

REGULAR DRAINAGE BOARD MEETING:

September 10, 2025

President, William Whitehead, called the meeting to order. Members present at the meeting were the following:

William Whitehead, President
Joseph Hamilton, Vice President
Sherry Riggin, County Commissioner
John Christy, Member
Wayne Bothel, Member
Brandon Murphy, Attorney
Tom Borchers, Surveyor
Jennifer Licht, Recording Secretary

President, William Whitehead, opened the meeting by welcoming the audience and inviting them to participate in the pledge of allegiance.

APPROVAL OF MINUTES:

Mr. Whitehead entertained a motion for the approval of the July 9, 2025 and August 13, 2025 Drainage Board Meeting Minutes. **Mr. Hamilton** moved for approval. Motion seconded by Mr. Bothel. Mr. Whitehead abstained. **Motion passed 4-0.**

TABLED BUSINESS

Mr. Hamilton entertained a motion to remove business from the table. Motion seconded by Ms. Riggin. **Motion passed 5-0.**

Mr. Hamilton stated at the last drainage board meeting we tabled the issue of the Wayne Johns Petition to Remove Obstruction. The reason we tabled that issue was so we could further research if it was under the authority of the drainage board. Our legal counsel has reviewed the issue and I believe he has a statement. **Mr. Murphy** stated I did provide a memo to the members of the board. The drainage boards are confined to the powers its granted by the Indiana Code. While we have authority over regulated drains and some limited authority over mutual drains and natural surface water courses. We do not have authority to determine neighbor disputes on surface water. There may be other places for those issues to be handled between the parties but it's not before the drainage board. That's the opinion of our office. It boils down to the definition in I.C. 36-9-27.4 and I.C. 36-9-27.-2 and that is our position on this matter. **Mr. Christy** moves to deny the Petition for Removal of Obstruction. Motion seconded by Mr. Hamilton. Ms. Riggin abstained. **Motion passed 4-0.**

PUBLIC COMMENT

Chad Thornburg, Deputy Trustee for Delaware Township, I was made aware of the situation with the Johns through the video last month. I thought being the Deputy Trustee, I should get involved. My opinion is the board has failed these people on both sides and the Surveyor also. The drainage is under the surveyor. I guess at this point I don't know what the drainage board does. What is the obligation of the drainage board? **Mr. Whitehead** stated we take care of legal drainage issues. **Mr. Thornburg stated** I call it a levy, if you can just put up a levy for surface water. I've got 400 acres of levies to build. The way I understood the common enemy doctrine, you get together with your neighbor and this is both of our problems, you do what you need to do to my point and I'll do what I have to do to get your water across me. If you say this levy can stand where it's at then anybody can put a levy in for surface water. **Mr. Hamilton** stated Mr. Thornburg last month I visited the site of the complaint. The problem that are they having with surface water is defuse surface water. It is definitely a problem for them. And prior to the problem of the accumulated surface water, this water did drain across Ms. Hoff's property. Since this is not water that flows in a defined channel or direction its outside the authority of the drainage board. **Mr. Thornburg**, the Johns invited me onto their property to see what the situation was and I would think that there would have been a tile in that area, the way that swell is running into that open ditch. The common enemy doctrine says you cannot gather water on and cast it onto your neighbor. The way the pond was done and I'm not pointing a finger at Ms. Hoff, that's exactly what's going on because there's no control. There's no outlet for the pond and to me that goes back on the pond builder. If anybody was a legitimate pond builder, they wouldn't put a pond in with no sort of control outlet or overflow. There is nothing. As far as common enemy doctrine goes its in direct violation. She's gathering a quarter acre of water and eventually its going to run over. That's going to put it to the West and I doubt they want the water. **Mr. Hamilton** the board attorney can correct me if I'm wrong, but I believe the common enemy doctrine falls outside the authorization of the drainage board. We are only authorized on removing an obstruction if it is an obstruction of natural water course or a drain. **Mr. Murphy** stated absolutely. Like I indicated there may be other places for these parties to resolve this dispute involving the common enemy doctrine but it is not with this board. I don't want to give anymore advise to the parties on that. We only deal with matters the code grants us authority over and this is not one of them.

Brandi Hoff, 8209 E County Road 350 N, Albany, stated I know this seems like a petty neighbor issue and of course it is. Unfortunately, I did say that I would install a drain in the fall and it was not fast enough for the Johns. I researched the law because I do have a right to enact the common enemy doctrine. The common enemy doctrine does say I cannot disperse the water. Disperse is pumping and that is written in the common enemy doctrine. Further, they have not asked me if they would contribute if they could drain their water. There are other ways to disperse their water like rain barrels, or a dry well if they so choose. I'm not a bad neighbor. This has been a continuing multiple issue problem and I'm just adhering the law. Thank you.

Mr. Borchers stated before we do new business, I would just like the board to know that before now we didn't have a pond ordinance to build a pond. So, you could basically do it however you wanted. We got with the committee and we've been working on it for quite some time now. It's

been sent to legal and then it'll be before the commissioners to adopt it. So, here in the near future some of these disputes will be taken care of with the new pond ordinance.

NEW BUSINESS:

Mr. Whitehead addressed Mr. Borchers and asked if he had any new business to present to the Board today.

Mr. Shroyer

Mr. Borchers stated Mr. Shroyer came in and he's been working on a tile for a few years. We put in few hundred feet of 24" tile every year. Last year we finished it to the open ditch. There used to be an old cement head wall there. He brought in a design from the NRCS on a new head wall to put on this 24" where it daylight into the ditch. This is just north of McGalliard west of the bypass a few miles. I haven't had a whole lot of experience with the design of new head walls. Typically, we'll put some rip rap and some fillable flow or some other design work. He brought this in with a couple of estimates to build the retaining wall. And they're pretty pricey. One was about \$19,000. The other one was like \$32,000. I didn't know what the board wanted me to do with this. If you wanted me to get other quotes, if you wanted me to try to find a metal structure, something that might be cheaper than building a cement spill way. I just went out and looked at it last night. I took some pictures. I didn't have a chance to get you any more information. **Mr. Hamilton** asked do you believe that a qualified engineering consultant should review the design? **Mr. Borchers** stated I think the NRCS did a good job on it. Maybe we can get another engineer to look at it. Would it be cheaper to get another couple quotes? I haven't really had a design put on my desk like that without being involved in it a little bit more. **Ms. Riggin** moved to table for further investigation. Motion seconded by Mr. Hamilton. **Motion passed 5-0.**

OLD BUSINESS:

Mr. Borchers stated Mr. Christy wanted me to update the board on people that talked last month. Cody Light came in with concern on the Rector drain and he had a website complaint. The contractor went out and dug a couple holes to test for flow and he fixed one small sinkhole, put in a section of 15" dual wall drain tile. This is another project that we may want to reconstruct. I'm going to get with Kyle at GIS to locate all the properties that drain into this acreage, disperse it to the board and see what we can come up with. Besides that, the tile was running like what it was designed to do 100 years ago. Don Chambers approached with concern about his neighbor running water onto him. The nearest regulated drain to him was 1,500 to 2,000 ft away. I have not looked at it because I was waiting for clarification on what the board's responsibility is. Now that we have the clarification, I can report back to Mr. Chambers on that. Commissioner Henry approached about a slow running tile. We ran locates, the contractor dug up 12 holes trying to find if it was plugged up somewhere and the tile is completely dry all the way through. So, it's working but I had him install two breathers to do investigative work. I had him put one next to the road. There's a couple places 100 foot or so where he couldn't see. Next time it rains we're going to either televise or jet rod on those areas to see if there's something broke down. But besides that, the tile seemed to be working and most of it was plastic, so it's been replaced at some point. **Mr. Hamilton** asked is this where it was suspected that a

homeowner caused damage with truck traffic over a legal drain? **Mr. Borchers**, correct. **Mr. Hamilton** asked if we determine the homeowner did cause the damage to the legal drain, does the homeowner bare responsibility for that claim? **Mr. Borchers**, yes. However, they didn't find it broke down. Commissioner Brand gave an update on the culvert going under Stockport Road. I believe everybody's received a letter from the county attorney. They're going to go ahead with that project. I'm also going to get with Mr. Johnson to update the county maps to reflect the reconstruction of that drain. They've done it a few times and moved it so we can get the proper area where that drain is under Stockport Road. Mr. Holsinger approached about two sink holes and a beaver dam. Mr. Holsinger is going to call my office when the crops are off so we can repair those two sink holes. The beaver dam's already been taken care of. Dennis Rogers came in to voice his views on debrushing the Racer ditch. As I stated before, next month we're going to open up quotes to go ahead and finish that job for Mr. Rogers, the town of Dunkirk and the surrounding area. That's all I have as far as old business.

MAINTENANCE CLAIMS:

Mr. Whitehead entertained a motion for approval of maintenance claims as presented. **Mr. Christy** moved for approval. Motion seconded by Mr. Hamilton. **Motion passed 5-0.**

Mr. Christy stated we were billed \$19,000 for the work on Racer Ditch by Arnold. We chose not to approve that claim today. I think it's the wishes of the board we do not pay that amount. So perhaps we need to discuss how we're going to move forward. **Mr. Hamilton** asked do we have sufficient documentation and photography after completion of that project to show the obligations of that contract were not met? **Mr. Borchers** stated we have the specifications I wrote up, he signed and turned back in and photography after completion. **Mr. Christy** asked if we choose to pay anything at all or pay him less than the \$19,000, do we need Mr. Murphy to write a letter explaining our actions. **Mr. Murphy** stated there is a couple ways we could do it. My preference if the board were open to it, would be to table that and allow me an opportunity to look at it and determine what was done, and wasn't done, what might be a fair amount to pay and then come back and discuss that at our next meeting if that's acceptable to the board. **Mr. Hamilton** moved for approval. Motion seconded by Mr. Christy. **Motion passed 5-0.**

Mr. Christy asked Tom, when you go to look at something, say for instance, the situation out there on Romy Street that Don Chambers has brought up. Do you have to have permission from landowners to go look and to carry out your job? I've got a right of entry, 75 ft on both sides of a regulated drain. If I'm not on a regulated drain, I can send them notice in the mail that I'm going to enter their property to get to a regulated drain if I can't get to it off of a road. Now, typically people call and they'll complain, I'll go out and look at it and they know I'm coming because they're the ones that called in the complaint. Typically, they know they're coming, but for the most part, if it's not near a regulated drain nor access to a regulated drain, I have no jurisdiction to enter the property. That's the way I read the Indiana Code.

Mr. Hamilton stated I have one more question. On the Hickory Lane issue from two meetings ago. It appeared that there was a claim from Culy's to jet that drain. Has that issue been resolved

for the landowner? **Mr. Borchers** stated where our tile ends, their house is about four blocks up the road with no other structures. So, what we're going to do is, we're going to get a meeting with storm water, highway, some of the commissioners and try to find a way to help those people out. So, before we did anything to hook into or see if we can hook into it, I wanted Culy to televise that and make sure that we have, proper structure to take on any more water. We're going to set another meeting next week and see what we can do to help them. **Mr. Hamilton**, Thank you for the update.

ADJOURNMENT:

The meeting adjourned at 9:31 a.m.

Jennifer Licht, Recording Secretary

William Whitehead, President

Joseph Hamilton, Vice President

Sherry Riggin, Member

John Christy, Member

Wayne Bothel, Member