

## MINUTES

### MONROE COUNTY DRAINAGE BOARD

Wednesday November 1, 2023, at 8:30 AM

Location: Showers Building Room 106D

Hybrid Meeting with Virtual Attendance via Zoom

**MEMBERS PRESENT:** Bob Autio, Trohn Enright-Randolph (*ex officio*), Lee Jones, James Faber

**MEMBERS ABSENT:** Ginger Davis, Bill Riggert

**STAFF:** Kelsey Thetonia (MS4 Coordinator), (attending remotely) Donna Barbrick (Secretary), Anne Crecelius (Planning), Jackie Nester Jelen (Planning), TSD

**1. Call to Order.** Meeting called to order by Bob Autio.

**2. Approval of Minutes for: October 4, 2023, Motion to approve by Autio; second by Faber. VOTE: Jones, Faber, Autio YES (unanimous). Minutes approved.**

**3. Public input:** (Donuts were enjoyed by those present in honor of Mr. Faber's years of service to Drainage Board since his term expires 12/31/2023 and he will step off the board.) Thetonia spoke about finding another candidate for the board. Mr. Faber read a thank-you from the commissioners:

We wish to thank you for your 25 years of service to the community. During this time, the Drainage Board has become increasingly important for the future of Monroe County and your contributions have made both the Board and the community more prepared and proactive in overcoming the many drainage problems our community will be facing. Your efforts have been greatly appreciated. Once again, thank you for your 25 years of service.

Faber expressed interest in attending future meetings on Zoom. He spoke about wanting a white line on North Maple Road since there is a ditch so close to the road.

#### **4. Business**

**a. Drainage Easement Waiver Request – 427 W That Road (Southern Meadows Lot 75) +\***  
Kelsey Thetonia explained where the site is located and outlined what the development included. She said the entire site drains to the west and there is a storm sewer collecting runoff from the roads and there are swales to convey water to detention ponds. She showed a 20-foot-wide drainage easement behind some of the homes. She said Lot 75 is proposing a deck inside a 10-foot-wide drainage easement. She said Lot 80 has not been built out yet, but she had some concerns. She said it was too close to the drainage easement. She said my general recommendation is not to approve this because we haven't seen the rest of the development built out. She displayed a letter from property owners of Lot 75 concerning a deck that they would like to expand. Thetonia said the proposed deck would expand six feet into the drainage easement. She displayed pictures of the current site. Autio asked if the current deck was right up against the easement now. Thetonia showed a map with proposed grading compared with what there is now. She said the current deck is very close to the easement now. She said with the elevation changes on the site, it could be conveying large amounts of water during a significant rain event. Thetonia said I recommend denying this petition for a variance based on the planned development on the other side of this drainage easement.

Autio asked do they have an opportunity to appeal if we deny. Thetonia said yes, they have the opportunity to appeal. **Motion by Autio to DENY the variance; second by Faber. Trohn said everyone would have to be in agreement. VOTE: JONES YES, FABER YES, and AUTIO YES.**

Thetonia said she would notify the property owner and could work with them on an appeals process if they would like to appeal.

**b. Violation of Drainage Easements Lot 60 Southern Meadows**

Thetonia projected site plans on the screen and talked about the site. She said the property owners were here today. She said Lot 60 drains to a common area detention pond. She showed the plot plan for Lot 60. She talked about the drainage from the cul-de-sac going into a manhole and then to a 24-inch HDPE pipe that discharges to the detention pond. She said the homeowners built a fence up to their property line that happens to be directly over the plastic drainpipe that drains the cul-de-sac. She showed flood plain to the west. She showed a map of the side yard of Lot 60 and where a fence had been built. She brought up a couple of photos for DB to see the storm pipe and the fence. She said the fence post is directly over the drainpipe. She said I inspected the pipe as best as I could and saw some potential damage. She said without televising it to get a clearer view, it is hard to see. She said there is about six inches of cover for the pipe. She said at the last DB meeting, Ginger Davis brought up the possibility of soils settling. She said the bottom of the pipe is on original material but everything around it has been filled in so there is the possibility of settling. Autio asked about the request for a variance. Thetonia said it is a request for the fence to remain in place. She said my current concern is that the post is directly on top of the pipe with less than a foot of cover. She said we have granted variances in the past where the fence posts straddled the pipe, but this is different.

Trohn said it is more about the compound effect of what may occur. He said everything we are looking at today is in the subdivision today and the last one we made a motion to deny. He asked how we are going to apply a level of fairness as well as try to mitigate any stormwater impact or flash flooding. He said we will probably see more development occur in the region and so we need to make sure that things are adequate. He said if you look at Clear Creek and all the things we have heard about that area, and we go through more of these, how are we going to get folks to follow the ordinance when we have a variance here, no variance there. He said I understand that some people are not aware. He said this subdivision is not even fully developed yet and people will be coming in and seeing the fences that have been put up. He said this is more of a compound situation of variances and after-the-fact builds. He said we want to make sure that this is done in line with our ordinance. He said it is unfortunate that we must address this after there have been dollars put into it. He said we are looking at four different things going on in this subdivision today. He said if we start piecemealing yes or no, what does that do with other potential homeowners in the future. Jones said when I got training for the Plan Commission, we were told to consider each one on its own merits without worrying about how other people feel about it. She said I agree that the fact that it is not built out makes it particularly sensitive. Faber said DB does not have the capability of imposing a fine for doing something that should not have been done. Thetonia said I think you do, but it has not been exercised. She said Chapter 761 does have enforcement capability through Chapter 115 of Monroe County code. Jones said it would have to go through Monroe County Legal. Thetonia said for any work in a drainage easement we have a lot of power to maintain what is there through several different means.

**Motion by Faber to remove the fence.**

The property owners (Don and Julie Grinstead) spoke. Julie Grinstead said we purchased this lot and moved here from Georgia; we had no idea about the easement. She said there is a common area behind us for the drainage area. She said we have two little dogs and six grandchildren, and we put up a fence and had no idea that there was any issue at all. She said then someone was walking around and said there might be an issue with the fence and the next day we got a letter about the violation. Don Grinstead asked

about having an inspection before the conclusion. He said we want to do the right thing with the fence, but we also want to look out for our financial and lawful space issues. He said as we have gone through this process, we want to make sure that DB knows we are doing this in good faith.

Thetonia said if the fence were not directly on top of the pipe and we had it televised to show it was not damaged, I would be more agreeable to maybe allow some leniency there. She said but it's location would still be an issue. She said it is clearly directly over the pipe. She said the county will not pay for televising it, so it would be the responsibility of the property owner and then, regardless, the DB could still say it cannot be allowed. She said it could cost upwards of \$1,000 to have it televised. She said this is regarding the east side of the fence, specifically.

Julie Grinstead said the house is built all the way up to the easement so I am not sure where the fence could start on that side of the house. Trohn said there are two issues there, the easement and then the discussion of if the pipe has been damaged. He said those are two separate matters. He said knowing that the pipe is functioning adequately, then that might allow the DB to lean toward allowing the obstruction in the drainage area. He said I sympathize with you; this is not an easy role for us or for you as property owners.

Jones said if they do move the fence and we still do not know if the pipe has been damaged, what do we do from there. Thetonia said when the developer goes to the county to take in the roads, we have, in Chapter 761, we can require them to televise the pipe and before we take it in, we can require them to fix issues. She said that is why it is complicated, on who is responsible for what. Don Grinstead asked about distances required for any structures. Thetonia said drainage easement sizing is in our ordinance. She said we have specific sizes for drainage easements based on the size of the pipe and how deep it is. She said when we go to excavate it, if the pipe is small and shallow, we don't need too big of a trench but if it is really deep and a large pipe, we need to excavate a wider trench. She said typically we allow ten feet on either side of the pipe, or larger for larger pipes. Julie Grinstead spoke about not knowing about the drainage easement. She said if we had known, we would have never done this. Don Grinstead said the area is still being developed; there are likely other homeowners contemplating fences or other structures.

Tom Winger spoke. He said on a new build, we give them a plot plan and it shows [easements] on that. He said I can work with the homeowners to televise [the pipe]. He said I give everybody a plot plan. He said you do not have to get a building permit to get a fence. He said I read your suggestion in the minutes about televising it and then if later down the road there is a problem, they understand the responsibilities.

Faber commented that the City of Bloomington requires permission to even put up a fence. Autio said my position is, if the pipe is functional both now and when the inspection is done, then allowing that variance. He said if it is not functional, then a repair needs to be made and the fence needs to be moved. Trohn said we need a unanimous decision on this. He asked would it just continue to move forward. He said DB could table it; maybe we could ask for an inspection to be done and then maybe we would have that information next time we look at this.

Autio suggested a motion to table this until there is more data on this. Jones asked if we are requiring it to be televised. **Autio said a motion to table until December and require the pipe be televised. Seconded by Faber. VOTE: JONES YES; FABER YES; and AUTIO YES. Motion to TABLE carried. Thetonia said the next meeting was scheduled for December 6.**

**c. Drainage Easement Violation (after-the-fact) – 404 W Irie Ct. (Southern Meadows Lot 58) +\***

Thetonia talked about the site, a rear yard drainage swale, and a common area detention pond. She said there is supposed to be a drainage swale here and then there is a large deck that the property owners constructed within the drainage easement. She said basically the swale was moved over, I think. She said the drainage could not be completed because the deck had been built. She said I worked with Tom's drainage engineer to make sure this had capacity to convey runoff from a flood event to the pond. She said there is a lot of elevation change in this area so that helps. She said my concern is that upstream from this has not been fully developed, but based on the engineer's calculations, they are comfortable signing off on the grading that the developer did. She said if we do have a big flood and it turns out that we do need to re-grade some of this, then the deck would most certainly be in the way. She said also they are required to apply for an after-the-fact building permit since it is over 30 inches tall, so they received another violation letter from Planning/Building departments.

Santiago Sotomayor spoke via Zoom. He said good morning, my name is Santiago, and I am filling in for my parents who have very limited English. He said I talked on the phone with you a couple weeks ago. He said I think the biggest issue was that there was not a lot of transparency when these lots were being purchased because there were conversations about decks and fences being built and didn't hear about easements. He said there were multiple conversations. He said my dad was unaware that a permit was needed for the deck. He said I know the structure is pretty sound; we sent some pictures from the other side. He said the top is closest to the easement; he said the bottom is close to the ten feet from the property line. He said I heard the concern about needing to remove the deck and I think it's worth crossing that bridge if we ever have to. He said they just added a whole bunch of pipes in the neighbor's yard, and I do not think there will be any issues with the deck.

Trohn asked to see the plat on Elevate. He said it is unfortunate that we are here for after-the-fact builds. He said I just wanted to highlight that there is an official process; the easements are platted. He said there is a procedure that the county follows; we are not selecting these sites randomly. Jones commented I agree, but I also think asking buyers to look at a plat map and understand all of that is not reasonable. Trohn said I just wanted to indicate that there is a process that we follow. Thetonia said I would recommend to anyone who is building to contact the county planning department because they can help you determine if there are easements on your property.

Tom Wininger said I do give plot plans to everyone, and I will probably put out a flyer from here on out, that all homeowners need to contact county planning. He said the other thing is, Kate Stein (Smith Design) re-did the swales in there and I believe that the criteria that we had to live up to was that all the inlets in the neighborhood were 100% for a 100-year flood. He said that is the criteria that she signed off on. He said I know a deck built after the fact has nothing to do with that, but she said that the deck did not impede the water flow that day.

Thetonia said I am not comfortable with it being there because if we do need to move it in the future it is going to make it that much harder. Autio said to get the full easement how far would it be. Thetonia said it goes 10 feet into the easement. Wininger said we had more than one attempt and we did it and Smith Design came out and site checked it, and it did not make it, so then I came back and talked to the homeowner about cutting the downspout. He said Smith re-shot it and then Katie Stein certified it. He said with it in place, it still meets those criteria.

Trohn said the easement is a 20 foot total span, so they are going completely into the easement on their property but it does not look like it is impeding. Trohn said I think Planning should weigh in on this one.

Autio said I am leaning toward having the deck removed to clear out the easement issue, even with the engineering.

*Jones had to leave the meeting.*

Thetonia said we have lost our DB quorum.

**d. Drainage Easement Floodplain Violations (after-the-fact) – Southern Meadows Lots 60, 61, and 62 +\***

Thetonia spoke concerning Southern Meadows Lots 60, 61, and 62, which all abut the floodplain for Clear Creek. She said the floodplain is within the drainage easement on the west side. She said the lots were graded in a way where fill was placed in the floodplain. She said all the grading was supposed to be in the lots and the floodplain was not supposed to be touched. She said Tammy Behrman (Planning) has been leading the enforcement of Chapter 808 Floodplain Management, working with them on compliance. She said DB does have some say on this because it's also in Chapter 761. She talked about plot plans in the packet. She said options given were to remove the fill from the floodplain or to provide compensatory storage and a No-rise certification, meaning that you are not contributing to any vertical change in that floodplain. She said that is a Federal FEMA requirement for zero rise. She said previously the State had 0.14 feet of acceptable rise and that is no longer in place due to changes at the Federal level. She said our current ordinance allows DB to dictate that zero-rise requirement as well. She said DB has a say in this. She said to be consistent with what Tammy is doing, we have asked the developer to comply with the Federal No-rise requirement. She said Tom Winger (developer) has chosen to hire an engineer to do the modeling and to design compensatory storage to be in compliance. She said we will review this next month.

Autio asked where the compensatory storage would be. Thetonia said it would be, I assume, in the floodplain just west of these properties. Tom Winger said Katie Stein with Smith Design is working on that. Thetonia said I also have contracts with local engineering firms for third party review so I can contract out review of this, just to make sure it is meeting the requirements. Autio said that sounds like a good solution.

**e. Future Drainage Plan Reviews for DB approval:**

**i. K&S Rolloff – New Fill Area (determining if drainage plan is required)**

**ii. North Park II Area B-9 – large fill site**

**iii. North Park Area B-3 Lot 3 – Stone Carver Drive Extension**

**iv. Monroe County Airport Drainage Improvements Project – pipe lining and replacement**

Thetonia said I have four things that are most likely going to be on the December agenda. She said one is K&S Rolloff. She said they are modifying the fill area. She said we did modeling to see if the fill placed in the sinkhole would impact the neighboring property and they were able to demonstrate that the 48-hour 100-year event would still be contained in the sinkhole area. She said we gave them the go-ahead to allow the fill to remain because we felt that removing it would disturb the sinkhole. She said now they are proposing to add an additional seven feet of fill and then put the dumpsters on top of what they have been doing now. She said my main concern is water quality. She said they are proposing check dams and other things. She said we may need to bring this back to DB to look at the additional seven feet of fill. She said the new fill should not be in the sinkhole.

She talked about activity in the North Park area. She showed Hunter Valley Road and the North Park area. She said there is an old quarry site which they plan as a long-term fill site for possible future development. She said they have some sediment basins.

She said the other one is an extension of Stone Carver Drive. She said I have received preliminary plans and will bring this to DB in the future.

She said the last one is regarding a request from the airport. She said the general proposal is showing repair/replacement of almost every single storm pipe on the property, excluding the main pipes under the runway. She said they are looking for remediation of some significant issues with older pipes. She said my first comment was about detention. She said they have existing ponds on site that are fairly large, and we have had preliminary discussions about adding more storage on the property. She said there were discussions of underground detention, as well, but that would require significant geotech work. She said they are open to whatever help they can get. She spoke about gullies forming and said you don't want gullies along the runways. She said they are required to have 250 feet of basically flat lawn on the sides of the runways in case a plane goes off the side. She said preliminary plans are just asking approval of the design. She said in time that will develop into a drainage master plan. She said in 2002, an airport evaluation was completed, and all the sinkholes were noted on the property and modeling was done. She said that expired in 2007, so we are working with Planning to determine whether another evaluation is needed. Autoio asked if there was an evaluation of the condition of the pipes that are under the runway. She said I know in 2013, a sinkhole formed next to a runway and there was an emergency grant from the FAA to help fix it.

Trohn noted a comment from Jackie Nester Jelen in the meeting chat (concerning a previous agenda item). She had commented that the owners will be required to apply for a variance through the Planning Department for construction within the platted building setback or revise the deck location (Lot 58).

**5. Staff Reports/Discussion**

**6. Adjournment**

**a. Date of Next Meeting: Wednesday December 6, 2023, at 8:30 AM**

The meeting adjourned at approximately 10:05 a.m.

Minutes approved: 1/4/2024

  
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**President**

*Donna Barbrick*  
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**Secretary**