

MORGAN COUNTY DRAINAGE BOARD

*September 2, 2005
11:00 A.M.*

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

OAK HILL – Banta Road

Jennifer Plummer, from Holloway & Associates, requested that this item be continued until next month's Drainage Board Meeting. Terry Brock stated a very preliminary plan was submitted and could not be submitted to the engineer. Jeff Quyle asked if this was the 70-acre development proposed at the intersection of New Whiteland and Banta Roads. Jeff Quyle made a motion to table the issue. Seconded by Brian Goss. Motion carried 3-0. Norman Voyles asked if this would be ready for the October meeting. Ms. Plummer stated that it would.

MEADOW LAKES - Mooresville

Terry Brock stated that this is the retirement home on the north side of Mooresville. It is in the buffer zone where State Road 67 and Old State Road 67 connect. Mr. Brock stated that this has been approved by the engineer and recommended approval by the Drainage Board. Brian Goss asked if the project was in the flood plain. Mr. Brock stated that they had to be careful because the west edge of the property is in the flood plain and they were required to build a large retention pond. Jeff Quyle made a motion to approve the drainage plan for Meadow Lakes. Seconded by Brian Goss. Motion carried 3-0.

HOMESTEAD - Monrovia

Lance Macro, Simon Corporation, was present to request approval of a drainage plan for the Homestead Development, Section One, located on the west side of State Road 39. Mr. Macro stated that McCracken Creek is located in this area. The development will be 71 lots on 40 acres. Mr. Macro showed the Board the plans for the development. There will be two retention ponds with water features. Mr. Brock stated that studies were provided for the wetlands, creeks, and ditches. Mr. Brock stated that there were 12 comments, 8 of which were clarifications, on the plan and recommended conditional approval. Mr. Brock stated that conditional approval would allow them to move the topsoil, and they would have a month to address the comments. Pete Foley disclosed that he had served for the developer who did the zoning work on the project, but has not done any other preparation or work for the clients. Terry Brock stated that this project has been approved by the Monrovia Town Council, but this area is in the buffer zone and the Drainage Board must approve the plans. They had to change the plans quite a bit because the county's regulations are more stringent. Jeff Quyle made a motion to grant conditional approval for preliminary earth removal to take place until such time that the Surveyor gives final release when he feels all conditions and requirements are satisfied. Seconded by Brian Goss. Motion carried 3-0.

LENVOIL ROAD OBSTRUCTION – Greg Hamilton/Matthew Stout

Pete Foley disclosed that he had represented Mr. Stout in an issue with neighbors several years ago. It is Mr. Foley's understanding that this matter is a new issue.

Greg Hamilton stated that he has owned the property at 2420 Lenvoil Road since June of 1997. Mr. Stout purchased the adjacent property approximately a year later. Shortly after purchasing the property, a swimming pool was built over the septic system in the backyard. Mr. Hamilton erected a berm to prevent swimming pool and septic waste from entering his land. This is the issue Mr. Foley spoke about earlier. This issue ended in a court proceeding in 2003. The judge ruled that Mr. Stout has a natural watercourse on his land. Because Mr. Hamilton blocked the watercourse, he was in violation and had to remove the obstruction. According to the Board of Health, Mr. Stout repaired the septic system; it was condemned by the Board of Health February 1, 2005. Mr. Hamilton stated that Mr. Stout has done three things to cause damage to his land and its value and referred to a packet of pictures: without a repair permit, Mr. Stout used a backhoe in a septic field related area; used a dump truck to drive onto and deposit topsoil into and on the septic field and into the natural swale area, adding dirt to raise the level about 6" in some areas; installed a 4" drain tile in close proximity to the septic field, going from the public right-of-way all the way to and against his fence and property line. Mr. Hamilton stated that when Mr. Brock told Mr. Stout to move the tile back, he moved it back about 4 feet and left an open trench leading to Mr. Hamilton's property. Mr. Hamilton stated that the Board of Health then let Mr. Stout reactivate his septic

system. Mr. Hamilton added that he did not know how a homeowner could perform work on his own septic system without written plans, permits, or inspections and be allowed to use the system. Mr. Hamilton stated that the pictures taken on June 12, 2005 show drainage onto his land through the tile Mr. Stout installed; Mr. Stout has pointed all the subsurface flow in that area to one point on his property. Mr. Hamilton asked that the Board keep in mind that it is wrong to focus subsurface drainage onto a singular point on a neighbor's land and you cannot legally place dirt in a legal watercourse and interrupt/block its flow. Mr. Hamilton referred to pictures taken August 30, 2005, stating that there was no surface flow in Mr. Stout's backyard, the only flow was coming from Mr. Stout's tile onto Mr. Hamilton's land. Mr. Hamilton stated that he has had a number of discussions with Mr. Brock concerning this issue and Mr. Brock agreed that Mr. Stout couldn't place a tile in this manner. In closing, Mr. Hamilton stated that Mr. Bray has stated his client will remove the violation, but it has been going on for many weeks and nothing is being done. Mr. Hamilton asked that the Board do two things: order Mr. Stout to move the drain tile back 25' from the edge of the property, install a catch basin, and fill and seed it; and restore the water course to the original grade. Mr. Hamilton asked that a time limit be set to accomplish these items.

Terry Brock stated that he has talked to Mr. Stout's attorney two or three times and recommended moving the tile back 20 feet, seeding the area, and giving it time to filter out. Mr. Brock stated that this has not yet been done. Mr. Brock stated that there is an obstruction, but there is no damage to the property. The Surveyor only has jurisdiction if the obstruction is harming the property.

Pete Foley stated that there are two issues, the fill in the natural surface watercourse, and funneling water onto the neighbor. Mr. Foley stated that the Board does not have jurisdiction over the obstruction because it is not causing damage to the person petitioning. The second issue, the drain tile, falls under the common enemy doctrine, you can deal with it however you want as long as you don't funnel it on your neighbor, but that would be a civil matter.

A discussion followed regarding jurisdiction.

Jeff Quyle made a motion to direct the Surveyor's Office to send a letter on behalf of the Drainage Board to Mr. Bray, advising him that the drainage tile needs to be moved back 20 feet from the property line with a clear filter mechanism created, and to provide written documentation when this will occur. Seconded by Brian Goss. Motion carried 3-0.

ADJOURNMENT

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

MORGAN COUNTY DRAINAGE BOARD

Terry Brock, Surveyor

Norman Vayles, Commissioner

Jeff Quyle, Commissioner

Brian Goss, Commissioner

ATTEST:

Mae Cooper, Auditor