

Riverbend Homeowners Association  
Riverbend Pond Owners Association  
P.O. Box 213  
Waterville, OH 43566  
[Riverbendperrysburghoa@gmail.com](mailto:Riverbendperrysburghoa@gmail.com)

January 4, 2017

Board of County Commissioners  
One Courthouse Square  
Bowling Green, OH 43402

Dear Commissioners:

This letter will confirm that the preliminary hearing on the Petition filed by Mr. Moser held on December 20, 2016 was adjourned without a final conclusion or disposition. At a subsequent hearing (time and date to be determined), Mr. Moser will attend and additional evidence will be presented. As a result, this letter should be included in the record.

First, we have several requests.

- We assume that notice of any subsequent hearing will be provided directly to all of the effected lot owners including, but not limited to, residents on Five Point Road and landowners in the Riverbend development. This is consistent with the notice mailed to lot owners on the original petition.

- As noted in our earlier correspondence, all of the lots in Riverbend ultimately feed into the drainage ditch through a series of interconnecting ponds. In addition, two adjacent lots (owned by ISOH and the Kings) also feed into the ponds. “(W)ater from land not contiguous to the ditch flow(ing) into it rendered such land liable for apportionment.” *May v Trustees*, 20 Ohio Dec. 429 (1910). And, as noted previously, not all effected property owners were not notified as required by statute. ORC 6131.04.

- To the extent that there is an additional survey or inspection of the drainage ditch located on property owned by Riverbend, individual lot owners in the Riverbend development or McCarthy Builders, we would like representation at the time such survey or inspection is conducted. The viewing held in September was only at the proposed terminus of the drainage ditch. This is inconsistent with the provisions of ORC 6131.10 which requires the view to include “the line of the proposed improvement and each branch, lateral or spur mentioned in the petition”.

- We will have the opportunity to directly question the petitioners or other parties offering evidence or support for County maintenance of the drainage ditch.

Next, there were several points raised at the hearing or in the Preliminary Report that need clarification.

- As stated, the Ohio Planned Community Act (ORC 5312) grants broad powers to the Directors and Officers of the Riverbend Homeowners Association. Specifically, the Directors may “(a)dopt and enforce rules that regulate the maintenance, repair, replacement, modification and appearance of the common elements” ORC 5312.06(D)(5). See also, ORC 5312.08. Also, the Directors can “(c)ollect assessments for common expenses from owners. . .” ORC 5312(A)(2) If the assessments are not paid by one or more lot owners, the directors are authorized to file property liens in accordance with ORC 5312.12. We have filed liens for the non-payment of HOA dues in more than ten cases. After the liens were filed, the lot owners satisfied the liens on each occasion.

- There was testimony that the culvert over the drainage ditch had flooded in the past, but no direct evidence was provided in support. Even if accurate, the original culvert was installed on agricultural land solely to allow access to a gas pipeline. As part of the approval granted by the Wood County Planning Commission for development of Riverbend Plat II, McCarthy Builders replaced the culvert, raised the road surface at least 10 feet and cleared the ditch of overgrowth. As the culvert was inspected and approved by the Wood County Engineer, we would expect that any potential for flooding was eliminated.

- The report prepared by the Wood County Engineer concludes that “future development” of the agricultural land should be considered. As there has been no evidence presented that development has been planned on the Moser property, the conclusion is, at best, speculative. And until a specific development plans have been submitted and approved by the Wood County Planning Commission, there is no possible way to predict if there will be any impact on the drainage ditch. Under ORC 6131.02, the County Commissioners must conclude that any improvement “Is necessary” (emphasis added), not “may be necessary”.

- To the extent the condition of the drainage ditch on Mr. Moser’s property has caused or contributed to flooding on Five Point Road, the remedy is to remove any obstruction on his property. (See Exhibit F in the Engineer’s preliminary report). Since a remedy is available, why would it be “necessary” to assume control of the entire drainage ditch?

- ORC 6131.04 requires that “(t)he petition shall state that the construction is necessary, will benefit the petitioner and will be conducive to the public welfare”. The petition filed by Mr. Moser fails to meet this standard.

- As noted in the preliminary report prepared by the Wood County Engineer, the drainage ditch is at least 1.8 miles in length, and includes various river tracts. There has, apparently, been an initial determination that it is not necessary for county maintenance of certain segments of the drainage ditch (from Mr. Bernard's property to the Maumee River). Can we assume, then, that any subsequent determination will be based on a review of the specific segments of the ditch?

- As noted in the report prepared by the Wood County Engineer, the petition filed by Mr. Moser specified certain River Tracts. The Wood County Engineer (page 1 of the report) amends the petition by including additional tracts. While Mr. Moser, as the petitioner, has the right to amend the petition, can the Board cite the statute that authorized the County to amend a private petition?

- In the event that the petition proceeds, any assessments for development are calculated on the basis of estimated benefits ORC 6137.03, not assessed valuation of the property. In addition, if any "improvements" to the drainage ditch adjacent to the Riverbend/McCarthy property are caused by construction in other segments, what additional "benefits" accrue to these property owners?

- During the hearing held on December 20, 2016, Mr. Huber was questioned on the basis for the preliminary cost estimate. Mr. Huber could not answer when asked the basis for the estimate or in which segment of the drainage ditch these costs would be expended. He could also not answer, when asked, as to the proposed benefits to Riverbend lot owners.

- To clarify testimony at the first hearing, the lot owner of parcel J38-100-523001128000 (Mr. Robert Zorz) does not support ceding control of the drainage ditch to Wood County.

Finally, a question:

- Is there a petition to assume control of the "Saunders Ditch" which, apparently, also connects to homes on Five Point Road?

Regards,

Signatures on File

Riverbend Homeowners Association  
Riverbend Pond Owners Association

cc: Wood County Engineer  
One Courthouse Square  
Bowling Green, OH 43402

Trustee of Middleton Township  
21745 N. Dixie Highway  
Bowling Green, OH 43402

Wood County Prosecuting Attorney's Office  
Attention: Linda Holmes  
One Courthouse Square  
Bowling Green, OH 43402

William Bernard  
25394 W. River Road  
Perrysburg, OH 43551

Mr. Robert Zorz  
14545 Monarch Court  
Perrysburg, OH 43551