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STATE OF MICHIGAN
COUNTY OF OTTAWA

IN RE: AGAPE DRAIN
BOARD OF DETERMINATION

Proceedings commenced at 11:30 a.m., on Monday, October 19, 2020, via Zoom in Michigan, held before Marjorie A. Covey, CSR-2616, Certified Shorthand Reporter and Notary Public.

APPEARANCES:

- Mr. Joe Bush, Ottawa County Water Resources Commissioner
- Ms. Sara Hirst, Secretary to Water Resources Comm.

- Mr. Bill Cargo, Board Chairperson
- Mr. Ken Souter, Board Secretary
- Mr. Rich VanderKlok, Board Member

- Mr. Stacy Hissong, Attorney, Fahey Schultz
- Mr. Steve Koski, Attorney, Fahey Schultz

- Mr. Ryan McEnhill, Engineer, Eng. Engineering & Surveying

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Via Zoom in Michigan

October 19, 2020 - 11:37 a.m.

PROCEEDINGS

WATER RESOURCES COMM. JOE BUSH: Welcome everyone.

Welcome to the Agape Drain Board of Determination. It's currently 11:37, so we'll go ahead and get this started.

Welcome everyone to the Board of Determination.

I'm Joe Bush, the Water Resources Commissioner. I'm sure some people are wondering what this is about and why I got a notice in the mail. So we do appreciate you learning about the legal process, the Drain Code and what a petition is.

We received a petition from Spring Lake Township for some flooding concerns over there, and this is a petition that requires a public hearing, which is the Board of Determination, for public input on the situation out there.

When I get a petition I have to appoint three board members who do not live in Spring Lake Township or have any vested properties in said area.

So this is a -- everybody within the drain district got invited or got a notice to participate in today's public hearing.

Normally I like to do these in person, but with COVID and 2020, which has been a strange year, we're holding them via Zoom. And we have Steve Koski on the line and in person -- not in person but via Zoom to kind of go over why

1 we're here and what the procedures are for the Zoom meetings.
2 Again I'd much rather hold them in person if we were not in
3 2020, for sure.

4 Again, with appointing a three-panel person, I
5 usually pick people that have done it for a very long time.
6 These three board members I have before you today have done
7 many, many board meetings, or Boards of Determinations I
8 should say and board meetings, so they understand the Drain
9 Code pretty well.

10 They do understand drainage and they understand how
11 the process works, whether it's special assessments, whether
12 it's the watershed, drain districts. So they have a good
13 idea of what's going on today. I try to get people who are
14 very informed and very educated on the process. So again I
15 appreciate everybody tuning in this morning.

16 One of the biggest questions, how come you hold
17 them in the afternoon, I have to work, or I can't attend it.

18 This is a legal process through state law, legal
19 code so we try to hold them during business hours just like
20 any typical public hearing that comes with a legal body to
21 it. So that's why we hold them during the day.

22 So again I'll go ahead, how this usually goes, I'll
23 give introductions and I'll give the three-panel board the
24 oath. They will then run the meeting, pick a chair and
25 secretary. And then once they run the meeting I'm kind of

1 off to the side and won't speak until spoken to or asked
2 questions for me or the engineering firm that I hired today.

3 Again the reason we're here is flooding back in the
4 spring and there was a request for a petition. And that's
5 the only way I can act on one of these public hearings is via
6 petition from the people or the municipality or the road
7 commission. So again this one came from Spring Lake
8 Township.

9 So currently I don't see anybody from Spring Lake
10 Township on the phone or in person. But I do see Margie is
11 with us, she's is our court reporter.

12 My three-panel board is Rich VanderKlok who is from
13 Georgetown Township, a board member over there, he's done
14 many of these.

15 We have Bill Cargo, he is the superintendent of
16 Grand Haven Township.

17 And then also Ken Souter, he's been doing many,
18 many of these as well. He came with 30 years plus of road
19 commission engineering experience, retired now, but he
20 owns -- or he represents these Boards of Determination as
21 well.

22 So these three gentlemen do a very good job. Be
23 sure to ask questions.

24 When it is time for public comment, be sure to
25 speak loudly, your name and address and your concerns. Again

1 Margie is a court reporter and everything is word for word.
2 And we're also recording the Zoom as well.

3 We also have Stacy Hissong, and she is with Fahey
4 Schultz, along with Steve Koski over there, with the head
5 phones on who will kind of direct us. He is a for sure --
6 what do I want to say, he's been doing these Zooms for a long
7 time and he's a professional Zoom person, that's for sure, he
8 does a nice job.

9 I don't see anybody from Spring Lake Township, I
10 was hoping to, but I don't.

11 And then we have Ryan McEnhill, he is from Eng.,
12 he's the engineering firm that will be doing the presentation
13 later.

14 Other than that I think we'll go head and move
15 forward with the oath.

16 Gentlemen, please raise your right hand. Do you
17 each solemnly swear that you will faithfully perform and
18 discharge the duties imposed upon you as required by law, as
19 members of the Board of Determination appointed by the Ottawa
20 County Water Resources Commissioner, to determine the
21 necessity for the location, establishment and construction of
22 the Agape Drain located in Spring Lake Township, in said
23 county, gentlemen?

24 BOARD MEMBER BILL CARGO: Yes.

25 BOARD MEMBER RICH VANDER KLOK: Yes.

1 BOARD MEMBER KEN SOUTER: I will.

2 BOARD MEMBER BILL CARGO: One thing before we begin
3 doing the election of chair persons, I think we want to have
4 Steve kind of explain the Zoom procedures.

5 ATTORNEY STEVE KOSKI: I'll be happy to do that,
6 Mr. Chair.

7 Good morning again to everybody and welcome to the
8 Board of Determination.

9 This meeting is being held in compliance with the
10 Open Meetings Act, which was recently amended to allow for
11 electronic meetings to be held under the Open Meetings Act.

12 We've been doing these for awhile now under the
13 Corona virus pandemic. Previously they were done under an
14 executive order from the governor of Michigan that allowed
15 these to be done in compliance with the Open Meetings Act.

16 Over the last two weeks there has been a lot that
17 has happened in relation to those executive orders and so
18 ultimately that resulted in the legislature passing an
19 amendment to the Open Meetings Act that allows for us to hold
20 these at least for the period through this year, and
21 potentially into next year as well. And so these are now
22 just being held under the authority provided under the Open
23 Meetings Act.

24 For this meeting today we will make every effort to
25 ensure that there is full participation and transparency for

1 all of you that are in attendance.

2 For each vote of the board we will do a roll call
3 vote, so there will be a motion and then a second and then I
4 will read the roll for the board.

5 With respect to the public, we ask that you remain
6 muted throughout the meeting until it's time for a public
7 comment period, which there will be a public comment period.

8 And I will help the chairperson facilitate that and
9 everybody that would like to participate can indicate that
10 they have a comment by selecting the Raise Your Hand option
11 on Zoom. So if you pull up the participant's list there is a
12 button under the participant list that says Raise Your Hand.

13 You can also hover over your name on that list and
14 there will be a Raise Your Hand button as well.

15 If you're calling in by telephone, you can dial
16 star nine and that will also indicate that you would like to
17 comment. And when you do comment, we -- I will call on you
18 and ask that you un-mute yourself and that you state your
19 name and address for the record.

20 Again we have Margie our court reporter here and I
21 am recording this on Zoom as well, so we just want to make
22 sure that everything is clear for the record.

23 Likewise if we interrupt you at any point because
24 we don't hear something, that's simply because we want to
25 have an accurate record. So we may ask you to repeat

1 something if the feed cuts out or something is unclear.

2 There is also a chat function on here. If you
3 select the chat button on the bottom, it's set for you to be
4 able to send a message to me so you can let me know if you're
5 having any issues. But also if you would like your comment
6 read into the record by me instead of giving it yourself, you
7 can just state your name and address for the record in that
8 chat, and then whatever comment you would like read.

9 To mute and un-mute yourself, there is a button
10 that's usually down at the left of your screen. Again when I
11 call on you, you can un-mute yourself and give your comment.
12 For those of you that are on telephone, you can dial star six
13 and that is how you can mute and un-mute yourself.

14 If anybody experiences any connection issues, we
15 recommend just logging out of the meeting and then logging
16 back in. That can solve a lot of audio and video issues. If
17 you still are having trouble, you can dial in by telephone
18 and participate that way, with the telephone dial in
19 information that was on your notice.

20 And those same recommendations go for the board,
21 though if one of the board members loses connection we will,
22 for obvious reasons, pause the meeting and wait for that
23 board member to either reconnect through their computer or
24 else dial in if need be.

25 So at this point I will turn it back over to the

1 board to proceed, and I will go over these procedures again
2 when we get to the public comment period in the agenda.

3 BOARD MEMBER BILL CARGO: Steve, thank you very
4 much. The first thing we need to do as a board is to elect a
5 chairperson.

6 Do we have a motion for electing a chairperson?

7 BOARD MEMBER RICH VANDER KLOK: I make the motion
8 that Bill Cargo serve as chair.

9 BOARD MEMBER BILL CARGO: Is there support?

10 BOARD MEMBER KEN SOUTER: I support.

11 BOARD MEMBER BILL CARGO: We have a motion and
12 support that Cargo serve as a chair of this Board of
13 Determination.

14 Steve, will you do a roll call vote?

15 ATTORNEY STEVE KOSKI: Yes. Bill Cargo?

16 BOARD MEMBER BILL CARGO: Yes.

17 ATTORNEY STEVE KOSKI: Rich VanderKlok?

18 BOARD MEMBER RICH VANDER KLOK: Yes.

19 ATTORNEY STEVE KOSKI: And Ken Souter?

20 BOARD MEMBER KEN SOUTER: Yes.

21 BOARD CHAIRPERSON BILL CARGO: And next we need to
22 do a motion for election of a secretary. Do we have a motion
23 to elect a secretary for this Board of Determination?

24 BOARD MEMBER RICH VANDER KLOK: Mr. Chairman, I
25 make a motion that Ken Souter be chairman -- or secretary.

1 BOARD CHAIRPERSON BILL CARGO: I will support that
2 motion. We have a motion and support on the floor.

3 Steve, would you do a roll call vote for that
4 motion?

5 ATTORNEY STEVE KOSKI: Yes. Bill Cargo?

6 BOARD CHAIRPERSON BILL CARGO: Yes.

7 ATTORNEY STEVE KOSKI: Rich VanderKlok?

8 BOARD MEMBER RICH VANDER KLOK: Yes.

9 ATTORNEY STEVE KOSKI: And Ken Souter?

10 BOARD MEMBER KEN SOUTER: Yes.

11 BOARD CHAIRPERSON BILL CARGO: And now we're going
12 to talk about procedural -- we're going to talk about rules
13 of public comment. And I'm going to make a motion that we
14 limit public comments to three minutes per person. You can
15 summarize a novel in three minutes, so we want the public to
16 be succinct in explaining their positions within a
17 three-minute time limit.

18 Do I have support for my motion?

19 BOARD MEMBER RICH VANDER KLOK: Support.

20 BOARD CHAIRPERSON BILL CARGO: We have a motion
21 from Cargo, support from VanderKlok.

22 Steve, would you do the roll call on this?

23 ATTORNEY STEVE KOSKI: Bill Cargo?

24 BOARD CHAIRPERSON BILL CARGO: Yes.

25 ATTORNEY STEVE KOSKI: Rich VanderKlok?

1 BOARD MEMBER RICH VANDER KLOK: Yes.

2 ATTORNEY STEVE KOSKI: And Ken Souter?

3 BOARD SECRETARY KEN SOUTER: Yes.

4 BOARD CHAIRPERSON BILL CARGO: And next we're going
5 to kind of outline the Board of Determination procedure, and
6 we're going to start with the attorney, Stacy, kind of
7 explaining the role and the function of the Board of
8 Determination.

9 ATTORNEY STACY HISSONG: Thank you, Mr. Chair.

10 So in this situation we have an application and a
11 petition for a brand new drain from Spring Lake Township. So
12 I'll kind of go through how the procedure works, how we got
13 to the point where we are today, and what happens next.

14 So, Steve, if you could pull up the third slide in
15 the engineer's presentation, that will be helpful to me.

16 So in this situation right now this is a petition
17 for a brand new drain, so currently there is no jurisdiction
18 from the Water Resources Commissioner's office for anything
19 called the Agape Drain.

20 An application to lay out designating a drainage
21 district was submitted by the township as well as a petition
22 to locate and establish the drain.

23 So what Ryan McEnhill, the engineer is going to
24 explain in a little bit, but I'm going to start with an
25 explanation today, is basically once that petition has

1 basically been submitted by the township for the drain
2 commissioner, for the Water Resources Commissioner to
3 establish and take jurisdiction of a drain in this situation,
4 and what is proposed for that would be what's in blue on this
5 slide, would be what would be established as the drain
6 itself.

7 And so the Board of Determination's role and
8 decision is should this be established as a drain. So to
9 give you a little background information, once a drain is
10 established, it is under the jurisdiction of the drain
11 commissioner.

12 So in this situation we're looking at the blue line
13 would be, if it's already there, it would be -- it's proposed
14 to be either constructed or taken care of if anything exists
15 by the Water Resources Commissioner's office.

16 Along with that is what's called a drainage
17 district, and that is outlined in pink. A drainage district
18 is the area when water falls within that pink area, it
19 eventually or will eventually get to the blue line, once it's
20 taken over by the jurisdiction of the drain commissioner --
21 or the Water Resources Commissioner, I'm sorry.

22 So the pink like and the drainage district is the
23 area of contribution, and we also use the word watershed to
24 explain that. So basically the pink line is the blue line's
25 watershed. So anything within that pink line will flow to

1 the blue line once it becomes a drain, and if it becomes a
2 drain.

3 The pink line is also important because that is
4 what makes up the special assessment district for the drain.
5 So basically a drain special assessment district pays for the
6 costs involved in a drain project.

7 So what you see there is obviously properties that
8 would be included in the drainage district, and any county
9 roads or state highways would also be included. So the
10 county would help pay for the benefit to county roads, MDOT
11 which we have a portion of U.S. 31 involved would help pay
12 for the benefit to the state highway, and then Spring Lake
13 Township would also be liable for an assessment in the event
14 it was established for benefit to the public health.

15 So those are the entities that help makeup a
16 drainage district and help pay for the cost of a drain once
17 it's taken over by the Water Resources Commissioner.

18 So this has been requested by Spring Lake Township.
19 We have an idea of what the jurisdiction would be and what
20 the boundaries of the area that would help pay for a project
21 if it took place. And now the decision as to whether that
22 should actually happen or not is the subject of today's
23 meeting.

24 So what we have today is called a hearing of
25 necessity for the Board of Determination, and we have the

1 three Board of Determination members who you have already met
2 who are property owners and residents of Ottawa County, but
3 not of Spring Lake Township. So they are uninterested in the
4 project or proposed project.

5 Their decision or their one role today is to decide
6 whether it is necessary and conducive to the public health,
7 convenience or welfare. And I'm going to say that term again
8 because that's in the Drain Code, necessary and conducive to
9 the public health, welfare and -- or public health,
10 convenience or welfare to establish the drain and construct a
11 proposed drainage project.

12 So in making that decision, they are aided by
13 information from the engineer, but also the property owners
14 involved who can provide testimony and evidence to the Board
15 of Determination members as to their -- what they've
16 witnessed and their information from actually living in the
17 area as to whether this drain should be established or not.

18 So after listening to engineering information and
19 information from the property owners, these three Board of
20 Determination members will need to make a decision, should a
21 drain be established, is it necessary and conducive to the
22 public health, convenience or welfare for a drain to be
23 established or not.

24 In doing that, that is their sole decision that
25 they make. If they decide based on the evidence presented

1 today, no, we don't think so, then nothing else will take
2 place in this petition, and a new petition cannot be
3 submitted for a period of at least one year. So there would
4 be no drain project under the current petition.

5 If they decide yes, then the Water Resources
6 Commissioner will work with the engineer and the stakeholders
7 in the project to develop a project scope, permits, easement
8 acquisition, etcetera, to move forward in constructing a
9 drain project.

10 So that is what the Board of Determination decides
11 today. More importantly, they don't decide what the scope of
12 the project is or how much the project will be. So as an
13 example, the drain -- the Board of Determination can't say,
14 yes, we think it's necessary, but we only think it's
15 necessary for 200 feet or we think it's necessary beyond
16 this, so we're only voting necessary based on that condition.
17 They can not do that.

18 The scope of the project and what will be
19 established as a drain is completely up to and within the
20 responsibilities of the Water Resources Commissioner's
21 office.

22 Likewise, this board can't say, yes, it is
23 necessary, but it should only be \$2,000, or they can't place
24 a price tag on it. That price tag is also up to the Water
25 Resources Commissioner after consultation with the

1 engineering and the project stakeholders. It is up to the
2 drain commissioner to develop the scope and we can't come up
3 with a project scope or cost until that scope has been
4 developed.

5 So basically we're looking at a yes, it is
6 necessary; or no, it is not, based on the information that is
7 available today. And if it is not necessary, we end the
8 proceedings. If it is necessary, then the Water Resources
9 Commissioner, in conjunction with the engineer, moves on from
10 there.

11 So, board members, are there any questions?

12 BOARD SECRETARY KEN SOUTER: I don't have any
13 questions.

14 BOARD MEMBER RICH VANDER KLOK: No questions.

15 ATTORNEY STACY HISSONG: And you're on mute,
16 Mr. Chair.

17 BOARD CHAIRPERSON BILL CARGO: Thank you. Thank
18 you, Stacy.

19 Next thing we're going to ask then is for Ryan, the
20 engineer with Eng., Inc., to provide an overview of the
21 project.

22 ENGINEER RYAN MCENHILL: Okay, well good morning,
23 everyone. My name is Ryan McEnill with Eng. I'm a
24 professional engineer in the state of Michigan and we work
25 with county drain commissioners and water resources

1 commissioners all over the state on projects just like this.

2 So Stacy and Joe kind of touched on a number of
3 things already. The purpose of the engineering review today,
4 obviously there was a Chapter 3 application from Spring Lake
5 Township to lay out and designate a drainage district, and
6 then also a Chapter 4 petition to locate, establish and then
7 construct a new county drain.

8 And Chapter 3 and Chapter 4, those are just
9 chapters of the Drain Code that I'm referencing.

10 And usually when we get to this point, the Water
11 Resources Commissioner's office is required to retain an
12 engineer. We typically try to keep costs, at this stage of
13 the project, as minimal as possible. And the reason we do
14 that is because if this board were to turn the project down,
15 we obviously don't want to extend a bunch of funds that would
16 have to be assessed back on a project that may not move
17 forward.

18 So to this point we have determined the land drain
19 and that's the drainage district or the watershed that Stacy
20 was mentioning, and I'll go through that in a little bit more
21 detail. A review of the entire system, we try to put
22 together obviously a tentative route and course of where we
23 think a legally established county drain should be located,
24 and that was that blue line on the previous exhibit that
25 Stacy had shown as well.

1 We try to identify any of the potential drainage
2 problems that could be happening out there. And then provide
3 an independent and unbiased assessment of those conditions to
4 this three-person board, keeping in mind that, you know,
5 they're not familiar with this particular drain system. And
6 so we just want to give them a broad overview of the
7 conditions, along with obviously feedback from the public and
8 the folks that live in this drainage district to give them
9 the most information for them to make a decision here today.

10 So this was this drainage district overview.
11 Wilson Road is the Ottawa County-Muskegon County line, it
12 does go westerly over to U.S. 31 and it does take in some
13 drainage from that highway. And then stretching all the way
14 to the south to where it intersects with Hemlock Drive.

15 And this encompasses about 59 acres entirely in
16 Spring Lake Township.

17 So just a broad overview of some of the things that
18 I'll be talking about today. Although it's -- I guess it
19 could be considered a smaller drainage district, the blue
20 line, which is essentially the road ditch on the left side of
21 168th Avenue is really the only conveyance system for these
22 59 acres.

23 So in that sense, when the road commission goes in
24 and constructs drainage ditches, they are primarily concerned
25 about just draining the roadway. They're typically not

1 thinking about, you know, how am I going to drain this
2 20-acre field. They're more concerned about the roadway.

3 And so when we have that much water contributing to
4 just a county road ditch, it's not capable of conveying those
5 loads. So there is a lot of pinch points in that road ditch
6 that are causing issues.

7 The culverts again under driveways, under roadways,
8 are not sized to be able to adequately convey those flows.

9 We had significant flooding, this primarily
10 occurred and we got several calls this past spring. That's
11 kind of where a lot of these photos and the phone calls that
12 we received stemmed from. It is a high groundwater area and
13 I'll touch on just soil conditions a little bit later on here
14 in the presentation.

15 And then we did also have some basement flooding
16 impacts as well.

17 So let me give, I guess a larger scale overview of
18 how drainage conditions worked in this area. Again we have
19 the existing road ditch in blue. Water is draining to the
20 north. There is a 15-inch culvert under Wilson Road
21 currently. The green arrows kind of dictate or show how
22 surface water wants to drain to this system.

23 The brown line on the north side of Wilson Road in
24 Muskegon County, that actually is currently under
25 construction right now. They're putting in like a 50-acre

1 residential development. And as part of that development
2 that blue line is getting established as county drain in
3 Muskegon. And then the pink line is the current private
4 watercourse that takes water out to Jerusalem Bayou or Spring
5 Lake.

6 So that's kind of a broader overview of how
7 drainage conditions function in this area.

8 Here is a look at just the soil conditions. And
9 not surprisingly given our proximity to Lake Michigan, we're
10 primarily in sandy soils.

11 I guess one thing of note with these soils is
12 although it's sandy and capable of infiltration, it also has
13 a very shallow water table. So in the summer months when we
14 get a hard rain, those soils are capable of infiltrating a
15 significant amount of water and we never see surface
16 flooding.

17 But what happens when that water table rises, is
18 now everything turns to 100 percent runoff and we get
19 extensive flooding. And the system that is currently in
20 place is just not capable of conveying that when we get these
21 high groundwater conditions and prolonged rains that we see
22 in the spring as well.

23 I'm just going to get into some of the photos.
24 Again these primarily came from this past spring.

25 This is mostly in the southern portion of the

1 district, the 168th near Hemlock. The photo on the left is
2 indicative of where we're seeing basement flooding. This
3 resident had been pumping for significant amounts of time and
4 kind of fighting against themselves because where he was
5 discharging his pump to really wasn't able to keep up with
6 what was required. Again just ponding on a private driveway
7 that's servicing a couple different properties.

8 We noticed that most of the flooding issues that
9 were occurring were in the southern portion.

10 Here we have flooded wooded areas. Again most of
11 this stems from the fact that these county road ditches
12 haven't been maintained over time, and also the culverts are
13 not sized adequately to convey a lot of this runoff.

14 Now the picture on the right is actually on the
15 east side of 168th Avenue. There is currently not even a
16 drainage ditch in this location, not really a positive outlet
17 for that water or culvert to get across to the west side of
18 168th Avenue. The picture on the left is kind of conditions
19 that were indicative of this past spring.

20 Obviously we have some road ditches there, but the
21 culvert is kind of a thin point, raising anywhere from 15 to
22 24-inch diameter for the amount of water that's being
23 conveyed to these locations.

24 These are a couple pictures that just kind of show,
25 I guess, the lack of maintenance.

1 The picture on the left is a large shrub that's
2 kind of growing into a tree at this point. This is right at
3 the, downstream onto the driveway culvert from the church,
4 making it, I guess, very difficult for stream flow to
5 function appropriately.

6 And then you can just see debris buildup over time
7 in a lot of these road ditches as well as we move to the
8 northern part near Wilson Street.

9 And actually the culvert under Wilson Street is
10 currently just a 15-inch diameter pipe. As part of that
11 development to the north in Muskegon County, the road
12 commission is actually upsizing that culvert to a 24-inch
13 diameter culvert at that location. Basically with the
14 understanding that they knew there was a potential petition
15 to the south in Ottawa County. That may be contributing, I
16 guess, more efficient flows to that system under Wilson
17 Street. So kind of a cooperative effort to accommodate any
18 future flow that would be coming this direction.

19 So just in summary, what we saw this past spring
20 was just widespread issues with flooding along 168th Avenue,
21 primarily on the west side of 168th. But we did -- I did
22 show a photograph there of flooding that's persistent on the
23 east side as well.

24 And again, just getting back to the fact that, you
25 know, these road ditches, their initial design is to drain

1 the roadway. It's not designed to be able to convey 59 acres
2 of runoff. So that's kind of the pinch point in this system.

3 And I think the main issue, if a project did
4 proceed forward, is basically following that same road ditch,
5 but just, you know, likely upsizing culverts and things of
6 that nature to be able to convey that 59 or 60 acres that
7 we're talking about.

8 So Stacy touched on previously some of the next
9 steps with how things proceed.

10 So obviously public testimony is very important.
11 We touched on obviously several things that we noticed, but
12 the folks in the district that live there and have
13 experiences over time, that's valuable to the board when they
14 are trying to make a decision here today.

15 The board is going to determine the necessity of
16 the petition, you know. If they turn the project down,
17 essentially the project ends today and nothing further is
18 going to be done from an engineering standpoint or an
19 improvement standpoint.

20 If they do find that the project is necessary, then
21 we'll work with the Ottawa County Water Resources
22 Commissioner's office, evaluate the scope of the project,
23 evaluate cost-benefit analysis of what's the best way to most
24 economically construct this drain, but still provide the
25 benefits that are required to try to alleviate a lot of this

1 flooding.

2 A lot of times with our designs we'll need to
3 obtain easements, sometimes permits from the state depending
4 on what we need to do. And we'll prepare construction
5 drawings that we need to bid out to contractors.

6 In some cases we may have a scope meeting with
7 property owners during the preliminary design stages as well
8 so we can get input from property owners as well along the
9 way.

10 So those are the item that I have. I'm more than
11 happy to take any questions from the board should they have
12 any.

13 BOARD CHAIRPERSON BILL CARGO: Thank you for the
14 presentation, Ryan.

15 BOARD SECRETARY KEN SOUTER: If you're running the
16 drain up to Wilson Street where it goes into Muskegon County
17 at that point and then comes back around, has there been any
18 look at the outlet where it's going into a currently natural
19 watercourse or a county drain down to, and into, I think you
20 said Jerusalem bayou?

21 ENGINEER RYAN MCENHILL: Yep, so we actually -- I
22 do storm water reviews in Muskegon County as well, and that
23 development was one that we reviewed as well. And we did
24 walk the downstream portion of that for a good chunk of it.

25 It's capable of conveying the flows from these

1 upstream areas. We didn't notice any issues that came to
2 light immediately based on our field visits that would be
3 cause for alarm to drain these properties more efficiently.

4 So, yes. You are correct in that that is a private
5 waterway and not under the jurisdiction of any county drain
6 commissioner's office.

7 BOARD CHAIRPERSON BILL CARGO: Any other questions
8 for the engineer?

9 Then before we open this for public comment, I
10 first want to ask is there anybody here from Spring Lake
11 Township or the road commission that would like to make
12 comment?

13 Seeing nobody from the road commission, or the
14 Spring Lake Township, I'll ask Steve again to briefly explain
15 how the public may make comments and then we'll open it for
16 public comments.

17 ATTORNEY STEVE KOSKI: Thank you, Mr. Chair.

18 Again, if anyone would like to comment, you can
19 select the Raise Your Hand option. You can pull that up
20 by -- if you pull up the participant's list, there is a
21 button beneath that list that will say Raise Your Hand; or
22 you can hover over your name and there should be a menu that
23 drops down that you can select Raise Your Hand.

24 If you are calling in by telephone, you can dial
25 star nine, and that will show me that you would like to

1 participate as well.

2 And once you -- once you are called on, you can
3 un-mute yourself and state your full name and address for the
4 record. Again, if you are calling by telephone, star six is
5 how you un-mute yourself and star nine is how you Raise Your
6 Hand.

7 You also can submit your comment via the chat
8 function. You can pull up the chat box and type your message
9 to me that you would like read into the record.

10 Same thing with that though, please state your name
11 and address for the record along with your comments.

12 BOARD CHAIRPERSON BILL CARGO: And, Steve, we'll
13 ask that you be the moderator for this public comment period
14 which will begin now.

15 ATTORNEY STEVE KOSKI: All right. I'd be happy to
16 do that.

17 One thing I'd like to confirm is with the Water
18 Resources Commissioner's office did you have anything that
19 you want read into the record for this one?

20 WATER RESOURCES COMM. JOE BUSH: We did not.

21 ATTORNEY STEVE KOSKI: Thank you.

22 So the first comment is from the user name Moto G
23 7, if you could un-mute yourself and state your name and
24 address for the record, please?

25 MR. BENJAMIN PORTER: Can you hear?

1 ATTORNEY STEVE KOSKI: Yes, we can hear you.

2 MR. BENJAMIN PORTER: Okay. I'm Benjamin Porter,
3 18951 168th.

4 Many of the pictures that were shown were in and
5 around my property. I'm the guy that was fighting with
6 himself with the water. So we've had this ongoing issue the
7 last couple of years pretty heavily. We've been on that
8 property 14 years now, and it's gotten much worse over the
9 last few years.

10 And it seemed as though the drainage was kind of
11 cutoff north of us with some development that happened before
12 the recent stuff, but it's continually gotten worse.

13 Now we're to the point where, you know, I've got
14 just about two acres, I'm the first house of three on that
15 private drive. And all three of our properties have been
16 pretty negatively affected.

17 I've had quite a bit of basement flooding, damages
18 in our house. I got three kids and my kids, once spring and
19 summer roll around, my kids struggle to go outside because
20 the property is so wet, mosquitos and tics are really bad.
21 We have been paying somebody professionally to come and
22 spray, which helps, but because of the saturation it gets
23 really hard.

24 So I guess, you know, I guess I'm kind of one of
25 the guys that got this whole ball rolling. But we've seen

1 significant increase in issues with water over the last, I
2 would say, five years. And I'm just -- we're just to the
3 point now where it's getting bad enough where obviously we're
4 trying to do something to help fix this situation.

5 My wife and I have considered selling our property
6 in the next couple of years because we're kind of outgrowing
7 it, and I feel like with the water issues right now, it's
8 almost impossible to try to do that. And try to sell a
9 property that's -- you know, that you can almost guarantee is
10 going to flood. It's pretty hard to do.

11 BOARD CHAIRPERSON BILL CARGO: Thank you very much.
12 Steve, who is up next?

13 ATTORNEY STEVE KOSKI: The next comment is from the
14 telephone number 3333 ending in those four.

15 If you could dial star six to un-mute yourself, and
16 then state your name and address for the record, please.

17 MR. GARY SHOTKE (sic): I'm Gary Shotke (sic), I'm
18 co-owner with GSDT. We own that south -- from Wilson Street
19 all the way down past the church, another 223 feet I believe
20 it is, the section 200-047 and all the way out to the
21 highway.

22 And I share the original caller in, his issues with
23 this wetland deal. We've walked that culvert several times
24 ourselves and found that like that bush that you had on the
25 photo, there is a lot of blockage that I think if that just

1 gets all cleaned up, it certainly would help our situation.

2 There is two culverts coming over from the
3 development on the east side of our property, and I'm not
4 sure how that got there, but they're draining everything into
5 our culvert which might be a part of his problem too because
6 the culvert is just, as the engineer said, not large enough
7 to handle the capacity of this runoff.

8 So I'm glad you're taking a look at it. I'd love
9 to be involved with it if anything comes up. We have got a
10 major portion of that frontage so, yeah. I'll just follow
11 you guys and see what we can do, if we can assist at all.

12 But I thank you gentlemen, and that's all I have.

13 BOARD CHAIRPERSON BILL CARGO: Thank you very much.

14 Steve, do we have any other people that would like
15 to make public comment?

16 ATTORNEY STEVE KOSKI: I do not see any other hands
17 raised at this time or chat message.

18 If anyone is having any issues with raising their
19 hand on here, you can turn your camera on and wave your hand
20 if you have to, so I can call on you.

21 I see one here.

22 Mary Ryan, if you could un-mute yourself please and
23 state your name and address for the record.

24 BOARD CHAIRPERSON BILL CARGO: Steve, can you
25 un-mute her?

1 ATTORNEY STEVE KOSKI: Yes. There is a message
2 that's popping up asking to un-mute you. There you go.

3 MS. MARY RYAN: Thank you.

4 I'm at the very south end of the drainage district,
5 and we're kind of on a hill. We've not experienced any
6 flooding on our property ever, and we've been here for over
7 30 years. So we're confused as to why we're included in this
8 district.

9 BOARD CHAIRPERSON BILL CARGO: I think we can
10 answer that for you. I'm going to ask is Stacy still here?

11 ATTORNEY STACY HISSONG: Yes.

12 BOARD CHAIRPERSON BILL CARGO: Stacy, can you
13 explain why people who may be on a higher ground that aren't
14 having any problem are included in this process?

15 ATTORNEY STACY HISSONG: Yes. As we mentioned,
16 that if you contribute water to the drain, whether you're
17 having a problem or not, the Drain Code is not necessarily
18 based on assessing those who have a problem, but basically
19 those who contribute water to the drain. So it's providing a
20 public outlet for the water from properties and those would
21 be liable for an assessment.

22 Now all assessments aren't going to be equal. The
23 Water Resources Commissioner can look at facts and
24 circumstances in coming up with an apportionment methodology
25 for the drainage system, but we really look at contribution

1 first and foremost.

2 MS. MARY RYAN: Okay. I have another question.

3 The property across the street from us that's on
4 the curve, that property is almost always flooded, and it's
5 not included in this drainage district. So we're also
6 curious why that isn't included.

7 ATTORNEY STACY HISSONG: And I think Ryan can
8 probably explain that. But basically the engineer drew the
9 drainage district boundaries by topography and by the road
10 drainage. So if you have somebody across the street, their
11 water probably goes somewhere else. And Ryan can explain
12 that further.

13 But even -- and for a next door neighbor there can
14 be a watershed break right next to you, or even on a piece of
15 property. That's why we -- a property can only be partially
16 in one watershed and partially in another.

17 MS. MARY RYAN: Okay. Thank you.

18 BOARD CHAIRPERSON BILL CARGO: Thank you.

19 Ryan, I think that was answered pretty clearly
20 there, so I don't think we need your input.

21 Basically our bottom line is engineering 101 we
22 know water flows downhill. So thank you.

23 Any other public comments, Steve, that you have?

24 I'm sorry, ma'am, did you have any other questions?
25 I didn't want to cut you off.

1 MS. MARY RYAN: No, I'm all set. Thank you.

2 BOARD CHAIRPERSON BILL CARGO: Okay, Steve, any
3 other public comments?

4 ATTORNEY STEVE KOSKI: Mr. Chair, I do not see any
5 other comments at this time.

6 BOARD CHAIRPERSON BILL CARGO: Well thank you.

7 At this stage then what we're going to do is I'm
8 going to close the public comment portion of this public
9 hearing and we're going to have a discussion among the Board
10 of Determination members.

11 Ken, I'm going to start with you, do you have any
12 comments that you'd like to make after hearing this testimony
13 or any questions?

14 BOARD SECRETARY KEN SOUTER: Other than the
15 question I brought up before as a possibility, it sounds like
16 even though it's a natural watercourse, there is a public --
17 there is an outlet for this drainage into Muskegon County.

18 So it looks like the problem child is drains, and
19 we know the road commission mainly drains their roads, to
20 drain their roads and not the surrounding property.

21 So I think it does make some sense to get rid of
22 some of this water. And if there is work being done in
23 Muskegon County to help alleviate the problem, it makes a lot
24 of sense to me that we do the same thing.

25 BOARD CHAIRPERSON BILL CARGO: Okay.

1 Rich, do you have any questions or comments?

2 BOARD MEMBER RICH VANDER KLOK: No, just to thank
3 the people who made comments. And I agree with what Ken just
4 said.

5 BOARD CHAIRPERSON BILL CARGO: My comment would be
6 that to me it's clear that there is a problem and a need for
7 this drainage district to be established. And so given the
8 testimony we've received, there seems to be a fairly simple
9 solution to this in terms of an engineering issue.

10 So I would look for a motion to approve this or to
11 make a determination that this is necessary.

12 BOARD MEMBER RICH VANDER KLOK: Mr. Chairman, I
13 would make the motion that the proposed location,
14 establishment and construction of the Agape Drain as
15 petitioned on June 8, 2020, is necessary and conducive to the
16 public health, convenience or welfare.

17 BOARD SECRETARY KEN SOUTER: I'll second that
18 motion.

19 BOARD CHAIRPERSON BILL CARGO: So we have a motion
20 and support on the floor.

21 Any further discussion among the Board
22 Determination members?

23 BOARD MEMBER RICH VANDER KLOK: No.

24 BOARD SECRETARY KEN SOUTER: No.

25 BOARD CHAIRPERSON BILL CARGO: In that case I'd ask

1 that Steve do a roll call vote.

2 ATTORNEY STEVE KOSKI: Bill Cargo?

3 BOARD CHAIRPERSON BILL CARGO: Yes.

4 ATTORNEY STEVE KOSKI: Rich VanderKlok?

5 BOARD MEMBER RICH VANDER KLOK: Yes.

6 ATTORNEY STEVE KOSKI: And Ken Souter?

7 BOARD SECRETARY KEN SOUTER: Yes.

8 BOARD CHAIRPERSON BILL CARGO: At this time then we
9 have made a determination that this proposed drain is
10 necessary, conducive to public health convenience or welfare.

11 I'm going to ask that Stacy briefly discuss the
12 appeal process before we adjourn.

13 ATTORNEY STACY HISSONG: Thank you, Mr. Chair.

14 There is an opportunity to appeal the decision of
15 necessity, if anyone is aggrieved by this decision, they have
16 the opportunity to appeal the decision in Ottawa County
17 Circuit Court within ten days from today.

18 And with that, Mr. Chair, I think we're all set.

19 BOARD CHAIRPERSON BILL CARGO: Okay, one last
20 chance, I want to give the Water Resources Commissioner, Joe,
21 a chance to make any comments.

22 Joe, do you have anything to say before we adjourn
23 this meeting?

24 WATER RESOURCES COMM. JOE BUSH: I just want to say
25 thanks, everyone, for tuning in this morning or this

1 afternoon for the BOD. Thank you for taking the time.

2 Mary, it's good to see you, it's been a while.

3 And thanks, everyone, have a great day.

4 BOARD CHAIRPERSON BILL CARGO: Then without
5 objection, this meeting is adjourned.

6 (BOD adjourned at 12:25 p.m.)

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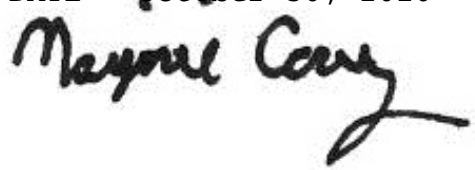
STATE OF MICHIGAN)

) SS

COUNTY OF MUSKEGON)

I certify that this transcript, consisting of 36 pages, is a complete, true and correct record of the Board of Determination for the Agape Drain held on October 19, 2020.

DATE: October 30, 2020



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Notary Public Expires: October 14, 2021, Muskegon County, Michigan/Acting in the State of Michigan.

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