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STATE OF MICHIGAN

COUNTY OF OTTAWA

IN RE: BIRCHWOOD DRAIN

BOARD OF DETERMINATION

Proceedings commenced at 10:00 a.m., on Wednesday,
August 24, 2022, at the City of Holland Offices, 270 South
River Street, Holland, Michigan, held before Marjorie A.
Covey, CSR-2616, RPR, Certified Shorthand Reporter and Notary
Public.

APPEARANCES:

Mr. Joe Bush, Ottawa County Water Resources Commissioner
Mr. Josiah Timmermans, Chief Deputy to Water Res. Comm.
Ms. Marie Snyder, Secretary
Mr. Chris Machiela, Drain Inspector

Mr. Bill Cargo, Board Chairman
Mr. Josh Westgate, Board Secretary
Mr. Rich Vanderklok, Board Member

Mr. Brian White, Holland City Engineer

Ms. Claire Schwartz, Fishbeck Thompson
Mr. Tony Health, Fishbeck Thompson

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Holland, Michigan

August 24, 2022 - 10:00 a.m.

PROCEEDINGS

WATER RESOURCES COMM. JOE BUSH: Well good morning, everyone. Welcome to city hall for the Birchwood Drain Board of Determination.

I'm Joe Bush, your Ottawa County Water Resources Commissioner. We usually don't have these in the city of Holland, so a little bit about me. I again, I used to be called the Drain Commissioner, it's the Water Resources Commissioner, same office, different title. And that happened to be back in 2012 when, at that time, the county changed the name from again, Drain Commissioner to Water Resources Commissioner.

So I am one of the countywide electeds, just like the sheriff, prosecutor, your clerk and your treasurer. I'm again, one of the countywides.

We don't do very many petitions in the city on county drains, but this morning we do have a Board of Determination.

Some of you are probably like, well why are we here, and how am I in this drain district? Well everybody is in a watershed, or a drain district. Somebody's water goes somewhere in some direction at some point in time, whether it's in the winter when the ground is frozen or just in a

1 flood or some situation, somebody's water goes in some
2 direction. And that's a watershed, or what we call a drain
3 district.

4 And you can tell on the two maps that are up on the
5 TV screens, that's kind of the overall watershed of the drain
6 district for today's Board of Determination.

7 And some people are like, well why are we at city
8 hall? Well we have to pick a location within the city. That
9 location today is the city hall.

10 And then, why do we have to go through this
11 process? Well what we're talking about today is -- it's a
12 drain, but it's an orphan drain. I have over 1300 county
13 drains that the county has jurisdiction over, and I do
14 maintenance on them. Kind of like, just like your water
15 system, your drinking water, this is kind of the same
16 situation where the county oversees the storm sewer.

17 Whether it's an open drain or an enclosed drain,
18 the county, me, one of my duties as the Water Resources
19 Commissioner is to oversee that drain system, make sure it's
20 working properly, make sure the water quality is somewhat up
21 to par, being soil erosion issues makes poor water quality,
22 and we can get into a long laundry list about that
23 responsibility when it comes to water quality and water
24 quantity and flooding.

25 But this particular drain that we're here today for

1 is called an orphan. And I don't have any jurisdiction over
2 it, but we've been getting phone calls from people concerned
3 about the erosion going on, or what's going on downstream,
4 what's going on upstream.

5 And we're getting more and more of this with the
6 climate change. Some people don't like to hear that word but
7 there is definitely some issues when it rains, it doesn't
8 rain an inch in a day, well it has lately, the last couple of
9 storms have been pretty nice, but typically it's two inches
10 in an hour or three inches in an hour, which drives us crazy
11 because it's hard to predict that, number one; number two,
12 this orphan drain has been around, I would imagine, since the
13 late 1800s, early 1900s, just like a lot of my county drains
14 were.

15 They were established a long time ago when the
16 Dutch came over and started developing. That's why Michigan
17 is the only state that has drain commissioners is because of
18 the development over the years, and somebody had to oversee
19 the county drain systems.

20 So that being said, this particular drain we're
21 talking about, again, is an orphan where the city doesn't
22 have really jurisdiction over it, neither does the county, or
23 the road commission, or anybody else, the street department,
24 the BPW.

25 It's really one of those things that's a natural

1 watercourse that has issues, and there is people, residents
2 who are concerned about that.

3 And there is a few ways to petition that. Either
4 the petition -- the petitioner can either be the road
5 commission, which they didn't; it can be the city, and the
6 city didn't petition this. The residents can petition, and
7 they did.

8 So that's why we're here. When we get a petition
9 from the public, the residents, there is a process. There
10 are so many signatures that the person circulating it has to
11 get, and once they receive that, we go through all the legal
12 parts of that. And then we setup a Board of Determination to
13 hold a public hearing to hear public testimony.

14 Whether you have issues or not, you know, we do not
15 have a project, there is no project because we have to hold
16 the hearing first. We have to figure out what the issues are
17 and put a scope together on what that might look like.

18 Some people are like, wait a minute, you already
19 know what you're going to do? We have no clue. We're just
20 here today to hear testimony, strictly testimony.

21 These three gentlemen who I appointed today as my
22 Board of Determination, their job is to say, all right, does
23 this project, or drain, become under my jurisdiction to come
24 up with a project. That's why we're here today.

25 So they're not here going, we're going to spend a

1 million dollars today because we think it's necessary. These
2 three gentlemen have no idea about the issues on this drain,
3 that's why we invite the public.

4 And again, I am neutral, I'm not in favor of or not
5 in favor of because, again, I have, by law -- this is all
6 through Drain Code, I have to appoint a three-panel board.
7 Again, their sole job today is whether it's necessary to move
8 forward under my jurisdiction to maybe come up with a
9 project. So that's the only reason that they're here today.

10 Some people are saying, well who pays and what's
11 the cost going to be. Again, we don't have that. Nor am I
12 going to go spend 50,000 or a hundred thousand on
13 engineering, this Board could turn this down today and say we
14 don't see this necessary, and I sit on a \$50,000 cost. That
15 would be very bad.

16 So we do a very preliminary, upfront kind of a
17 drain district, and this is kind of the issues. We take some
18 pictures out on site. And then we kind of talk to the
19 residents who have been calling and going, hey, with these
20 erosion issues, they're getting worse over the years, and
21 usually they do. They don't fix themselves.

22 Natural watercourses have a unique way to make a
23 lot of bends and turns and twists, and erosion is basically
24 the number one issue that comes out of that in all those
25 bends and twists, and when you have this kind of a climate

1 change with rain events.

2 So anyway, that's why we're here today is for a
3 Board of Determination, to give testimony and so this Board
4 can make a decision.

5 So once I give the oath to these three gentlemen,
6 they will be running the meeting. They'll pick a chair, a
7 secretary, they'll do everything they need to do to run
8 today's hearing.

9 I'll sit back and answer any questions that may
10 arise. But, you know, I'm not involved as far as making
11 decisions until after the fact. And again, this Board makes
12 that decision.

13 So I'll do introductions in a second. Everything
14 is court recorded. I've been doing this since I got elected,
15 and it takes about four to six weeks to be on my website.
16 But I'm very transparent, and everything is word for word
17 from the time I start until the time it ends.

18 So I hire a court reporter, which is not required
19 by law, but I do for the protection of everybody here today,
20 whether it's the city, which I'll give introductions in a
21 minute, whether it's me, whether it's the Board, whether it's
22 whatever the outcome is, it's always nice to go back years
23 later, because we forget, because we're so busy and our minds
24 wander all the time, what was said, who said what, and what
25 are we going to do.

1 So I like to have that court recorded, and it's
2 always on my website for every one of my projects since I've
3 been elected since 2013.

4 So that being said, if anybody wants to kind of
5 review what was said or why we're here, you can always go
6 back and read it.

7 Again, Margie has been with us for many, many years
8 and done a lot of these. So if you do have public testimony,
9 please speak loudly for her, and give your name, address, and
10 just kind of share your thoughts on why you're here today and
11 ask any questions.

12 Like I said, it's all about being transparent. We
13 always have been and we're happy to entertain any type of
14 answer we have at the moment. Some we don't have answers for
15 because we don't have a project. We don't have a cost and we
16 don't know what the overall scope looks like, so let me get
17 that out of the way. We don't have that information yet.

18 And then who else? We got Brian White is from the
19 city, he's the city engineer. Brian White and I have worked
20 together on many projects over of the years on intercounty
21 drains, and even -- there is drains in the city, it's just
22 typically we don't have a petition forum necessarily. It's
23 not very often.

24 Then we have Claire Schwartz and Tony Heath,
25 from -- they're from Fishbeck. They're the engineering firm

1 that's kind of involved in this project.

2 They also work with Brian White very well on a lot
3 of other projects, reviewing development sites or just
4 assisting the city of Holland, their firm between Claire and
5 Tony work a lot with Brian White.

6 And then we got my staff, my secretary, Marie is
7 here. And then we have Josiah, my chief deputy. And we have
8 Chris Machiela, he's here as well, he's my drain inspector.
9 He'll give kind of an overall view of maybe some of the pics
10 that were taken out there and walk through that here in a few
11 minutes.

12 At this time I'll go ahead and introduce my Board
13 for today.

14 Again, when I appoint the three-panel board, these
15 three gentlemen have been with my for quite some time.
16 Number one, they understand Drain Code, they understand
17 drainage, they understand how to run a meeting, because those
18 are about the most -- the three most crucial parts of why to
19 be here.

20 And also they understand drainage in a different
21 way because they all have leadership roles in their own --
22 their jobs or their previous jobs. They understand the
23 purpose of today because they've been in your shoes. So
24 that's -- when I appoint people for boards -- and they have
25 no affiliation with any of the properties in the watershed or

1 in the city of Holland. They're all outside of that. I
2 can't appoint people who live nearby or live in or live just
3 on the outside. These three gentlemen do not.

4 So that's one of the main things I look at is
5 experience, and they've been doing these drain boards of
6 determination for quite some time. So they understand their
7 purpose, which is very critical as how I see it.

8 So at this point, we have Rich Vanderklok, he is
9 from Georgetown Township, previous board member at Georgetown
10 Township Board.

11 Then we have Bill Cargo, he's from Grand Haven
12 Township. We have a Georgetown Township, we have Grand Haven
13 Township. He is the city -- or township manager, been there
14 for a long time.

15 Then we have Josh Westgate, and he is previously
16 the Wright Township Supervisor, way up in the, in God's
17 county in Wright Township. So again these three gentlemen
18 have no prior land or anything in this watershed.

19 Again, once I give them the oath, they'll be
20 running this meeting at that time.

21 So gentlemen, please rise and raise your right
22 hand.

23 Do you each solemnly swear that you will faithfully
24 perform and discharge the duties imposed upon you, as
25 required by law, as members of the Board of Determination,

1 appointed by the Ottawa County Water Resources Commissioner,
2 to determine the necessity to locate, establish, and
3 construct, the Birchwood Drain located in the city of
4 Holland, in said county, gentlemen?

5 (All said, "I do.")

6 BOARD MEMBER BILL CARGO: The first thing we need
7 to do is to elect a chairperson and a secretary.

8 Do I have a motion to elect a chairperson?

9 BOARD MEMBER RICH VANDERKLOK: I would move Bill
10 Cargo serve as chair.

11 BOARD MEMBER JOSH WESTGATE: I will support that
12 motion.

13 BOARD MEMBER BILL CARGO: It's moved and supported.

14 All in favor, say aye.

15 (All said, "Aye.")

16 BOARD CHAIRPERSON BILL CARGO: And I'll make a
17 motion that Josh Westgate be the secretary for this Board of
18 Determination.

19 Do I have support?

20 BOARD MEMBER RICH VANDERKLOK: I will support that.

21 BOARD CHAIRPERSON BILL CARGO: Then again we have
22 motion and support.

23 All in favor, say aye.

24 (All said, "Aye.")

25 BOARD CHAIRPERSON BILL CARGO: Josh, you are the

1 secretary.

2 The rules for public comment typically, you can
3 summarize War And Peace in a very short period of time. And
4 we want people to express their opinions here, but what we
5 don't want to do is have a half-hour discussion about
6 something that's in front of us right now.

7 So I will make a motion that we limit public
8 comments to three minutes per individual.

9 BOARD SECRETARY JOSH WESTGATE: I'll support that
10 motion.

11 BOARD CHAIRPERSON BILL CARGO: We have a motion and
12 support.

13 All in favor, say aye.

14 (All said, "Aye.")

15 BOARD CHAIRPERSON BILL CARGO: And then the first
16 thing we're going to do is get the engineer to make a
17 presentation.

18 After that I will ask for comments from the city
19 representatives, but the engineering firm who has taken a
20 preliminary look at this, if you could come up to the podium
21 and give a presentation, I would support it.

22 Again, as with the public, please give your name,
23 address, and again the firm that you're with.

24 ENGINEER TONY HEATH: Hello, my name is Tony Heath.
25 My address is 617 Kellogg Street, Southeast, in Grand Rapids,

1 Michigan. And I'm a civil engineer with Fishbeck working
2 with Claire Schwartz, who is here as well.

3 Our work on this drain has been fairly preliminary.
4 We were approached by Joe Bush in winter of 2020, early --
5 sorry, winter of 2021, early 2022 about this project, about
6 this Board of Determination, and he requested that we perform
7 a desktop delineation of the watershed and potential drainage
8 district for the Birchwood Drain.

9 We performed that delineation as a desktop
10 delineation, so we did not perform a field investigation of
11 the site or investigate any of the claims of the petitioner.
12 Our work was limited to delineating the watershed for the
13 Birchwood Drain that you can see on the figures that were
14 passed out in back and are on the screens in front of you.

15 The drain district that we delineated is based on
16 the most downstream point where the Birchwood Drain flows
17 into the Macatawa River. It consists of two main channels, a
18 primary channel to the west and a secondary channel to the
19 east .

20 Our delineation for this was based off of GIS
21 information that our firm has available through partnerships
22 with Ottawa County and the city of Holland, as well as city
23 of Holland storm sewer information that we received from them
24 due to earlier work that we've done developing their storm
25 water management plan.

1 That is the extent of my comments. Are there any
2 questions?

3 BOARD CHAIRPERSON BILL CARGO: We have some
4 pictures that were given to us. Have you looked at the
5 pictures and do you have an opinion on the amount of erosion
6 that is there? Is the amount of erosion in your opinion
7 problematic or is it going to cause future problems?

8 ENGINEER TONY HEATH: No, we haven't received the
9 pictures or investigated them. I will leave that to the
10 drain inspector from the Water Resources Commissioner office.

11 BOARD CHAIRPERSON BILL CARGO: Okay. In that case,
12 we have the Water Resources Commissioner inspector. If you
13 want to make some comments, if you could come to the podium.
14 I know you've already been introduced, but if you would, for
15 the record, give your name and address.

16 DRAIN INSPECTOR CHRIS MACHIELA: Sure, Chris
17 Machiela, four seven eighteen, Zeeland, Michigan.

18 I did an inspection which originally started this
19 process of looking at the different photos you can see in a
20 couple of different backyards, just assessing the situation,
21 looking at the amount of undercutting and the destabilization
22 of the banks of where we're having erosion issues, which are
23 causing sediment buildup downstream and all that stuff.

24 So I basically looked at a couple of bad spots and
25 that's what ended up getting the process started.

1 BOARD CHAIRPERSON BILL CARGO: How severe would you
2 consider the erosion to be that you observed?

3 DRAIN INSPECTOR CHRIS MACHIELA: The few spots that
4 I observed vary. I mean it's undercutting the bank, where
5 the banks are overhanging. And you're starting to get some
6 sluffing of the banks where the sides are falling in. And it
7 keeps working more towards residential housing and on the
8 curve or the direction of the drain at the time.

9 BOARD CHAIRPERSON BILL CARGO: Okay. Anything else
10 you'd like to share with us, Chris?

11 DRAIN INSPECTOR CHRIS MACHIELA: I don't think so,
12 just a few pictures.

13 BOARD CHAIRPERSON BILL CARGO: Okay. Then before I
14 open this to the public, we also have Brian White, the city
15 engineer here.

16 Brian, if you could come up here and again, just
17 for the sake of the record, give your name and address?

18 CITY ENGINEER BRIAN WHITE: Yes, good morning,
19 Board. Good morning members of the public. My name is Brian
20 White, I'm the City Engineer and Director of Transportation
21 services for the city. I live actually on the north side,
22 1423 Stillwater Drive in Holland.

23 Just a couple of comments here. Really I want to
24 strike a neutral position on this item before us today. I
25 can certainly share Chris's observations of certain areas of

1 this draining do have some erosion. I've walked most of the
2 drain myself, but there are a lot of areas of this drain
3 where I feel it's in pretty good shape.

4 We've got some historical photos that I think I've
5 shared with folks involved from the 1950s that basically show
6 the drain before all the development occurred around the
7 drain. And it was basically in the same spot as it is now.
8 So I think that, you know, the drain has long been
9 established, it's been there for a long time.

10 As far as complaints that the city has received, we
11 certainly have received some. I think probably from a lot of
12 the same folks that have contacted the county.

13 As Joe said earlier in the meeting, we typically
14 take a stance at the city where if we do not have an easement
15 to perform any work on the drain, then we do not respond to
16 those comments, and we leave it up to the property owners to
17 basically handle their own specific situations that they may
18 be experiencing along the drain.

19 And again, you know, we checked our records, we do
20 not have any easements that we're aware of in the area where
21 the pictures are taken from, and where there are some issues
22 of drainage and erosion concerns.

23 You know, another thing too that I think is a
24 challenge with this particular situation is access. I know
25 that, again, the drain has got a lot of different buildup

1 along the drain, and just to get access back there, I think
2 is certainly a challenge.

3 So I would certainly want to make that an important
4 aspect of the project, were that to move forward that you
5 certainly want to evaluate and understand how to get access
6 to these areas.

7 And then I guess the last thing that I'll share in
8 terms of the outcomes; to my knowledge, there aren't any
9 structures that are in jeopardy, you know. Nobody has called
10 and complained to us that, you know, their basement is
11 flooded or anything like that.

12 Obviously, if that were the case, we would
13 certainly be probably more of an active participant in this.
14 But I think we're talking about erosion in a couple of
15 individual spots along the drain. And we believe that each
16 individual property owner can address those, as they may,
17 moving forward, and basically protect their own property
18 accordingly.

19 So that's, I guess, from our perspective --

20 BOARD CHAIRPERSON BILL CARGO: A couple of
21 follow-up questions. If you're saying that you think the
22 individual property owners should be able to handle the
23 erosion, that's not really a neutral position. You're not
24 showing support for putting this into a drainage district,
25 correct? You're saying the individual property owners should

1 be handing these problems?

2 CITY ENGINEER BRIAN WHITE: I'm saying from the
3 city's perspective, we're not interested in basically
4 creating a city drain, if you will.

5 BOARD CHAIRPERSON BILL CARGO: Okay. Let me ask a
6 question then. When we're talking about this watershed, do
7 any of your street drains empty into this watershed? Because
8 you have a lot of impervious area. Are you adding water as a
9 city to this drain?

10 CITY ENGINEER BRIAN WHITE: We are. In fact, along
11 8th Street, there are drains that are low-flow drains that
12 flow into this. There is also a relief drain, a 60-inch
13 relief drain that goes down Cambridge, basically takes water
14 along 8th Street and empties out into the creek down by Paw
15 Paw, and the Paw Paw bridge there. So --

16 BOARD CHAIRPERSON BILL CARGO: Up to the area where
17 we have the erosion, is the city upstream of that adding
18 water to it?

19 CITY ENGINEER BRIAN WHITE: We are, yes.

20 BOARD CHAIRPERSON BILL CARGO: Okay. So, given
21 that, do you think that could be the cause for the erosion,
22 that you're taking all this impervious area and putting the
23 water into stream?

24 CITY ENGINEER BRIAN WHITE: Yeah, sure. And,
25 again, I would go back to the historical perspective on that

1 in that this drain has been there for a very long time, and
2 we've had very few complaints with regard to erosion along
3 that drain.

4 BOARD CHAIRPERSON BILL CARGO: Okay. But it is an
5 orphan drain. So when you say a drain, it's typically --
6 it's not really a city drain, and it's not a county drain,
7 it's an orphan drain meaning nobody has responsibility for
8 it.

9 CITY ENGINEER BRIAN WHITE: Well I think each
10 individual property owner has the ability to work on that
11 drain.

12 BOARD CHAIRPERSON BILL CARGO: Well, Brian, I want
13 to push back a little bit on that because you're adding water
14 to it, but you're saying you have no responsibility for it.

15 CITY ENGINEER BRIAN WHITE: I would say we've been
16 adding water to that for a very long time. And that there is
17 an obligation from downstream property owners to accept that
18 water, and it's a low-flow situation. So, yeah. I think
19 that, to me, there is an obligation by downstream property
20 owners to receive water.

21 BOARD CHAIRPERSON BILL CARGO: Okay. That's an
22 unusual position, I've not heard that before.

23 Any questions from the other Board members?

24 I mean I understand they have to accept the water.
25 I'm just surprised that since it's coming from city streets,

1 that you don't feel you have any obligation to maintain the
2 drain.

3 CITY ENGINEER BRIAN WHITE: Yeah, sure. And I
4 would, again, state that we're a piece of the overall
5 watershed. And that, you know, each individual property
6 owner contributes water in addition to the city.

7 BOARD CHAIRPERSON BILL CARGO: Okay. I appreciate
8 it. Thank you.

9 CITY ENGINEER BRIAN WHITE: Thanks.

10 BOARD CHAIRPERSON BILL CARGO: We're going to -- is
11 there anybody else from the city that would like to make any
12 comments?

13 That said, I am going to begin having comments from
14 the public. Again, when you come to the podium, just please
15 give your name and address.

16 And I'm going to start in the very front row, the
17 individual right here, if you would like to make any
18 comments, now is your opportunity.

19 UNKNOWN SPEAKER: I don't have any.

20 BOARD CHAIRPERSON BILL CARGO: Nothing. I'll go to
21 the second row on the far left, the individual next to him?

22 Next?

23 Okay. In the -- the lady in the red, would you
24 like to make any comments? Please come and give your name
25 and give your address, please.

1 MS. LINDA FALSTAD: I'm Linda Falstad, I live at
2 152 Birchwood Avenue, Holland Michigan.

3 I've lived in my home at 152 Birchwood for 41
4 years. And we bought our property because of it being on a
5 cul-de-sac and, you know, the beauty of nature in our
6 neighborhood.

7 Over 40 years, we've invested a lot of money in our
8 property, and the city of Holland and our taxes show that,
9 we've invested in our home.

10 And back in '96, we put in ground sprinkling, and
11 we put in an invisible fence for our dog. And we put those
12 on our -- we own both sides, where the storm drain runs
13 through. So we own pieces of property on both sides.

14 We have a bridge through our yard which we've
15 replaced many times as the width of that storm drain has
16 increased.

17 We've had rain that I have videos of that over the
18 years has come up probably within ten feet of our house over
19 the years when we had substantial rainfall. This has been an
20 unusual year.

21 Currently, there are pictures, they don't come out
22 very well here, that show I have two to three feet of my
23 irrigation system hanging into the storm drain, and my
24 invisible fence is now hanging in that storm drain.

25 When we installed those in '96, '97, they were

1 probably five or six feet from the edge of the storm drain.
2 So that we never imagined we would have them hanging in the
3 storm drain.

4 There is substantial erosion, and I'm concerned. I
5 invest in my property. I have people downstream, it is an
6 open, public drain. And I think that either I can fill it in
7 if the city wants me to and do what I want because I'll just
8 fill it in, I don't really care what happens to the other
9 people, if it's my responsibility. It's not. It is a public
10 system.

11 And as the public, we have a responsibility to
12 provide for quality of life. Thank you.

13 BOARD CHAIRPERSON BILL CARGO: Thank you.

14 I'm going to go across the aisle, the gentleman in
15 the row here, if you'd like to make a comment, give your name
16 and address please.

17 MR. CURT BAKKER: Curt Bakker, I'm on that
18 cul-de-sac, 147 Birchwood.

19 I've got some erosion on the east side, quite a bit
20 of erosion where the drain is against a hill, and goes up
21 towards Timberwood, I believe it is. And starting to erode,
22 and the trees are all leaning into my yard.

23 And the comment I'd like to make about the whole
24 drain system is there might have been -- I mean there is
25 storm sewers that go to that drain, but there is so much

1 housing that got built up over the years, that there is no
2 place for the water to sink into the ground anymore. It just
3 all goes to the streets, so we're getting more water to those
4 drains. So that's my comment.

5 BOARD CHAIRPERSON BILL CARGO: I appreciate it.

6 The gentleman next to him? Again, just a reminder
7 for name and address.

8 MR. BOB TEASLEY: Bob Teasley, 205 Country Club
9 Road.

10 My comment would be this, as the city reported, in
11 looking at the historical perspective of the drain system,
12 overall it's remained intact for the number of years.

13 Where we live we have some different drainage
14 problems that I would call cropped up, but me and my
15 neighbors, we take care of it. We make the improvements that
16 we need to our yard.

17 The city said there is nothing preventing these
18 homeowners from doing the same thing over time to help
19 prevent their yards from being replaced, while the
20 establishment of this drain district would then all of the
21 sudden distribute all of that responsibility to the rest of
22 us relative to our taxes, to our fees, to all the rest of
23 that stuff, that we would then be public.

24 I don't see the issue. As the city said we could
25 fix the problem. I understand they might not like it. We

1 haven't liked everything we've done, but at the same time
2 we've done it.

3 That's my thoughts.

4 BOARD CHAIRPERSON BILL CARGO: Before we go on I
5 have a question for the Drain Commissioner. Is this stream
6 regulated by the state? Is this an inland stream that would
7 be regulated by the state of Michigan? In other words, would
8 you have to get a permit from the state to do work?

9 WATER RESOURCES COMM. JOE BUSH: That is correct.

10 BOARD CHAIRPERSON BILL CARGO: So an individual
11 homeowner, if they were doing any substantial work, they
12 would actually have to get a permit through the state, which
13 is not an easy process, obviously.

14 WATER RESOURCES COMM. JOE BUSH: I would say that's
15 correct.

16 BOARD CHAIRPERSON BILL CARGO: Thank you.

17 The individual next? Okay.

18 Next?

19 MR. TOM BOSSARDAT: Good morning. Tom Bossardat,
20 258 Sterling Drive.

21 The questions I got, you know, I sympathize because
22 Sterling Drive, if you look at the history of Sterling Drive,
23 we've had issues that we still continue to have issues.

24 But I'm curious, with all -- if you look at the
25 zone and the boundaries, how much construction that is going

1 on around our area, you know, up 16th Street, the condos and
2 apartment complexes and all this stuff, and it affects the
3 lay of the land as far as where everything drains and
4 everything like that.

5 And like they were talking about, you know, they
6 add all this stuff, and everything goes in to, you know,
7 storm water has got to go somewhere.

8 And so I'm kind of wondering, when we built -- or
9 when we moved into your house on Sterling, you know, the
10 backyard was a natural drain, okay. And it had an elevation
11 to a frog pond, okay, that's on 8th Street. And it was
12 supposed to be different phases because we had all kinds
13 of -- I got pictures of flooding and everything else.

14 But, you know, there were several phases that were
15 supposed to go on, and cleaning the frog pond out to allow
16 the water because it has a big culvert that goes under 8th
17 Street and it dumps off, and that's still a big issue.

18 So I'm just -- it's just curious to me with
19 everything going on, with all the construction and everything
20 like that, that, you know, we're not looking at the big
21 picture and where is all this water going to go.

22 BOARD CHAIRPERSON BILL CARGO: It's unusual to have
23 this developed of an area be an orphan drain. So you're
24 right. There needs to be some oversight on that because
25 there is a lot of impervious areas, based on the map. The

1 more impervious area you have, the more runoff you have, the
2 more it will put a burden on the natural inland streams.

3 MR. TOM BOSSARDAT: Right, and it's not just
4 Birchwood. Holland has issues everywhere. Thank you.

5 BOARD CHAIRPERSON BILL CARGO: I appreciate it.
6 Next?

7 MR. BRIAN DE WITT: Brian DeWitt, 180 Timberwood.
8 So I'm right on the corner of 8th Street and Timberwood.

9 I actually wasn't expecting to be here, I did send
10 pictures in.

11 BOARD CHAIRPERSON BILL CARGO: Okay.

12 MR. BRIAN DE WITT: My thing is that green box on
13 there, is it going to extend past that if they do do
14 something? Or is it just the green box?

15 BOARD CHAIRPERSON BILL CARGO: No. What they would
16 do is they would take a look to see if there needs to be
17 erosion control.

18 I've seen many streams in the county where they
19 will do erosion control in one area, and then a half mile
20 downstream they might have to do more erosion control. That
21 might be riprap, but there is something to prevent further
22 erosion of the banks.

23 So they will be able to look at drainage issues
24 within the entire district. But again, I think this is what
25 I think triggered this discussion about bringing this orphan

1 drain under the control of the county.

2 MR. BRIAN DE WITT: Yes. Because one of the -- I
3 didn't get a picture of it, but one of the main culverts, I
4 guess, that comes in from 8th and Timberwood, is you can see
5 where they laid the cement down and everything else, and you
6 can see where big time erosion has happened over the years.

7 I've only lived there eight years, so I haven't
8 seen a ton of it. But you can definitely see when the water
9 comes in, the water goes up and it definitely takes out
10 the --

11 BOARD CHAIRPERSON BILL CARGO: It's scrubbing
12 underneath it so it's threatening the structure?

13 MR. BRIAN DE WITT: Big time.

14 BOARD CHAIRPERSON BILL CARGO: Thank you. I
15 appreciate it.

16 Okay. At the very end, the gentleman in the white
17 shirt?

18 MR. JONATHAN HOFMAN: I was hoping for more than
19 three minutes, but I'll talk fast. Jonathan Hofman, 216
20 Haymarket, property owner in the proposed district.

21 According to information made available by Ottawa
22 County on its website, this petition has been brought by
23 seven residents of four tax parcels located at the south end
24 of Birchwood Avenue, in the city of Holland.

25 In response, the Ottawa County Water Resources has

1 proposed creation of a drain, encompassing nearly 10.8
2 million square feet.

3 The majority of the proposed drain, and possibly
4 all of it, is located within the city of Holland in a
5 suburban neighborhood that has seen little change over the
6 last several decades. It appears that the proposed drain was
7 created by drawing boundaries around the watershed that
8 empties into Black River or Macatawa River on the northeast
9 corner of the proposed drain.

10 All properties in the watershed were included,
11 regardless of their contribution to drainage through the
12 petitioner's properties.

13 My first concern is a drain of the proposed size
14 and complexity is not necessary to address the petitioner's
15 concerns.

16 Any drainage -- and I originally thought this was a
17 drainage problem, not an erosion problem, but any problem
18 that's caused, experienced by the petitioners can be resolved
19 with a drain roughly one-fifth the size proposed.

20 From what you've been explaining, it would still be
21 an orphan drain, but it would be a county drain. This is
22 because very close to the petitioner's properties drain does
23 drop allowing sufficient drainage over their parcels. And,
24 again, this isn't apparently a drainage issue but an erosion
25 issue.

1 Water erodes. In 30 years a stream will move.

2 Sand gets washed. Clay gets washed.

3 As property owners we realize this. We mitigate
4 this, and as my previous speaker and neighbor mentioned, we
5 work with one another to keep our properties from ending up
6 in Lake Mac.

7 The drain, if proposed, also does not factually
8 represent the existing ditches, streams and topography in the
9 area. I appreciate the need to keep costs low at this stage,
10 but there is a major contributor to water flowing out of the
11 northeast corner of this proposed drain that is not reflected
12 on the Fishbeck map. That major contributor runs south along
13 Country Club, cuts across 8th Street between Country Club and
14 Sorrento, and is actually drawn quite well on Google maps.

15 So if the proposal is that this drain district
16 would only involve maintenance of the blue line, the blue
17 line is not right. There is a significant drain that is not
18 included. And if the drain is going to be approved,
19 properties along this significant additional drain should be
20 identified and receive benefits from expenditures.

21 The fact that the drain would likely not submit
22 property owners to significant costs has no bearing on its
23 necessity. I have spoken with county personnel and their
24 thoughts at this point is they're not talking about miles of
25 large culvert, they're talking about surface repair.

1 However, that doesn't appear -- should not have any
2 bearing on your finding of necessity. And if that is a
3 rational for creating it, it's just going to be a little cost
4 today, I encourage you to remove costs from your equation.
5 Little cost or big cost, it's either needed or not.

6 BOARD CHAIRPERSON BILL CARGO: And you're
7 absolutely right. Costs are not going to be a part of what
8 we discuss because we don't know what they are.

9 MR. JONATHAN HOFMAN: Exactly. Other alternatives
10 exist and are better suited to resolve the petitioner's
11 concerns.

12 And those alternatives include the petitioners
13 armoring their eroding banks. Or, if water from someone else
14 is causing this problem, pursuing that in a court of law.

15 I have a couple of other concerns, but I think I'm
16 out of time.

17 I'd like to just submit my written comments for the
18 record, if that's something that can be done.

19 BOARD CHAIRPERSON BILL CARGO: I appreciate it.
20 Absolutely.

21 And one of the things I do want to also clarify is
22 that the red boundary that you see where they say this is the
23 storm district, if it is recommended, or if it is made a -- a
24 motion is made that this drain is necessary, those boundaries
25 can be amended as more information comes in.

1 So you talked about that one area that is
2 contributing to this drainage district, in your opinion, that
3 has been taken and noted by the Drain Commissioner. And if
4 the boundaries need to be amended, they can be amended.

5 MR. JONATHAN HOFMAN: To clarify, actually, in my
6 opinion, all property to the east of Country Club Road, which
7 runs north-south, should be excluded from that drain.

8 BOARD CHAIRPERSON BILL CARGO: That can also be
9 done. They can also exclude if they don't believe it's
10 contributing water to the district.

11 MR. JONATHAN HOFMAN: Thank you. To whom should I
12 provide this?

13 BOARD CHAIRPERSON BILL CARGO: If you will provide
14 that to me, I will then share that with the county. Thank
15 you.

16 MR. JONATHAN HOFMAN: I appreciate your service
17 today.

18 BOARD CHAIRPERSON BILL CARGO: With that
19 information, I'm going to go to the very last row, the last
20 individual. Nothing?

21 The woman then?

22 The individual next?

23 Next?

24 At the very end we have somebody raising their
25 hand, okay. If you would again come up, give your name and

1 your address.

2 MR. GREGG HARTER: I'm Gregg Harter. I live at 151
3 Birchwood, which happens to be in the cul-de-sac that is
4 really the biggest part of the problem, I believe.

5 We've lived there now for 50 years. We moved in
6 right after that house was built. And the drainage ditch in
7 the backyard was about knee deep, with a grass bottom, and it
8 was about six feet wide.

9 And we didn't have problems immediately. But we
10 were there before an awful lot of the building was done in
11 Holland Heights area, and it got worse and worse and worse.

12 And we certainly complained to the city, and they
13 actually put a drain down 8th Street that took care of a lot
14 of the flow of water.

15 Joe Bush referred to that drain, and I don't
16 remember what he called it. But it was like a 60-inch drain
17 and it's taking a lot of the water somewhere else.

18 But, we're still having a mountainous amount of
19 water coming through our backyard from other people's
20 property that have been built there since we moved in.

21 Now the one thing I would say is I put Spruce --
22 little Spruce trees in in the early '80s, and they were put
23 in five feet from the ditch. And now I'm cutting them up as
24 they fall in the ditch. And like I said, it was knee deep,
25 now it's six to seven feet deep, and 12 feet wide. And it's

1 really an ugly situation. And it's not all my water.

2 I think you're absolutely right that the problem is
3 all around us, and it needs to be addressed.

4 BOARD CHAIRPERSON BILL CARGO: Thank you.

5 MR. GREGG HARTER: Thank you.

6 BOARD CHAIRPERSON BILL CARGO: And again, the very
7 last row over here? The gentleman in the white shirt?

8 In the back? Yes, if you would come forward.

9 MR. RICK BOSCH: Good morning. My name is Rick
10 Bosch, I live at 1253 Riverview Drive. And this is the condo
11 area which is the Villas of Holland, and I'm on the condo
12 board there.

13 And the ravine goes through our property. So that
14 if there is any work that is done in this, you know, this
15 area, it's something I really hope that all of the areas
16 associated with this drain are considered for erosion control
17 or whatever else needs to be done. So just not one small
18 specific area, everything needs to be taken a look at.

19 BOARD CHAIRPERSON BILL CARGO: I appreciate it.

20 And then again -- I guess that's everybody who
21 hasn't already spoken.

22 Because we've given everybody a chance to speak,
23 are there any objections to closing the public comment
24 portion of this public hearing?

25 BOARD MEMBER RICH VANDERKLOK: I move that they be

1 closed.

2 BOARD SECRETARY JOSH WESTGATE: I'll second that
3 motion.

4 BOARD CHAIRPERSON BILL CARGO: Motion was made and
5 supported to close the public comment period of this public
6 hearing. And we will now have some discussions among
7 ourselves and ask questions of anybody else that we need to
8 ask questions for.

9 Rich, I'm going to start with you, do you have any
10 questions or comments?

11 BOARD MEMBER RICH VANDERKLOK: I really don't have
12 any questions. My only comment is that I believe there is a
13 necessity to look at bringing this under the auspice of the
14 Ottawa County Drain Commissioner.

15 Obviously, we do not know the scope of anything
16 that would be done. And as you've indicated, the boundaries
17 are flexible, and all of that, but we won't know that until
18 something specifically is done.

19 So I'm in favor of bringing it into the Ottawa
20 County Drain Commission.

21 BOARD CHAIRPERSON BILL CARGO: Josh, do you have
22 any comments?

23 BOARD SECRETARY JOSH WESTGATE: All my comments
24 would echo Rich's, so I'm not going to repeat my comments.
25 They're basically the same as Rich's for this project.

1 BOARD CHAIRPERSON BILL CARGO: I may repeat some
2 things.

3 First of all, it's clear that this is a drain. The
4 city says it's a drain, they're dumping into it, individual
5 property owners, their water is going into this watershed,
6 this is a drain.

7 But it's a drain that is an orphan drain meaning
8 there is nobody responsible for it. And because there is
9 nobody responsible, there are some areas that have become
10 problematic.

11 And the Drain Commissioner can't go in there and
12 fix them. I think the homeowners would have a difficult time
13 getting the permits to do the work that needs to be done if
14 it could be done privately.

15 The city has not said they want this to be part of
16 the storm drain system, the city has a storm drain system
17 also, so I think the only alternative is to give this over to
18 the county so the county has responsibility to maintain this
19 drain.

20 And so I also think that this is a drain system,
21 this is an orphan drain, the boundaries and the scope of any
22 project will evolve over the course of months and years,
23 because ten years from now, 20 years from now, there could be
24 a different problem that occurs. And at least now there will
25 be somebody who is responsible to address the problem, if we

1 make this into a county drain.

2 So I would like more a motion of necessity, if
3 someone wants to make a motion of necessity for this.

4 BOARD MEMBER RICH VANDERKLOK: I would make the
5 motion of necessity for bringing this into the county drain
6 system.

7 BOARD SECRETARY JOSH WESTGATE: I support.

8 BOARD CHAIRPERSON BILL CARGO: Specifically, the
9 motion that has been made by Rich is that to make a motion
10 that the location, establishment and construction, of the
11 proposed Birchwood Drain, as petitioned on May 20 -- May 5th,
12 2022, is necessary and conducive to the public health,
13 convenience or welfare.

14 Is there support for that motion?

15 BOARD SECRETARY JOSH WESTGATE: I will support that
16 motion.

17 BOARD CHAIRPERSON BILL CARGO: We have a motion
18 made and supported.

19 Is there any further discussion by the members of
20 the Board of Determination?

21 BOARD MEMBER RICH VANDERKLOK: No.

22 BOARD SECRETARY JOSH WESTGATE: No.

23 BOARD CHAIRPERSON BILL CARGO: Then all in favor,
24 say aye.

25 (All said, "Aye.")

1 BOARD CHAIRPERSON BILL CARGO: Opposed?

2 And the motion then is approved.

3 At this point, I'm going to turn this public
4 hearing over to the Drain Commissioner who will talk about
5 the appeal process. And once he's done with that, we'll
6 adjourn the meeting.

7 Joe, if you would talk about the appeal process, I
8 would appreciate it.

9 WATER RESOURCES COMM. JOE BUSH: If anybody wanted
10 to appeal today's decision, you can do that from ten days
11 from today to circuit court, through Ottawa County. So if
12 anybody felt like they needed to do that, you are free to do
13 that. It's not through my department, it's through circuit
14 court.

15 The other thing is I appreciate everybody's time
16 coming listening and giving input. We applaud that.

17 And again we appreciate everything you've done. So
18 thanks.

19 BOARD CHAIRPERSON BILL CARGO: I have made what I
20 hope is a minor mistake. I see that we had an email from a
21 Brian DeWitt --

22 BOARD SECRETARY JOSH WESTGATE: He did speak.

23 BOARD MEMBER RICH VANDERKLOK: Yes.

24 BOARD CHAIRPERSON BILL CARGO: And I had one
25 question, also, a comment card from Dale Flowerday on 137

1 Euna Vista Drive. And the question is, will all residents
2 need to comply with new or current codes or rules?
3 And the Board of Determination and the fact this
4 was made or recommended as necessary, will not change the
5 rules and enforcement thereof.
6 So with that comment, I'll make a motion to
7 adjourn.
8 BOARD MEMBER RICH VANDERKLOK: Support.
9 BOARD CHAIRPERSON BILL CARGO: There is a motion
10 and support to adjourn this public hearing.
11 All in favor, say aye.
12 (All said, "Aye.")
13 BOARD CHAIRPERSON BILL CARGO: And we are over.
14 (Proceedings concluded at 10:50 a.m.)
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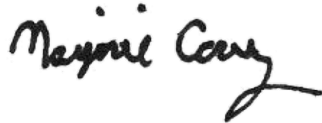
STATE OF MICHIGAN)

) SS

COUNTY OF OTTAWA)

I certify that this transcript, consisting of 39 pages, is a complete, true, and correct record of the Birchwood Drain Board of Determination, held on August 24, 2022.

DATE: September 1, 2022



MARJORIE A. COVEY, RPR
Michigan License CSR-2616
Washington License 20109173
Oregon License 20-0468
Illinois License 084-004911

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