug Freyberger approaches the Board with his cell phone to show the video*)

Doug Freyberger: It had been a really hard rain that afternoon, but you can see here, this is a security camera out the back of my house and I will go through it here, you can see the water come in from my South/West corner and comes in and that is all mud water then it goes right into the pool, it continues, continues, continues, and continues…just fills my pool up with mud.

Julie Freyberger: We have tried talking with the neighbors, I’ve tried talking with them, they are just two retired teachers from Castle and she has always wanted a pool. I told her that we’ve never had any problems, you put this in and now we’re having all kinds of flooding issues we even went out and bought 20 more sandbags that lines our pool now, beats having to squeegee water out, they are just not receptive to do anything..

Doug Freyberger: Out entire pool is lined with sandbags now to keep this water out.

Commissioner Dan Saylor: You mean like this?

Julie Freyberger: Well, there’s more sandbags now.

Doug Freyberger: Yeah, now I’ve actually, that was not keeping it out.

Morrie Doll: But, that is your pool?

Doug Freyberger: Yes. Right before I came here, just ironically…

Julie Freyberger: The utilities are under water, the WOW box is under water, Vectren..

Commissioner Dan Saylor: Doug, do you guys have any pictures on what is going on outside….okay so that is the inside…

Morrie Doll: There is some outside in there, the next-door neighbors, the disturber.

Doug Freyberger: This is actually this, I took this before we came, this is the cable box, WOW actually just got called out because they are starting to have trouble calls, but that is excess water on the East side of my residence, because it is draining that way as well, I really wish I would’ve brought the 200 pictures that I have but, this is the rear, this is kind of what they have done here, so this is the rear of their residence this is like the North/West side of their residence here, this is as well, basically this is, everything drains into this area and then our residence is right here so this is where my fence is and its just a natural low spot. I’ve put in a 12x12 drain to try and catch, it cant keep up.

Julie Freyberger: I mean, we had to do something in an emergency situation because it was out of control, so we put a drain in and we’re probably already out a little over $1,000.00 doing this, we’re just asking them, I feel like its illegal what they’ve done to do their part, and to put some kind of drainage system in the back of their yard. She keeps saying she’s going to call the pool people, I told her that’s all fine and good, but you are responsible you are the homeowner and the pool people I talked to for the homeowners they’re not going to do anything.

Doug Freyberger: I mean, this is the kind of water, its just ginormous amounts, I mean, it cant, its all going down, this is like a walkway between my fence and my neighbors fence its coming down in between there its going out to the street on Lauren Court, its going across the back side of our fence coming in, they have it lined with the straw stuff or whatever, the round straw tubes, they have them anchored in there trying to prevent this, but water is going to find the least point of resistance and just keep coming in. I mean, this is concrete and this is my patio furniture, that drain is covered in that picture it just cant keep up with it.

Commissioner Dan Saylor: Where does that drain to, where did you?

Doug Freyberger: Out to the West side of my property

Julie Freyberger: So, we had to pay to put that in for an emergency situation and we’re going to now have to run that all the way to the street..but this cant keep up, because we’re taking on all their muddy water because its all mud back there now they haven’t put in any grass or sod in, and that’s still not going to rectify this.

Commissioner Dan Saylor: They have not done any of that yet?

Doug Freyberger: Nothing yet.

Commissioner Dan Saylor: The video that you showed, do you remember how much rain we got on that particular day?

Julie Freyberger: Well, I can show them the video from Friday how much water you were squeegeeing out trying to keep up with it because…

Doug Freyberger: On Friday I don’t know how much rain…that’s the thing, on a normal rainy day, like this morning, no problems. But on these big gully washers that we have been getting here in June, we’re getting up at 4:30 in the morning having to stay on top of this, I mean I am trying to squeegee water to keep it away from the pool. You know, everybody says that we’re going to have to take them to, its needs to be a civil court thing….to have to sue somebody, I just think there should be a different method than having us be out attorneys’ fees and everything else that there should be something on the books that doesn’t allow somebody to build property up to cause this, this time of situation, and quite frankly all the water that’s being forced down at the front of the street are hydrant, the dirt is being washed away from the fire hydrant and the water shut off and all that, which I didn’t bring pictures of.

Morrie Doll: I have a question.

Doug Freyberger: Yes, sir.

Morrie Doll: This disturbed earth around their pool, before they built the pool how much lower was the ground?

Doug Freyberger: I don’t know if I got one here that….you can kind of see it in this picture right here, you can see the slope of the land down I don’t know if it shows it real well, but this is finally where they are being post to putting their fence. Unfortunately, unless I was laying on the ground you cant really get the idea of the slope away from the house. Their rear fence is probably a good 12-inches higher than ours, and it’s the same 6-foot fence just like mine is. So, you would think it was the level ground your fence would meet like my neighbors do on each side of me, how they meet up at the same height.

Morrie Doll: There is no drainage easement, or anything at the rear of your yard or the rear their yard?

Doug Freyberger: I mean, other than the natural drainage..

Morrie Doll: No, legal. Legal drainage easement.

Doug Freyberger: Oh, yeah that I don’t know.

Steve Sherwood: Yes.

Morrie Doll: What do we got?

Steve Sherwood: We have platted easements on all four sides of both properties, that is an indication there on where they exist and these are the plats.

Morrie Doll: So, is there green space between your cement patio around your pool in the property line?

Doug Freyberger: Yes, there’s..

Steve Sherwood: I assume the white fence is your property?

Doug Freyberger: Yes.

Steve Sherwood: And it’s on the property line?

Doug Freyberger: Yes.

Morrie Doll: So, that is gravel around the plantings? Or is that a hard surface?

Doug Freyberger: That’s gravel, and between their fence and our fence is about a 2.5-foot wide section.

Morrie Doll: How wide is the easement?

Steve Sherwood: 10-foot on their side, 6-foot on those people’s side.

Julie Freyberger: They said they would rectify this at first and knock the fence out…

Morrie Doll: I’m sorry, its how wide?

Steve Sherwood: The people who built the current pool they are talking about just South it’s a 10-foot public utility easement, and then on the Freyberger side it is a 6-foot public utility easement, and drainage easement at this point.

Morrie Doll: So..

Steve Sherwood: Their fence under landscaping is mostly within the platted easement.

Morrie Doll: Yeah, you’re cement patio is within 6-feet of your fence, would that be a true statement?

Steve Sherwood: Their improvement location permit shows the pool was not to be constructed in the easement, I believe I have a copy of both the improvement location permits here.

Morrie Doll: Well, to The Board, it seems to be first of all, it’s not a public drain so the Drainage Board has no jurisdiction over it. In the context of the Stormwater management, I mean you have a drainage easement….

Steve Sherwood: There is a caveat on both subdivision plats, one is the Section A, one is in Section B, all public utilities may be used for overhead and/or underground utilities and storm drainage ditches and/or conduits.

Morrie Doll: But everybody has either built into the drainage easement, or filled into the drainage easement.

Steve Sherwood: Right, and when I looked at this with Jason on the original drainage plan, there is no clear indication that there was supposed to be a drainage ditch.

Morrie Doll: Or swale.

Steve Sherwood: Or swale running East/West thorough their common property line within any of the easement, there is no detail given.

Morrie Doll: Does it empty into any kind of a natural or legal drain anywhere?

Steve Sherwood: Depending on the elevations, most of it stands in their flat back yards, either by houses being built by the original contractor, if there were any swales they do not exist anymore. A lot of people landscape, or fence encroachments in the easements, again I know the situation that we couldn’t get in and construct anything.

Morrie Doll: This is a case of you got to be careful what you wish for, because if you say to us is there a public remedy available here? The public remedy would be, well first of all it wouldn’t be the Drainage Board, maybe Steve could ask to enforce the drainage right away in the subdivision, but that is going to impair your property as much as your neighbors. You certainly don’t want to take out your landscaping in sub-sections of your cement patio around your pool because its in a public drainage easement obviously.

Doug Freyberger: Right.

Morrie Doll: The problem civilly is, Indiana is one of the states that follows what’s called, I can copy it from heart, Indiana follows something called “ The Common Enemy” doctrine about water in which it says, as a property owner I can do whatever to keep water off my property. I can run it off my property onto my neighbor or I can dam my property to keep my neighbors water off my property, but if it falls from the sky as precipitation I can do almost anything to protect my property, or dry my property out under the Common Enemy Doctrine which our Supreme Court has upheld for decades, much to sometimes lawyers should grin, that’s what it says. So, I don’t have a lot of optimism if you go to court and say that its rainwater, its not flowing out of a ditch that passes through the neighborhood then flows over the property onto me, its rainwater. I think its subject to probably motion to some prejudgment and you get dismissal order really quick that says “sorry, but our Supreme Court says that a Common Enemy thing they can do what they want to”. That would also mean if you wanted to you could build a dam on the edge of your property if you wish to do so to keep his water on his side of the property.

Julie Freyberger: So, people can just build up their property however they want to and have their water drain and it doesn’t matter.

Morrie Doll: There is five people in Indianapolis with black robes that say that is right, it has been that way in the State of Indiana for decades. I’m sorry, drainage law in Indiana is pretty sedentary, doesn’t change a lot, and that is the Common Enemy Doctrine which our Supreme Court religiously upholds. They couldn’t build a trough, put a pipe in…

Commissioner Dan Saylor: Or a downspout…

Morrie Doll: Well, downspouts are surface water that has been collected on a rough and that’s an interesting question. If it enters your property in a flow, what we call a sheet flow, a flow off of their property, even if they raised their land…

Julie Freyberger: We’ve haven’t had any problems in 10 years..

Morrie Doll: I know, I understand that because everybody was level, then somebody raised the land and when they did the flow changed and now it casts it down on you. What you can do is wall it off, you can wall it off.

Julie Freyberger: If didn’t have a pool it would still be bad, but we’ve had a swimming pool that we’ve had for 10 years that’s going to ruin that.

Morrie Doll: Not if you wall it off.

Julie Freyberger: So we should build a concrete wall and route the expense to do that?

Morrie Doll: If you build a curb, or some kind of a raised impervious cement or concrete blockage that would keep the water right off your property, built it right on your property line if you chose to, keep it off your line and onto your neighbors that is completely legal.

Steve Sherwood: But, if they build it on the property line then it is in the platted easement.

Morrie Doll: Well, I understand that, but they have already violated it that much so what difference does that make? That would keep it out of your land.

Commissioner Dan Saylor: I would build one before it got to your landscaping.

Morrie Doll: You could pay a lawyer to go to court, but you’re going to loose. I’m sorry. And I don’t that for a living, but you will loose, and there isn’t any legal recourse that is as painful for you as it is for them through the drainage and the County in this neighborhood the way it was platted. That is my opinion, to the Board is we do not have any legal standing.

Steve Sherwood: But, to answer your question is there a county law that prohibits them doing for what they did, the answer is no.

Julie Freyberger: In Kentucky I know they have it, you cant do that over there.

Morrie Doll: You know, and I don’t know what the Kentucky law is to comment on it.

Julie Freyberger: I know you cant, I am from Kentucky and they tried to do that to my parents house so many years ago and its illegal, because that’s a shame, this is awful, we are like held hostage in our house when it rains we cant go anywhere, that’s awful. You know what I guess, I don’t know.

Morrie Doll: I would put a curb in, if it were my pool. I really would.

Steve Sherwood: When your pool was built, did it slope towards the South, towards the landscaping and the fence?

Doug Freyberger: I think it, there’s different, like this section maybe slopes this way and then from here to over here it slopes that way, and every which direction it slopes a different way away so you weren’t forcing all the water onto somebody’s property.

Steve Sherwood: The 12-inch pipe and inlet you built, if I get my directions correct, at the South/West corner.

Doug Freyberger: Yeah, it wasn’t a 12-inch I only put a 4-inch this was just a quick try to fix this.

Steve Sherwood: It drains along the West side of your house to the street, unfortunately we run into people who do private drainage on their lots too, and some of it is in the platted easements because its not part of what we call the approved drainage plan like what the Katz were referring to when we came out and fixed their storm drain from the street to the ditch, that’s not a part of the approved drainage plan. There is nothing around your lot..

Morrie Doll: No swale, no drain, no ditch, no anything its all just sheet flow.

Steve Sherwood: Unfortunately, they all start doing their own little construction of their lots as it gets developed or re-developed

Morrie Doll: I’ll raise my land if you raise your land, then I will raise my land…

President Bob Johnson: I’m sorry we cant help you more.

Morrie Doll: Put a curb up, sorry.

Steve Sherwood: Since your complaint was filed I have been out there, Jason has been out there, I spoke to Jason about it to see if there is some avenue, then we heard you were coming to the meeting and we didn’t have a chance to put anything in writing to respond.

Doug Freyberger: Right, okay well, at least we know.

President Bob Johnson: Good luck to you.

Morrie Doll: Good Luck.

Doug Freyberger: Thanks for your help.

**CLAIMS:**

President Bob Johnson: Next, we have two claims, one for Ground Control Stubbs/Fruendenburgh Springle Ditch for $6990.00 and another for Alpha Laser for copy charges $8.98.

Commissioner Dan Saylor: Jason, that’s work been completed to your satisfaction and all that?

Jason Baxter: Yes, sir.

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 business for Drainage Board? Mr. Sherwood

**STORMWATER DEPARTMENT**

Steve Sherwood: Thank you Mr. President, I will be brief. Under Stormwater meeting agenda, just to report to the Board I am putting together two local, small type drainage improvement projects. One in South Broadview on what I call “Roberts Ridge Drainage Improvement Project”, and the other is in Old Hickory which I have been working on for about a year to get a resolution to what is called a “ Hale Watson Drainage Improvement Project” This will replace a section of the existing storm pipe in order to get some more capacity resolved a local flooding drainage issue during periods of high rainfall. I should have something to go to bed yet this summer and get some responses back before August, it involves getting an open trench across Old Hickory, a roadway in Old Hickory I believe it is called Hickory Boulevard, with the detour of traffic over Oak Grove Road Phase 3 I have been trying to mitigate a good time to close the road for up to a week to get this conduit replaced so that’s why it has taken some time, that should be coming soon. That is all I have.

President Bob Johnson: So, as soon as they open it up you are going to close it, is that right?

Steve Sherwood: Timing is everything.

President Bob Johnson: Is that it Sir?

Steve Sherwood: Joe is not present so I would ask for what he has, that is all that I have.

President Bob Johnson: Anything else? Jason? Councilor?

Morrie Doll: No, Sir.

**MOTION TO ADJOURN:**

President Bob Johnson: Take another motion.

Commissioner Terry Phillippe: I make a motion to adjourn.

Commissioner Dan Saylor: Second.

President Bob Johnson: All in favor 3-0 (Phil Baxter was not present for the meeting)