

**MORGAN COUNTY DRAINAGE BOARD**

*November 6, 2006  
11:00 A.M.*

DRAINAGE BOARD MEMBERS PRESENT WERE: NORMAN VOYLES (Commissioner), JEFF QUYLE (Commissioner), BRIAN GOSS (Commissioner), TERRY BROCK (County Surveyor) and PETE FOLEY (County Attorney).

**FEE SCHEDULE ORDINANCE**

Norman Voyles stated that this ordinance is not yet ready for approval. Brian Goss made a motion to table the ordinance. Seconded by Jeff Quyle. Motion carried 3-0.

**MINERAL EXTRACTION ORDINANCE AMENDMENT**

Norman Voyles stated that this amendment is not yet ready. Jeff Quyle made a motion to table the ordinance amendment. Seconded by Brian Goss. Motion carried 3-0.

**PETITION FOR REMOVAL OF OBSTRUCTION**

Terry Brock stated that he has received a petition for a removal of obstruction from Leslie and David Skaggs. Pete Foley, Morgan County Attorney, stated that this item is a remand from a prior hearing that was held last year on the same issue. There was a challenge by the respondent, Mr. Etter, regarding the lawfulness of some of the procedures. There was an agreed entry entered into by the county, Drainage Board, and Mr. Etter to have the earlier petition essentially voided and dismissed. It could be re-heard if the petitioners brought a new petition, which they have done. Notice of the public hearing was sent to David and Leslie Skaggs and Gary and Janet Etter. Mr. Foley reviewed the procedure for the hearing and stated that the Board should base their decision on evidence presented today and not on any prior information. Mr. Foley stated that the Board should keep in mind whether or not it is a natural surface watercourse, whether or not it has been obstructed, and whether or not the obstruction was intentional.

David Skaggs stated that he owns the property at 2570 Laurelwood Drive. They have a problem with water backing up on the back of their property. Mr. Skaggs stated that the pipe in their yard cannot release the water that it accumulates that would normally drain to Mr. Etter's property. Mr. Skaggs stated that when he talked to neighbors to find out why the water wasn't draining, a neighbor told him that Mr. Etter filled in his drain with concrete and covered it over. Mr. Skaggs stated that the pond gets three feet deep and he feels that it is a safety issue, especially with small children in the area. Mr. Skaggs stated that it is also devaluing his property. Leslie Skaggs stated that this problem has been occurring for two years and she is concerned about mosquitoes and the water backing up into their septic system. Brian Goss asked if they had changed the watercourse since they purchased the property. Leslie Skaggs stated that they haven't changed anything and it was her understanding that the culvert under Hess Road had been there for 50 – 60 years. Mrs. Skaggs stated that one side of the culvert was open, but she did not know why or how the other side tied into Mr. Etter's drain tile. Mr. Skaggs stated that the water should drain under the road, through Mr. Etter's pasture, to SR 44 and to a state owned ditch.

Steve Oliver, representing Janet and Gary Etter, asked Mr. and Mrs. Skaggs when they purchased the property. Leslie Skaggs stated that they purchased the property in April 2001. Gary Etter stated that he purchased his property in 1982. Mr. Oliver and Mr. Etter gave a history and description of Mr. Etter's property and how it had changed since 1982. Mr. Oliver also showed 22 pictures and described them as follows:

1 through 4, the outlet of the drain as shown from the fence at Hess Trails looking north.  
5 through 8, the path of the drain – showing that there are no above ground obstructions.  
9, underground drain from standpipe in Skaggs' backyard.  
10 through 12, the culvert under Hess Lane, looking from the south to the north.  
The pictures listed above were taken November 4, 2006.  
The pictures listed below were taken October 17, 2006.  
13 through 16, the area in the pasture where the drain is buried.  
17 and 18, the drain from Laurelwood Road.  
19 through 22, the water ponding between Skaggs standpipe and the culvert on Hess Lane.

Mr. Etter also showed an aerial photograph (#23) and described the area before the subdivision was developed. Mr. Etter stated that there was no water in this area before the subdivision was developed. Terry Brock stated that the drainage plans for the subdivision were not reviewed by

the Drainage Board. Mr. Oliver stated that the subdivision is elevated 8 to 10 feet higher than the strip of ground owned by Larry Hess.

Mr. Etter stated that when his tractor broke a tie rod, he saw a 4-foot deep and 5 foot wide hole that the tractor was in. Mr. Etter stated that he then called in a contractor who dug the area out and put a few bags of sakcrete in the hole next to the pipe. Mr. Etter stated that this restricted the pipe that caused the erosive hole. Mr. Etter stated that he did not obstruct the surface of the ground.

Terry Brock asked Mr. Etter what caused the hole. Mr. Etter stated that there was such a volume of water coming through the pipe that the sleeve connector came apart. Mr. Brock asked if the culvert was the only place the water came from. Mr. Etter stated that it was. Mr. Brock asked if the concrete went into the pipe. Mr. Etter stated that he left it in the bags. A discussion followed regarding the pipe repair. Norman Voyles asked Mr. Oliver what he thought was causing the ponding. Mr. Oliver stated that the culvert under the road is blocked and when the retention area from the subdivision is full, it starts to backup into the Skaggs backyard.

Terry Brock showed aerial photographs from 1946 (#25) and 1967 (#26). Mr. Brock stated the road and culvert were there prior to 1946 and showed where the natural surface watercourse ran. Mr. Brock also showed a 1955 USGS topographic map (#27) of the area. Mr. Brock then submitted photographs that the Morgan County Stormwater Coordinator took on October 27, 2006 (#24). Mr. Brock stated that the purpose of the standpipe is to slow the water down, but if there is no outlet, the water will stand until it's absorbed. Mr. Brock stated that if the pipe Mr. Etter installed were functioning correctly then there would not be an obstruction. Jeff Quyle stated that while the culvert appears to be a problem, it is not preventing water from using the pipe.

Terry Brock stated that his findings were that this is a natural surface watercourse and that it has been obstructed. Mr. Brock showed an instruction sheet for a breather pipe (#28) from the Soil and Water Office.

Leslie Skaggs stated that water is still getting through and they had no problem until the pipe was plugged or blocked. Jeff Quyle asked if they were informed that their property bordered the detention area for the subdivision when they purchased the property. Mrs. Skaggs stated that they purchased the property from Mr. Etter's nephew and it was her understanding that he might have created the levee in the back and re-graded part of the front yard. Jeff Quyle asked how long her yard stays wet when the water backs up that far. Mrs. Skaggs stated that it varies depending on the season and how saturated the ground is. Mrs. Skaggs also showed a photo of ducks swimming in the ponding area (#29).

Mr. Etter stated that he did not alter the topography to the south of the chain link fence, including the Skaggs property. Mr. Oliver stated that he does not think that the Drainage Board has the jurisdiction to do what the petitioner is asking. Mr. Oliver stated that Mr. Etter altered the drain on property he owned. Mr. Oliver stated that a natural surface watercourse is defined in 27.4 of the Drainage Board statute and the Board has authority to take action if there is a mutual drain involved. Mr. Oliver stated that a natural surface watercourse is an area of the surface of the ground over which water from falling rain or melting snow occasionally and temporarily flows in a definable direction and channel. Mr. Oliver stated that Hess Lane itself is a watercourse obstruction and all Mr. Etter did was put in a drain to service his property. Mr. Oliver stated that there is nothing on the surface of Mr. Etter's property to obstruct the flow. Mr. Oliver stated that if there is a simple solution, the cost of it shouldn't be borne by Mr. Etter, the cost for it should be borne by the residents of the subdivision. Mr. Oliver stated that it is Mr. and Mrs. Etter's position that they had a legal right to do what they did because it is their own drain and is outside the Morgan County Drainage Board's jurisdiction. Mr. Oliver requested that the Board deny the petitioner's request.

Terry Brock stated that it is a natural surface watercourse and cannot be obstructed; the drainage tile was put in the natural surface watercourse and covered over. Mr. Oliver stated that surface water is a common enemy and according to Common Law any adjoining property owner can do what they want without recourse to anyone who has been damaged. The exception to this law is that they cannot collect and pool the water and then channel it on to someone else. Mr. Oliver stated that the elevated property to the south of Hess Lane increased the amount and velocity of the runoff and created pools. Mr. Oliver stated that Hess Lane itself became an obstruction. Mr. Oliver stated that if the concrete is removed from the drainpipe, essentially, all the people in the

subdivision would be guilty of pooling, collecting, and channeling surface water onto Mr. Etter's property.

Mr. Brock stated that the Common Enemy Law would be a civil matter. The Board has no jurisdiction over the water coming from the subdivision, but does have jurisdiction over the natural surface watercourse that has been altered.

Pete Foley stated that there are three steps the Board would need to take:

1. Make findings: determine whether or not there has been an obstruction to a natural surface watercourse and that the removal of the obstruction will promote better drainage on the petitioner's land and not cause unreasonable damage to the land of the respondent.
2. If the Board makes this finding, then they make the determination of whether it was intentional or unintentional.
  - a. If the Board determines that the obstruction was intentional, then they can order the respondents to remove the obstruction at his own expense or direct the county surveyor to remove the obstruction at the expense of the respondents.
  - b. If the Board determines that the obstruction was unintentional, then the Board could authorize the respondents to remove the obstruction, or authorize the surveyor to remove the obstruction at the expense of the petitioner.
3. If the Board determines that there is not sufficient evidence to make a finding, then the petition is denied.

Brian Goss asked Mr. Etter if he could cross the pasture before the pipe was installed. Mr. Etter stated that he could.

When asked, Mr. Etter stated that he installed the pipe approximately 1991; the subdivision was developed in 1995; Mr. Skaggs bought his home, built in 1996, in 2001; and the pooling started in 2004. Jeff Quyle stated that in looking at all the possible causes, the south end of the culvert under Hess Trail was blocked all this time; connecting the north end of the pipe apparently occurred in the late 1980s, early 1990s; the repair to the pipe occurred in 2004; any silting or obstruction in the north end of the pipe is unknown. Mr. Quyle stated that in looking at the sequence of events, it appears that the repair of the pipe is what caused the pooling to occur.

Pete Foley also asked that a copy of the petition be marked as Exhibit #30; copies of letters dated October 2 to the respondents and petitioners, copies of the certified receipts, and a memo from Mr. Brock dated October 2 be marked as Exhibit #31.

Jeff Quyle made a motion to find that there is an obstruction to a natural surface watercourse due to the installation of the drain that collects water flowing north to south, and the subsequent activity that occurred in 2004 to repair the pipe. That activity in repairing it apparently caused water to back up onto petitioner property. There appears to be benefit to the petitioner, based on information the surveyor's office showed the Board as a possible means of alleviating the flow problems within the pipe, and that it can be fixed without unreasonable damage to the respondent. Seconded by Brian Goss. Motion carried 3-0.

Jeff Quyle made a motion to find that the obstruction was intentional by Mr. Etter due to the activity he took to repair the pipe on his property and this led to water pooling on the Hess and Skaggs properties. Seconded by Brian Goss. Norman Voyles stated that he heard Mr. Etter state that he placed the bags of sakcrete in the hole to restrict the flow. Motion carried 3-0.

Jeff Quyle made a motion to direct Mr. Etter to remove the obstruction at his own expense within 45 days or to have the county surveyor remove the obstruction if the obstruction is not removed by Mr. Etter in 45 days. Upon making that removal, the surveyor will charge Mr. Etter for the expense. If weather or other outside factors prevent Mr. Etter from reasonably carrying out the activity in 45 days he may come back to the Drainage Board and petition for an extension of time. Mr. Etter will also notify the surveyor's office of an opportunity to observe the removal. Seconded by Brian Goss. Motion carried 3-0.

Pete Foley stated that he would draft the order and it will be sent via certified mail to Mr. Etter.

#### MINUTES

Brian Goss made a motion to approve the September 1, 2006 minutes. Seconded by Jeff Quyle. Motion carried 3-0.

**STORMWATER COORDINATOR REPORT**

Sharon Hall, Stormwater Coordinator, handed out the report for October 2nd through November 3rd.


**ADJOURNMENT**

Brian Goss made a motion to adjourn. Seconded by Jeff Quyle. Motion carried 3-0.

MORGAN COUNTY DRAINAGE BOARD

  
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Terry Brock, Surveyor

  
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Norman Voyles, Commissioner

  
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Jeff Quyle, Commissioner

  
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Brian Goss, Commissioner

ATTEST:

  
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Brenda Adams, Morgan County Auditor