

**MORGAN COUNTY DRAINAGE BOARD**

January 4, 2015, 2016 TB

8:30 A.M.

Drainage Board members present were: Norman Voyles, Brian Goss, and Don Adams. Also present were Terry Brock (Surveyor), Bill Dials (Stormwater Coordinator), Rod Bray (Attorney), and Deb Verley (Administrative Assistant).

**Reorganization**

Don Adams made a motion to appoint Norman Voyles as Chairman. Motion seconded by Brian Goss. Motion carried 2-0-1. Norman Voyles abstained.

Don Adams made a motion to appoint Brian Goss as Vice Chairman. Motion seconded by Norman Voyles. Motion carried 2-0-1. Brian Goss abstained.

**Public Hearing - Obstruction of a Natural Surface Watercourse**

Terry Brock stated that a petition was filed by Mr. and Mrs. Mayhew on October 25, 2015. A hearing was scheduled for December but the respondent requested more time to gather information so the hearing was continued until today.

Per Indiana Code, speakers are heard in the following order: petitioner, respondent, County Surveyor, rebuttals, Board discussion, findings. There are four findings: 1.) Is it a natural surface watercourse, 2.) Is it obstructed as per the petition, 3.) Was it intentionally obstructed, 4.) Is it impeding the flow.

Bill Dials stated that Mrs. Hawkins installed a 6" pipe in a natural swale in the backyard. There is a 36" diameter culvert under State Road 42 (this replaces an 18" culvert that was replaced during a resurfacing project by the state). Lambert Court, which also drains into this, has an 18" culvert, and a driveway to the east has a 15" culvert. The 15", 18", and 36" culverts all merge into this watercourse.

Norman Voyles opened the public hearing. Shirley Mayhew, a resident on Lambert Court, stated that water is backing up into her yard and septic system. Ms. Mayhew stated that there has been a pit in her yard to hold back water three times and it has been removed. A grader removed an incline from the field behind the house so it would be easier to mow. A friend staying with Mrs. Hawkins, the neighbor and respondent, cleaned out the ditch and the water flowed nicely. With the culvert installation, the water doesn't flow and the culvert gets stopped up with leaves, this causes a backup onto her property and Mrs. Mayhew handed out photos showing the backup. Ms. Mayhew stated that the photos show that three feet of the trench is on her property. The addition is between two hills and water funnels to the area. The state installing a larger culvert made it worse for the whole neighborhood. Ms. Mayhew stated that she enjoyed Mrs. Hawkins' friendship, but when she acquired a gentleman friend, he told her he was "going to dam you up" and they have not been able to communicate and work things out. Ms. Mayhew stated that her backyard is sinking.

Edith Hawkins, the respondent, stated that she had an advocate present (Paul Walker) to speak for her and they have always had water problems in the area. She had an open ditch on the property and the water has always backed up. Paul Walker asked if the pictures were dated. Brian Goss stated that some were dated spring of 2015, October 2015, and December of 2015. Mr. Walker stated that the subdivision was built in 1965 off of State Road 42 and there wasn't a swale across the septic field. Mr. Walker stated that 30 triaxles of dirt were placed between lots 4 and 5. The state installed a larger pipe under State Road 42 and 4,000 to 5,000 acres of water flows through the pipe. Mr. Walker stated that they have done nothing but improve the flow and Ruth Ann White would be happy to give testimony that the last few months is the first time she has been able to mow her yard in the last five years (Ms. White was not present). Mr. Walker stated that he installed the 6" pipe 3' deep and drained the septic field; the water is running without a problem. The Mayhews have Lot 3 and Mrs. Hawkins has Lots 4 and 5. Mr. Walker stated that he did install part of the apron on the Mayhew property. The grade from lot 3 to lot 4 is 5 degrees. The ditch in the back was 10 feet deep and 2 to 10 feet across before installing the pipe. Mr. Walker stated that he eliminated all the mosquitos and e coli and did not obstruct anything.

Terry Brock stated that under Indiana Code 36-9-27.4-3 a natural surface watercourse is an area of ground over which water from falling rain and melting snow occasionally and temporarily flow in a definable direction and channel. Mr. Brock showed aerial photos from 2005 showing the ditch in the backyard along with bridges over the ditch. Mr. Brock also showed aerial photos from 2007 and 2011 that showed the ditch. Mr. Brock showed the location of the 15", 18", and 36" pipes and the flow of the water. It is anywhere from 15 to 20 feet wide from top of bank to top of bank until reaching the Hawkins property, where it is funneled into the 6" pipe. Mr. Brock stated that it is his opinion that it is a natural surface watercourse. Mr. Brock also showed drainage plans for a veterinary clinic and stated that they are retaining water on the property with a retention pond; the water then flows east, downhill to a creek.

Mr. Walker stated that if the pipe is removed it will deteriorate the whole backyard and a watershed going over septic tanks should never have been approved.

Brian Goss stated that if the ditch was filled in with rip rap it would not deteriorate, but installing the 6" pipe is acting as a levee. Ms. Hawkins stated that there wasn't a ditch there until she dug it and in 2007 the back of property fell in.

Terry Brock stated that the deeper ditch was caused by erosion. The ditch is a natural surface watercourse and installing the pipe slowed down the water. The best solution would have been to put the swale back in the way it was and armor the entire length. It is the Surveyor's Office opinion that it has been obstructed.

Donald Mayhew stated that you can see from the pictures that the water is backing up; it is backing up over the septic system.

Ms. Hawkins stated that the water was backing up when the ditch was there. Mr. Walker stated that the old pictures weren't important; it's what happened last week, what was the rainfall.

Rod Bray stated that if the Board determines that there is an obstruction, they would need to decide whether or not it is intentional because that has a bearing on who pays for the solution. The party that caused the obstruction could fix it themselves or the county could fix it and make the responsible party pay for it. Mr. Brock stated that they could also pay for it out of the General Drain Fund and charge it back to whoever is responsible for it. Mr. Brock stated that his office would be happy to work with the property owner to resolve the issue. This option was also offered before the hearing, but the office was not contacted.

Norman Voyles stated that it appeared to him that it was a natural surface watercourse, it was obstructed, and it is impeding the flow. Brian Goss and Don Adams stated that they agreed. Mr. Voyles stated that he was unsure of the intent. Don Adams stated that the intent may have been to do good, but the result wasn't. Don Adams made a motion to find the following: 1.) It is a natural surface watercourse, 2.) It was obstructed, 3.) It was intentional, and 4.) It is impeding the flow of water. Motion seconded by Brian Goss. Motion carried 3-0.

Don Adams made a motion to remedy the situation through the County Surveyor and any costs incurred would be at the expense of the respondent. Motion seconded by Brian Goss. Motion carried 3-0. Norman Voyles asked that Mr. Walker contact the Surveyor's Office and work with them to get it resolved and closed the public hearing.

#### **Stormwater Coordinator Update**

Bill Dials, Stormwater Coordinator, stated that the annual report for the Stormwater Program must be submitted to IDEM by January 26<sup>th</sup>.

#### **Adjournment**

Don Adams made a motion to adjourn the meeting. Motion seconded by Brian Goss. Motion carried 3-0.

#### MORGAN COUNTY DRAINAGE BOARD

  
Norman Voyles, Commissioner

  
Brian Goss, Commissioner

  
Don Adams, Commissioner

ATTEST:

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Terry Brock, Morgan County Surveyor