

# REGULAR DRAINAGE BOARD MEETING

July 20, 2015

**President Clarence Hensley called the meeting to order. Roll call held. Present at the meeting were the following:**

Clarence Hensley, President  
John Landers, Vice President  
Shannon Henry, Member  
Charles Whitehair, Member  
Brandon Murphy, Board Attorney  
Phil Taylor, County Surveyor  
Stan Willis, Deputy Surveyor  
Cindy Harty, Recording Secretary

**Mr. Hensley** opened the meeting by inviting all to participate in the pledge of allegiance.

## **APPROVAL OF THE MINUTES:**

**Mr. Hensley** entertained a motion for the approval of the June 15, 2015 Drainage Board minutes. Mr. Henry moved for approval. Mr. Whitehair seconded the motion. **Motion passed 4-0.**

## **OLD BUSINESS:**

### **Fimple East Drain**

**Mr. Hensley** called for Michael Stikeleather.

**Mr. Michael Stikeleather, 5300 W. Hessler Road, Muncie, IN,** approached and stated that he has a handout for everyone and gives the documents to each member of the Drainage Board, Board Attorney, Surveyor and the Board's Secretary.

Mr. Stikeleather stated as follows: He would first like to apologize for having to be here today, and stated it would be evident once he goes through the materials today. For the record, this matter involves a retention pond located in Yorktowne Meadows

Subdivision. The retention pond is part of the Fimple #182 Drain, and from now on that is how I will refer to it, the Fimple 182. It is located approximately two-thirds of the way south between Benton Road, the east side of the road between McGalliard Avenue and Jackson Street. It is connected to Fimple 182, and it was installed in 1993 and reconstructed in 2005. A map of that is located for you on page 1. Mr. Stikeleather asked all too please go to page 2 where they would see the plat of Yorktowne Meadows Section 1. You will see out lot number one shaded there, it is shaded (inaudible). It says the county drainage easement is 25-foot on the outside edge and top of bank around the perimeter of the pond, and this plat took place in 1993. As you can see if you look on page three where it is signed off by Marta Moody who is present here today, on September 2<sup>nd</sup>, 1993. When I was getting ready for this presentation today, I was doing some research and discovered a file that had copies of a Drainage Board Minutes regarding Fimple Drain 182. I made these copies when I was doing some research involving Stan Hiatt for the reconstruction, which occurred in 2005. These copies were from a time when I was living in Indianapolis and not really involved in Mr. Staton's Muncie affairs, as Mr. Charles Staton developed this subdivision, Yorktowne Meadows. However, these minutes I found were very relevant to why we are here today. Allow me to go through a small portion of those minutes if you would please. If you go to page four and look at the very top of the page, you will see it is August 9, 1993. Mr. Stikeleather read as follows:

“The members present were Ron Bonham,” and he stated you probably know some of these people or have had an acquaintance with them, “Ray Parsons, Harold Walters, are the three members, Frank Brinkman, Drainage Board Attorney, Jim Petry, Delaware County Surveyor, and Linda Springer, Drainage Board Secretary.” The relevant part that applies to Fimple #182, if you would turn to page 5, I have highlighted it for you. For the record please allow me to read that section. He reads as follows:

“Jim, as referring to Mr. Petry, recommended to the Board to accept Fimple #182 into the system as it is completed except for leveling and seeding, and operating properly. Ray made a motion to accept the Fimple #182 construction into the county drainage system, as recommended by the County Surveyor. Harold seconded the motion. Ron called for a vote and the motion was carried by three ayes. Jim presented and read the Certificate of Approval for the subdivision known as Yorktowne Meadows dated August 4, 1993. Jim said more specifically that includes the pipe from Yorktowne Meadows, a beehive, and a detention pond that has been built. Jim said it has been determined that it did drain properly into the Fimple #182. Jim said he could attest to the fact it is substantially complete except for some maintenance, wash out etc., which he has talked with Mr. Staton about. Jim recommended the Drainage Board take into the Delaware County Regulated Drain System the Yorktowne Meadows, Section 1 with said drains consisting of the following: Out lot 1 and the detention pond located thereon and approximately 390 feet of 24-inch sewer tile extending from the pond south to the new reconstructed Fimple 182, including a beehive inlet located south of

Fernwood Way. Harold so moved to accept into the Delaware County Regulated Drain System the Yorktowne Meadows Subdivision as recommended by the County Surveyor. Ray seconded the motion. Ron called for vote and the motion was carried by three ayes.”

Mr. Stikeleather stated that the long story short is next month it will be 22-years in which the detention pond and the out lot have been incorporated into the Delaware County Regulated Drain System. Before I had, and here is why I said, I did not know that until I read this Saturday. If you will please go to page 6, you will see the Minutes are signed off by the appropriate people on the Drainage Board and attested to by Linda Springer, the Secretary. If you go to page 7 you will see one of the two documents referred to by Mr. Petry as the County Surveyor’s Certificate of Approval, and he has signed it August 4, 1993. If you go to page 8 you will see the Drainage Board of Delaware County, Indiana Certificate of Approval and Acceptance which says,

“This is to Certify that we, the undersigned Drainage Board of Delaware County, Indiana, do hereby approve and accept, into the Delaware County Regulated Drain System, the storm sewers and/or drains installed in accordance with approved plans and specifications set forth in the preliminary plat for the subdivision of land to be known as Yorktowne Meadows, Section 1 with said drains consisting of the following: Out Lot 1 and the detention pond located thereon and approximately 390 feet of 24-inch sewer tile extending from the pond south to the new reconstruction Fimple 182 including a beehive inlet located south of Fernwood Way. Dated this 9<sup>th</sup> day of August, 1993. Signed by Mr. Bonham, Mr. Parsons, and Walters.”

Mr. Stikeleather stated that for the Board’s information pages 9 and 10 are an old historical map of Fimple 182 that was in the files at the County Surveyor’s Office, but they are still a problem, however. Let me get into that problem. If you will please go to page 11 now that we know that the Delaware County Drainage Board has jurisdiction over this detention pond and the out lot, I want to make sure that we have one legal detail as you will. This property is still on the tax roll records of the County Treasurer, and there was a disconnect apparently that could have happened in 1993 between the Drainage Board’s acceptance and the County Auditor’s removal of the out lot from the real estate tax roll. You will see the numbers there and the summary of the tax side I.D. I have another handout for you (a man from the audience assists Mr. Stikeleather). Mr. Stikeleather stated this handout he just received this afternoon from the Delaware County Treasurer’s Office. (Mr. Henry asked the men to give a copy to Angie from the Engineer’s Office and thanked him). Mr. Stikeleather stated that it has been suggested, “Why don’t we just not pay the taxes on the property.” He stated that has its own set of problems and I investigated that matter in that the statute does go into an idea of a tax certificate. Furthermore, Mr. Stikeleather stated if it does not go to tax sale, or if it does go to tax sale and it does not sell, a tax certificate is issued, and then the county can try to sell that tax certificate, or the county can hold on to it, and after a one year redemption period, try to get a deed. The statute, if you read it, does not go the step further and say,

“It shall go get a deed”, but there is another issue. If you’ll look on this page right here, it was not sold at the October 15<sup>th</sup>, 2014 Tax Sale, PAM, Ltd has not paid taxes indicated on the second page of that since 12 pay 13, so it was not sold in the October 15, 2014 Tax Sale and it was removed from the October 2015 Tax Sale to offer it to an adjacent property owner. The legal question is can the Delaware County Treasurer convey and sell land that is under the jurisdiction of the Delaware County Drainage Board. Mr. Stikeleather stated he thought of an idea that might clear this up. I respectfully request, and Mr. Murphy will have to weigh in on this, the request should authorize Mr. Murphy to prepare a Quit Claim Deed and the authority sign necessary documents so that PAM, Ltd can convey it to Delaware County Drainage Board, and then that way the County Auditor and Treasurer would have a document to take it off the tax roll. Of course, Mr. Murphy then could take these minutes and record those in the miscellaneous record of the Delaware County Recorder and cross-reference the two documents. That way there will be no questions at all. They could go to the minutes, which are duly signed and in the files of Delaware County Drainage Board and in the Surveyor’s Office that in 1993 it was turned over to Delaware County and adopted into Delaware County regulated drainage system. Therefore, I respectfully request that some type of action be taken and that Mr. Murphy advise on this matter. I apologize for having to take your time to come to this. He stated the whole question was to take over the thing, when in fact you have already taken it over, now 21-years, 11-months, and it would be 22-years next month. Therefore, I wanted to make you aware of this legal issue, because frankly I just want to clean it up. I told Mr. Taylor and Mr. Murphy when I met with them, that I was always trained as a kid that if you borrowed something or use something you always turned it back in at a condition better, at least as good or better than what you got it. I do not want to walk away. I want to clean it all up and make sure everything is buttoned down tight and that way then everybody walks away with no problems. Thank you for your time and I will be happy to answer your questions.

**Mr. Henry** asked Marta Moody if she had something to add.

**Marta Moody, Director of Delaware County Plan Commission**, approached and stated she wanted to clarify something, and stated in 1993 when the Yorktowne Meadows plat was finalized, those minutes of the Drainage Board reflect that the Drainage Board accepted the facilities, the pond and the outlet pipe into the regulated drain system, but it did not transfer title to the property. Ms. Moody stated it was the action of the Drainage Board agreeing that they would be responsible for maintenance of the pond and outlet pipe, but it did not transfer title. Furthermore, she stated it was just an easement that was granted by virtue of the plat and the description of the outlet pipe that was taken into the regulated drainage system, but it did not transfer ownership. Mr. Stikeleather stated more than reason to come back and clean all of it up.

**Mr. Hensley** asked if there were any other questions. Mr. Henry asked Angie Moyer if she had any thoughts on this matter.

**Angie Moyer** approached and stated that she and Marta Moody discussed this matter earlier today. Ms. Moyer stated that Marta Moody did point out to her that the Drainage Board does not

own land in their name and she asked if that was correct. Mr. Henry stated that is correct. Ms. Moyer stated that Mr. Stikeleather wanted to bring this matter to the Board of Commissioners and present it to them, but she stated, "I don't know if we need to go to that detail or not during a meeting." Ms. Moyer stated if they consider accepting the land and putting it in Delaware County's name, maybe some type of special assessment could be started to maintain this detention pond, similar to the way the Farmington subdivision is being handled. Furthermore, she stated that she did not know if you need a year or two of maintenance fees to take the land over so it would be able to maintain itself until the county could receive future assessments to maintain the pond. Ms. Moyer stated she was uncertain as to how it was being maintained at this point, and wondered if it was paid through its own line item. Mr. Taylor asked the Drainage Board Secretary, Cindy Harty's opinion on the matter. Ms. Harty stated she was not taught or aware of that information, so she is uncertain if it is paid from collections on Fimple East or Fimple North. Furthermore, Ms. Harty stated she understood that the Surveyor's Office is handling the collections of monies for the neighborhood association for one pond, which the county mows, but is uncertain which one that is. Angie asked if that is the Farmington Pond. Ms. Harty stated that she thought Farmington Plat 17 was different. Ms. Moyer stated that she would hate to see the assessment monies coming in and then be combined with the entire watershed monies, because those funds would be to maintain that pond only without a neighborhood association. Mr. Stikeleather agreed there is no neighborhood association. Furthermore, he stated that he would point out that he did share the following information with Mr. Murphy and Mr. Taylor, which is Indiana Code 36-9-27-75. Mr. Stikeleather stated it is for the purpose of paying costs of constructing or maintaining a drain under this chapter, and it does define gifts in the statute. He stated in effect for all intents and purposes giving a gift (inaudible).

**Ms. Moyer** informed the Board that she would recommend that they not accept the pond unless it was in good shape today. Mr. Stikeleather stated it is in great working order. Ms. Moyer stated that it probably is, but just to project your interest.

**Mr. Stikeleather** stated that he had met with Mr. Taylor, Mr. Murphy, and all the Board members, on June 30<sup>th</sup>, and showed them pictures of the pond. Mr. Stikeleather stated it is in great shape, very neat, in proper working order, and it has performed admirably for 22-years, particularly after the 2005 reconstruction. He stated that he used to live in that area and it was developed as Yorktowne Meadows. Mr. Stikeleather stated it has seen the pre-drain flooding that took place, and then the Fimple 182, the 1991 reconstruction and also the 2005 reconstruction, which did a magnificent job of improving it. Ms. Moyer stated that she believed him whole-heartedly, but recommended to the Board just to protect their interest, that they might want someone to take a look at it if they are considering accepting it into the county's system. Furthermore, Ms. Moyer stated that she did not know how the special assessments worked and asked if Mr. Murphy could guide them, and how quickly that could begin. She stated she assumed this would be accepted by the Board of Commissioners because they can own land and the Drainage Board cannot.

**Mr. Hensley** asked if there was any other discussion.

**Mr. Stikeleather** stated he would point out that he is 61-years-old, that his children obviously have no interest in it, and his wife is the one in the partnership that owns this. Mr. Stikeleather stated if his wife passed away, he did not want to leave the Board in a legal limbo about who owns it, or for it to go to a tax sale with all of its issues, and stated that is why he is proposing this situation to the Drainage Board so they can get the matter cleaned up. He stated it is the idea of leaving it in a much better condition and to get rid of all the legal gray areas that was given to Mr. Murphy last Friday.

**Mr. Henry** asked Mr. Stikeleather if he would be willing to enter into a contract with the county to maintain the pond for approximately two years. Mr. Stikeleather stated he would have to think about that, and stated he knows it has worked great for the past 22-years. Ms. Moyer asked Mr. Henry if they are requesting a surety bond or maintenance bond. Mr. Henry stated yes, some type of maintenance agreement just for a couple of years until the assessments could catch up. Mr. Stikeleather stated that they could discuss that if they could furnish him with the details, he would be happy to look at it. Furthermore, Mr. Stikeleather stated it would not be the first time he had been in a bond for a land development, but he would prefer to keep that at a minimal time because it is 22-years-old, and the county is already maintaining it. Mr. Stikeleather stated that it does look great, but he does not want to get something and a month from now we start having major issues with it. Mr. Henry asked if he understood what he was saying. Mr. Stikeleather stated he does understand and that he does not live here so he does not monitor it every day, but it has done an admirable job and it looks great. Mr. Hensley asked if there was any other discussion.

**Mr. Hensley** entertains a motion. Mr. Henry questioned if they could get some type of agreement drawn up. Mr. Murphy stated that he needs some input from the members of the Board as to what they are looking for.

**Mr. Henry** stated that if Mr. Stikeleather would agree to pay for half of any work if we should have a catastrophic failure of the pond, excluding mowing, and he would be willing to pay for half of that just for two years, is that something you would agree to. Mr. Stikeleather stated he believes he could entertain that because the probability of that happening is very, very low. Mr. Henry stated he thinks so too, but again, I want to protect the county's interest. Mr. Stikeleather stated that he would prefer a year opposed to two. Mr. Henry asked Mr. Taylor if he had any concerns. Mr. Taylor stated that he felt this was a good idea and we could all live with this. Mr. Henry asked Ms. Moyer what viewpoint she had from Engineering. Ms. Moyer stated she felt it was a good idea and understood Mr. Stikeleather is getting older, his children do not want to maintain it, and she stated that she worries about the neighborhood, and this would help them. Mr. Stikeleather stated that if you look at the whole structure of the watershed, that pond is a key component for both drainage east of Benton Road, and flood control west of Benton Road, in the whole Fimple #182 watershed that is a key piece of it. Ms. Moyer stated that she understood how tight the Drainage Board's funds are, but if we could set up the special assessment to maintain it. Mr. Henry asked Marta Moody if she could help with the special assessment. Ms. Moody answered yes. Mr. Henry stated that if Mr. Stikeleather would be willing to enter into an agreement for two years to pay for half of anything that would potentially happen to that holding

pond, he would make a motion that we recommend the Board of Commissioners to accept this lot. Mr. Whitehair seconded the motion. **Motion passes 4-0**

## **NEW BUSINESS:**

### **GIS DATA LAYERS**

**Marta Moody** approached the Board and stated that she has spoken with Angie, Shannon and Phil concerning the above matter. Ms. Moody stated she does not know how many of them use the county's Beacon website, which has the aerial photography and the GIS data layers that show parcel information, and all other types of information. Ms. Moody stated they digitized the open waterways and can see them on the aerial photography, and in 2008 we got this plan-a-metric data with the waterway information, digitized the ponds, but what would be wonderful if we could go a step further and create a regulated drain layer so that we could show the buried tiles. She stated they have all talked about it and she feels everyone agreed it would be a good idea if the county could have GIS data layer with buried tiles located on it. Ms. Moody stated it would be the most work, but we could label them and you could attach any kind of information to it that you would want to, such as attaching drainage board minutes, which you could pull up when you clicked on the particular drain. Furthermore, Ms. Moody stated that being able to utilize the GIS system is a wonderful tool to keep track of things such as drainage easements, it could also reflect the width of an easement, the standard width being 75-foot on either side of the bank of the open waterway, but for urban drains, it could be less. Ms. Moody stated if they feel that it is a good idea, they could work toward trying to find a way to get it completed. She stated that they had some success using Ball State graduate assistants or graduate students, to help them digitize different pieces of information, and we could work it a Township at a time, or we could even do it a watershed at a time. She stated that she felt it to be a great piece of information and a great tool to have when you are dealing with things. Mr. Hensley agreed.

Mr. Taylor stated that it is an excellent idea. Mr. Taylor stated that Cindy, Stan and he have talked about that, and it would help the Surveyor's Office tremendously knowing where that tile is located, instead of guessing. He stated if we have a problem, then we have to jet rod to figure out where the tile is located, the depth, and the length. Mr. Taylor stated it would be excellent if we could come up with the money to complete that. Ms. Moody stated like Phil and I talked about, when Phil does have to send somebody out to jet rod an underground tile, we could have somebody following along with GPS technology so we could get the information and input that into the data layer. Mr. Henry and Mr. Taylor agreed it would be great. Mr. Taylor stated that would bring us into the 21<sup>st</sup> century. Mr. Henry stated that it would help the ladies in your office tremendously too when someone called or came in, they could go right to GIS and pull it up. Ms. Moody stated they would see how we could get that done.

**Mr. Stikeleather** asked if he could say something else. He stated if they would look at page 1 that is why part of it is blue, and the other part of the tile is black. He stated it was not in her layers, but I lived out there, so I knew where it was located, and that is why I could draw it in black. Mr. Stikeleather stated he thought it would be great and helpful.

### MORNINGSIDE ADDITION

**Roger Overbey, 2201 E. Dartmouth Avenue**, appeared and stated he was told to come to the Drainage Board and talk to the Surveyor and the Drainage Board. Mr. Overbey stated there are drainage problems out there (Morningside Addition). He stated a lot of people do pay a drainage assessment/ditch assessment. He stated one particular problem that was brought to his attention was 2106 E. Cornell, which is right by the park in Morningside Addition. He stated when they have a lot of rain like this weekend, that yard is flooded. Mr. Overbey stated that he drove by the park this morning and there is still a little water standing in the park, with four or five inches of water at 2106 E. Cornell, leaving them unable to mow. He stated that Harvey Wright and he went down to the park with some of the guys from the Sanitation Department and they thought possibly if they put a ditch or a tile from that property across the north end of the park to Muncie Creek, which is right beside that property on the west side of the park, that would allow that water to flow out of there. Furthermore, Mr. Overbey stated that particular area caught his attention because when you get a hard rain it just floods, and they cannot do anything with the property, it just floods out and stands under water for days. Mr. Hensley asked if that affected him only or other people. Mr. Overbey stated that does not affect him personally, he is several blocks away. Mr. Hensley informed Mr. Overbey that the people that it does affect, should come to the Surveyor's Office and ask for relief and let them handle it from that point on; there is an application process from that point on. Mr. Overbey stated again sir, I did not know the procedure, and I was just directed to talk to you folks and maybe the Surveyor. He stated he would tell them to go see the Surveyor and see if they can get help with that. Mr. Overbey stated that he has spoken with Phil several times about Morningside Addition. He addressed Mr. Taylor and stated that Mr. Taylor had come to some of the neighborhood association meetings a couple of times, and stated there is real drainage problems in the neighborhood, and he would appreciate if you folks would take a look at that and see if anything could be done.

**Mr. Taylor** stated that when you get this amount of rain, everyone has problems. He stated the average rain for July is 4 and half inches, and since the first of July, we have probably had 17-inches. Mr. Taylor stated so people who did not have problems with minimal rain, now have a problem with the amount of rain we have received. Mr. Taylor stated he even has drainage problems at his property at this time, and said he is not making excuses, but there has been a lot of rain. Furthermore, Mr. Taylor stated we have a long list of complaints, and when those complaints come in, we inspect them and do what we can to address those problems. He instructed Mr. Overbey to have those folks come in so they could inspect the problem. Mr. Taylor stated if the weather would cooperate for a couple of weeks, then we could get our contractors in to complete their work. Mr. Taylor told Mr. Overbey that they would take a look at that location and see what could be done. Mr. Overbey stated he appreciated it because even this Spring before all of the rain hit, they had problems at that particular location. He stated that he really did not know the whole procedure and that is why he asked several different people to look at it, give their thoughts on the standing water, and then he was directed here. Mr. Overbey stated that he realized this has been an ongoing problem for a long time, but when the creek is up, there is absolutely nothing you can do because that creek comes up over the banks. Mr. Overbey stated that he would direct those people to come see Mr. Taylor. Mr. Taylor stated that



they will fill out a complaint form with the parties' name, address, and telephone number and an inspection will be completed to see what they can do to fix the problem. Mr. Overbey stated he understood and thanked him. The Board Secretary stated, "Roger if it is easier for them, they can call, and not necessary for them to appear in person". Mr. Overbey stated that he thought it would be and he would direct them to do that. Mr. Overbey stated that if Phil got a chance to run out to the Park and to the first place east of the Park, he would be able to see the area is just under water. Mr. Taylor asked if the problems are just in their yard and not in their homes. Mr. Overbey stated that this particular property is a mobile home so it sets up a little higher, but they have had to put in a handicap accessible ramp, so when the flooding happened, obviously it was in the homes, and stated truthfully they might even be in a flood plain in that area, but if the creek floods, everyone gets flooded. Mr. Overbey stated they had talked to someone about the problems previously, but did not remember whom. Mr. Overbey informed the Board that the husband just passed away last month and they had asked him if they could put fill in their yard to run that water off, and were told they could not because it would flood the Park more. He stated it does not give them much option unless there is a tile running through there to drain that property, and stated he is not an expert at that because he has built roads all of his life so he does not know much about draining properties. Mr. Taylor informed him they would take a look at the problems out there, but just have the party's contact his office and he would get them on the list. Mr. Overbey stated he would get his number after the meeting.

**MAINTENANCE CLAIMS:**

**Mr. Hensley** entertains a motion to approve the maintenance claims as submitted. Mr. Henry so moved. Mr. Whitehair seconded the motion. **Motion passed 4-0.**

**ADJOURNMENT:**

The meeting adjourned at 3:11 p.m.

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Clarence Hensley, President

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John Landers, Vice President

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Shannon Henry, Member

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Cindy Harty, Secretary

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Charles Whitehair, Member