

REGULAR DRAINAGE BOARD MEETING:

May 20, 2019

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

William Whitehead, President
Clarence Hensley, Vice President
Shannon Henry, Member
Dick McIntire, Member
Tom Borchers, Surveyor
Stan Willis, Inspector/Chief Deputy
Brandon Murphy, Board Attorney
Cindy Harty, 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 April 15, 2019 Drainage Board Minutes.

Mr. Henry moved for approval. Motion seconded by Mr. McIntire. **Motion passed 4-0.**

OLD BUSINESS:

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

Mr. Borchers stated there is no old business to discuss this date.

NEW BUSINESS:

Mr. Whitehead asked if anyone in the audience had business to present to the Board this date,

and if so, instructed them to approach and state their name, address, and concern.

Mr. Borchers stated first on the Agenda is Mr. Mike Anderson who wants to build a new pole barn on his property off Highway 35 South. He stated the new pole barn that Mr. Anderson wants to build is going to be on the county's 75-foot right-of-way. Mr. Borchers stated that from the best he could tell without digging and finding exactly where the pipe is, Mr. Anderson's building is going to be within twenty (20) feet of the center of the county's tile. Mr. Borchers informed the Board that they probed it and that is what they found.

President William Whitehead excused himself from making any decisions on this matter. Attorney Murphy advised the Board that the Vice President would have to take over briefly.

Mr. Borchers stated there is an old clay tile at that location that he assumed would have been an older county tile at one time, which actually runs underneath where Mr. Anderson is. He stated, "I do not know what that is, but it is an abandoned tile or possibly a broken tile, but not real certain what it is." Mr. Borchers stated that Mr. Anderson is requesting the Board's approval for encroachment on the right-of-way, which would knock the 75-foot easement down to approximately 20-foot at the end. Mr. Borchers stated that he does not believe, that Mr. Anderson has completed his drainage plan or had it approved yet with the engineer's office. Mr. Borchers further stated, "I don't know if that will make a difference as far as the Board's approval of the reduction of right-of-way."

Vice President Hensley entertained a motion to either deny or approve this request.

Mr. Henry stated that he is not in favor of the barn going that close, but would rather have the county's engineer look at the drainage plan first, and then come back and revisit this issue.

Mr. Murphy asked if Mr. Anderson is present so that he might have an opportunity to speak.

Michael Anderson approached and stated that he lives at 11801 N. Black Cemetery Road, Albany, Indiana.

Mr. Borchers stated, "Mr. Anderson, you know that tall riser south of your fence, there is a county tile located there, and it goes on to the west, almost straight back and curves. Mr. Borchers stated this is where your building will angle and the tile angles, so it almost cuts a corner of your fence, which would be approximately 20-feet from the county's tile, at the back of your building where that tile runs."

Mr. Anderson asked when they were out there if they noticed that it had been filled in around the black riser. Mr. Borchers stated, "Yes." Mr. Anderson stated that it is sinking again. Mr. Borchers stated that they would have to get more gravel out there, since it was last year that it opened up quite a bit. Mr. Anderson stated that he did not know where that tile was located, and just learned the location today. Mr. Borchers stated, "Neither did we until we got it probed today. I tried to get a person out there on Friday and he was not able to make it out, and was only able to make it this morning."

Mr. Anderson stated that he has some pictures with him today that shows when it was flooded out there last month. Mr. Anderson stated he wanted to tell them what some of the problems are out there with the water. Mr. Borchers stated that he could if he wanted, but that is a different issue than what they are discussing right now. Mr. Anderson stated that he knew that, but there is another issue with the water out there. Mr. Anderson passed out pictures to the Board and stated that the first two or three pages are the water itself. He stated one of the pictures would show a big metal pipe, which is a 4-foot corrugated pipe going under the highway. Mr. Anderson stated when the water was standing, the pipe was two-thirds full, but the water was not running on the other side of the highway. He stated that he believes the dirt is built-up on the east side of the highway and holds that water back. Furthermore, he stated that if that were not that high, that water would not be standing there. I do not know who has filled it in, but it has been filled in for quite some time. Mr. Anderson stated when the water finally went down, he thought the drain was plugged, and he could see the whole pipe, and there was nothing in it but a few big rocks.

Mr. Borchers stated he did not know if the culvert under the road would fall under the state or the county, but the county's actual tile is to the north from there approximately a couple hundred feet. Mr. Anderson stated the distance from the culvert pipe is probably only 50-feet. Mr. Borchers stated so the culvert that he is talking about, just so the Board knows, would not fall under our jurisdiction because he assumed it would be the state's or maybe even the county's jurisdiction, but not sure since it's under the state highway.

Mr. Henry stated that if it runs under a state highway, it should be state jurisdiction. Mr. Borchers agreed.

Mr. Anderson stated, "When he called the state because the black pipe had a sink hole, the state said they did not own either one of them, and they called the county to get the one straightened out. He stated they said they did not own any of the pipes under the roads, so I am just trying to explain what I have tried to do for a year." Mr. Anderson informed the Board that what he was trying to say is that with the dirt being over there, it is holding the water back in the fields a foot or foot and a half deep through that field because it has no way to drain. He stated, "I guess there is a possibility I could shorten the building up or something."

Mr. Borchers stated that he apologizes to Mr. Anderson for not getting back with him, but they just got this information on the way to the drainage board meeting.

Mr. Anderson stated that he had no idea, there is suppose to be a setback or what is to be a setback, I just went with the other office and they told me to do it and file a variance on it being off the corner of the fence. He stated that the building is not completely back there because it is on an angle.

Mr. Borchers stated that he had the plans, and he made copies for the Board from the copies that Mr. Anderson gave to him.

Mr. Anderson stated he would do whatever he has to do to resolve this. Mr. Anderson stated, "I have a business out there where I store pontoons and have bunches of people wanting me to store pontoons for them. It is a great location since it is about 10 minutes from the reservoir. I currently store approximately 20 pontoons now with the building I have, but I just want to increase that, and the board wanted me to get a drainage permit before I come back on the 30th of this month to try to get the building permit."

Mr. Henry asked Mr. Anderson if he had spoken to the engineering department about getting a drainage plan put together.

Mr. Anderson stated that he went up to their drainage people and they told me to come up and see the Surveyor, and that is all he had done. Mr. Anderson stated, "I did call an architect drainage person and they told me it would be somewhere between two and ten thousand dollars, but they could not do it prior to these meetings."

Mr. Borchers stated that he thinks that is where the misunderstanding is coming from, is with the Drainage Board and then putting a drainage plan together. He stated, "I think what Mr. Anderson needs to do is talk with Angie at the Engineer's Office concerning a drainage plan, and then once that is approved with all his specs then maybe he can come back to get that variance shortened, and that is what I would suggest." Mr. Henry stated that is what he would like to see. Mr. Henry stated that Mr. Anderson needed to talk with the county's building commissioner before the building commissioner will issue Mr. Anderson a building permit, but he would like to see a drainage plan.

Mr. Anderson stated that they wanted to see a drainage plan approval before they approved the building permit.

Mr. Henry informed Mr. Anderson that this is different to a drainage plan, this does not have anything to do with his drainage plan, and stated again, "You need a drainage plan for this project."

Mr. Anderson stated that he made a drawing for them.

Mr. Henry stated that this is not a drainage plan, and he would have to go down and speak with the building commissioner about the drainage plan. Mr. Henry stated again that he would like to see a drainage plan first, especially since Mr. Anderson is having all of those water issues at that location.

Mr. Anderson stated that they are having some water issues, but thinks most of them could be repaired if someone would just spend some time out there, but he cannot get anyone to say it is theirs.

Mr. Murphy stated that there are a couple of options. One would be to table it until the next meeting to wait for a drainage plan.

Mr. Henry moved to table this matter. Mr. McIntire seconded this motion. **Motion passed 3-0.**

Mr. Whitehead resumes his position with the Board.

Mr. Borchers stated the next item on the Agenda is Mr. Ballard who farms some ground south of County Road 400 South and 700 West. Mr. Borchers informed the Board that what happened is the farmer or landowner just south of him systematically tiled that. He stated that it would be somewhere between sixty or eighty acres, and hooked into our county tile without permission. Mr. Borchers stated the county tile is only 10-inches, and with all that water going in there, it has overloaded the system. He stated, "Thus everyone from Mr. Ballard to the open ditches, their fields are not draining like they should." Mr. Borchers informed the Board that he had spoken with Mr. Murphy about this issue.

Mr. Henry asked, "So they have somebody that has tied into one of our ditches without permission, correct?" Mr. Borchers stated, "Yes to an existing county tile."

Mr. Murphy stated that present today is Ms. Farthing, Attorney, and Mr. Ballard, and asked that they would come forward to a microphone, and state some of their concerns.

Ms. Deann Farthing, Attorney at Law, approached and introduced Rudy Ballard, whose address is 7050 South County Road 700 West, in Daleville. Ms. Farthing stated, "That in March the property's owner had put in a drainage system and tapped in to the county's tile. We think there were about 60 to 65 acres flowing through to that tile ditch prior, and now you have more than doubled that. We think that they have added an additional 70-acres, which is causing both Mr. Ballard's land and then all of the neighbors to that open ditch, not being able to shed the water off as they used to, so it is causing some significant issues for them." Ms. Farthing stated, "If it is not resolved, it is only going to continue to lower the value of all of their properties and it is only going to get worse. Therefore, their concerns are since there was no permission to tap into this by the Board, at least not where they could find, figuring out how the Board can help to resolve this and what would the time frame look like to get it done."

Mr. Murphy asked if she recalled when this system was installed, and stated he believed it was earlier this year.

Ms. Farthing stated, "March." Ms. Farthing stated that she believed she went back, and looked through the minutes through last January, and did not see anything about permission for this ditch.

Mr. Murphy stated, "So a few alternatives are available to the Board when there is not permission granted. One would be to send a certified letter to the property owner who had the work done, advising them to disconnect within a certain amount of time, and if they fail to do so, that the Surveyor will proceed to disconnect. The Board would have to determine what remedy to seek whether it be an assessment against the individual owner, a suit, or take it out of the

general drainage fund if those are available if you proceed in that direction. Mr. Murphy stated that it is up to the Board what to do about this. We reviewed the records and do not find that permission was granted for this hook-in.”

Ms. Farthing stated that she has one additional question in regards to those remedies, and stated that she knows that the fund is available, but she does not know how that fund impacts property owners in regards to taxes or how that fund is funded, and so because we have a direct correlation to the cause of this, the remedy that we would propose would be having that property owner rectify this situation versus using that fund to rectify the situation and deplete that potentially when it could be used for other things.

Mr. Murphy stated he thought the fund that would be affected would be the General Drainage Fund for the whole county, as opposed to the individual ditch, but also thought that should be a decision for the Board to make at a later time once it is determined how the property owner is going to act and what the cost is, which we do not know at this point.

Mr. Henry moved for Mr. Murphy to send the property owners a letter, and asked if ten (10) days is sufficient. Mr. Murphy stated that it is ten (10) days after receipt of the letter and we will send it certified mail so we will know when that is, and if nothing is done, then Mr. Borchers would proceed to take action. Mr. Henry stated that he would put ten (10) days in his motion, and asked after those ten (10) days, could we fine them per day? Mr. Henry stated he thinks just going out on the property removing their tile could be more problematic and he would rather just fine them. Mr. Murphy stated that he did not feel they could do that until the next meeting. Mr. Henry stated that what he is saying, if they do not have that out within ten (10) days, then could they be fined on the eleventh day. Mr. Henry asked, “Is there any way to do that?” Mr. Murphy stated that they could not do that specifically, instead they could authorize the Surveyor to disconnect it.

Mr. Henry stated that he would make that part of his motion.

Ms. Farthing stated, “Pursuant to the statute, could they add a per diem cost in after the fact even though you cannot put in the certified letter now. I believe a couple of statutes do reference the Board taking this action and does allow for it if the Board proceeds to litigation for costs, attorney fees, and everything to be paid by the property owner.”

Mr. Murphy stated that is correct, but feels that it really depends on what the Board wants to do as the next step. Mr. Murphy stated that he thinks if the Surveyor has to take the action to disconnect, then whatever the cost of that is, would be the initial amount they would be talking about, and is not sure a per diem amount is proper in that circumstance. Mr. Murphy stated, “If we choose to file suit concerning this issue, we might be able to get some additional remedies.”

Mr. Ballard stated that he would like to make a comment. He stated that he cannot understand why his neighbors and farming neighbors would not talk to him about this, since he is an adjacent landowner and inform him they are going to do some ditching. Mr. Ballard stated that no comments were made concerning this, and that he owned the property for twenty-five years.

Mr. Henry stated that it is sad, but that is the way things are done these days.

Mr. Ballard stated, “This tile actually goes over on the landowner and he has that right to hook up to that, it just shouldn’t create problems for others from that. In my opinion, the man can do all the ditching he wants to do, but you have to have the proper tile to get into that outlet.”

Mr. Henry stated that he agreed.

Mr. Ballard stated (inaudible) put in roughly about 1883, and I cannot tell you how many 4-inch tiles that go into that, but there are several. He stated that they recently found one on Thursday, which was a 4-inch going into it, along with a broken tile and sinkholes.

Ms. Farthing stated that her only follow-up question would be, “If you are going to send that letter, when would you anticipate that letter going out?” Mr. Murphy stated, “Probably tomorrow.” Ms. Farthing asked when is the follow up meeting. Mr. Murphy asked the Board Secretary when that meeting would be and she stated that she did not have her calendar with her, but stated it would be the 3rd Monday of June. Mr. Murphy stated it would be June 17.

Mr. Borchers addressed Mr. Ballard and stated that the ideal situation would be to file for a reconstruction on that ditch, which would be approximately 3,000 or 3,500-feet. Mr. Borchers stated that it is not a long stretch comparative to other areas.

Mr. Ballard stated, “That the only issue is that he does not have a lot of land, which everybody knows. He has seen a lot of rain in the past, but what he noticed that once this was hooked up, there was water like he had never seen before on his farm, north of him, and across 400 South.” Mr. Ballard stated that he had pictures, which show water this deep (expresses showing height of water), ponds out there, and we only had 3.8-inches of rain where he lives because he keeps track of all the rain. He stated that he has seen rain 6-inches in the past, and it is nothing like he has witnessed. They can say, “Well this happens all the time,” and I have owned the property 25-years, I have never seen anything like this.

Ms. Farthing asked if it would be appropriate, since they had Clark Farm Drainage do the ditching, would it be appropriate to send a certified letter to them as well. Mr. Murphy stated that he thinks that would be fine if the Board wants to do that. Mr. Henry stated that he is okay with that.

Mr. Ballard stated that we all know that this land is valuable, and we all know (inaudible), and stated, “I didn’t have a problem, but apparently they did, because they spent thousands of dollars to do this.” Ms. Farthing thanked the Board.

Mr. Whitehead stated that for clarification if they do have to unhook what they have hooked up,

it is just the new tile. Mr. Borchers stated, "Correct."

Mr. Ballard stated that tile probably only goes into their field (inaudible). Mr. Ballard stated that it appears to be about 200-feet, maybe a little further, it could be a little less.

Mr. Whitehead stated that we have a motion on the table, and does anyone have a second. Mr. McIntire seconded the motion. Mr. Murphy asked if he could restate his understanding of the motion just to make it clear. Mr. Whitehead stated, "Please." Mr. Murphy stated that he is to send a letter to the property owner and to the Clark Farm Drainage giving them ten (10) days after receipt of the letter to disconnect and if they fail to do so, that Mr. Borchers is authorized to disconnect their tile. Mr. Henry stated, "Correct."

Ms. Farthing stated that there are two (2) property owners. Mr. Murphy stated, "Bronnenberg," and he asked what the other name was. Ms. Farthing stated, "Jackson."

Mr. Whitehead stated there is a motion before us and properly seconded, roll call please.
Motion passed 4-0.

Mr. Whitehead called on Mr. Borchers.

Hiatt Ditch

Mr. Borchers stated the last item that he had to discuss under new business is out by the Player's Club concerning a private drive, which runs across the Hiatt Ditch. Mr. Borchers stated that they currently have a span bridge there, but it is in need of repair and the fire trucks, ambulances and emergency vehicles will not cross it. He stated that Mr. Schneider of Schneider General Contractors has been contacted to put in two (2) 8-foot steel culverts in place of that bridge. Mr. Borchers stated that he feels like two (2) 8-footers will be plenty to push that water through there and there will not be any hindrance, plus it will be a safer bridge for the E.M.T's and rescue to cross.

Mr. Henry moved to approve the bridge replacement. Mr. McIntire seconded. **Motion passed 4-0.**

MAINTENANCE CLAIMS:

Mr. Whitehead entertained a motion for the approval of the maintenance claims.

Mr. Henry moved to approve the claims as submitted. Mr. Hensley seconded. **Motion passed 4-0.**

HONORING MR. HENSLEY

Mr. Whitehead stated that Mr. Hensley is going to step down as Vice President of the Board, and would like to thank him for his commitment and years of service to Delaware County, and stated that they sure appreciated everything that he has done.

Mr. Henry asked Mr. Borchers to approach, and stated, “On behalf of the Commissioners, the Surveyor, and the Drainage Board, they would like to present Mr. Hensley with this plaque.” Mr. Henry reads the plaque which states: “Presented to Clarence (Dink) Hensley; Thank you for your many years of dedicated service to Delaware County.”

Mr. Hensley stated that he already gave a speech downstairs, but will do it again. Mr. Hensley stated that he really appreciated this job and stated the Board had done a good job, he has been treated well, and that Tom is doing a good job. Mr. Hensley stated that he appreciated everyone and thanked everyone.

ADJOURNMENT:

The meeting adjourned at 3:02 p.m.

William Whitehead, President

Clarence Hensley, Vice President

Shannon Henry, Member

Dick McIntire, Member

Cindy Harty, Recording Secretary