



SURVEYOR'S OFFICE  
**Hamilton County**

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*Suite 188*  
*One Hamilton County Square*  
*Noblesville, Indiana 46060-2230*

November 14, 2008

TO: Hamilton County Drainage Board

RE: Windjammer Drain Reconstruction

Attached are plans, specifications, drain map, drainage shed map and schedule of assessments for the reconstruction of the Windjammer Drain located in Fall Creek Township. The maintenance for the Windjammer Drain was approved at hearing on August 11, 1986 (Hamilton County Drainage Board Minute Book 2, Page 153). The Windjammer Drain Extension was approved at hearing on February 20, 1990. (Hamilton County Drainage Board Minutes Book 2, Page 413). The Windjammer Drain Extension asbuilts and additional easement (Instrument No. 8913832) was approved at hearing on August 25, 1997. (Hamilton County Drainage Board Minute Book 4, Page 419).

This project was originated by a complaint dated June 6, 2008 from Lynn Frischman the homeowner on Lot 33 of Windjammer. Mrs. Frischman stated that the wooded areas behind her lot were not draining. Standing water of over 5' was a safety concern.

The Surveyor's Office reviewed the complaint and cleaned out the blockage at the headwall on the north side of Fall Creek Road. I feel a reconstruction of the existing piping system is required to allow the wooded area north of Fall Creek Road to drain more quickly. Adding a large trash rack to the inlet on the north side of Fall Creek Road would stop the large tree limbs, Christmas trees and other debris from entering the existing pipe and jamming the drainage pipes downstream. This has been a recurring maintenance problem. The structure on the south side of Fall Creek Road is a 20' deep stand pipe without steps. The proposed reconstruction will construct a reinforced concrete manhole with steps, which will allow us to clean out the manhole and pipes more readily. The new manhole will be raised to reduce the grade from the proposed sidewalk to the reservoir. This will eliminate the safety hazard of the existing sloping sidewalk that drops off next to the existing stand pipe.

During our investigation a survey of the existing pipes and manholes found the downstream invert at the manhole with the open grate to be 6" higher than the invert upstream at the deep manhole. The dogleg in the existing 36" CMP between structures allows debris to become wedged making it difficult to drain. The dogleg CMP is corroded and the flowline of the pipe will eventually wear through. Water stands in the bottom of each structure most of the time due to poor construction and inlet constrictions.

The reconstruction will add almost 143 LF of 36" RCP between the new manhole and will tie into the existing manhole near the dock at Geist Reservoir.

The new regulated drain reconstruction shall also consist of the following:

- Trash guard
- Reinforced concrete manhole - 25' deep

The existing 36" CMP with dogleg will be blocked at the north end and 165 lineal feet will be vacated between the new manhole and the manhole on the Gustafason Property. The open grate manhole on the Gustafason property will remain because it accepts some surface water and functions well.

The drainage area covers portions of Section 9, Township 17N, Range 5E and consists of portions of Windjammer, Masthead Section 8 & 9 and Carefree Estates. The Windjammer Drain project will consist of a reconstruction of the manhole structure and pipe to connect to an existing manhole that outlet through an existing headwall at a dock on Geist Reservoir.

Below is the hydraulic data for the proposed pipe:

Watershed	22.83 ac
Windjammer Q10	35 cfs
Windjammer Q100	87 cfs
Pipe capacity proposed 36" RCP	81 cfs
*Note: Existing 36" RCP under Fall Creek capacity	147 cfs
Existing 36" CMP @ Dock capacity	34 cfs

### COST ESTIMATE

The cost estimate for this work is as follows:

#### RECONSTRUCTION OF DRAIN

Traffic Control	\$ 1,000.00
Tree and shrub removal	\$ 3,000.00
Remove 22'-standpipe	\$ 2,500.00
Manhole structure – 25' @ 300 per foot	\$ 7,500.00
36" RCP, 143' @ \$40.00/foot	\$ 5,720.00
Excavation & Installation of Pipe	\$77,500.00
#8 stone	\$ 4,000.00
Shoring for sanitary sewer	\$10,000.00
Dewatering	\$15,000.00
Block – 1-Inlet	\$ 1,000.00
Haul out excess soil from trench	\$ 5,000.00
Trash Guard	<u>\$ 5,000.00</u>

#### STORMWATER POLLUTION PREVENTION

Construction entrance, install, remove	\$ 4,000.00
Silt fence and tree protection	\$ 1,500.00
Cut sod and replace	<u>\$ 3,500.00</u>

**HIGHWAY DEPARTMENT**

Remove and replace sidewalk		\$ <u>3,000.00</u>
	Subtotal	\$149,220.00
	+15% contingency	\$ <u>22,383.00</u>
	Total	\$171,603.00

Sidewalk, remove & replace per HCHD	-	\$ <u>3,000.00</u>
Distribute to drainage shed		\$168,603.00

I have reviewed the drainage shed for the Windjammer Drain, Masthead Lots 263 and 264, and Carefree Estates; upon considering all parcels individually: I believe that the acreage of each residential parcel draining to the reconstructed drain shall pay an equal per acre assessment. The Highway right of way acreage was increased slightly to reflect the fact that approximately 90% of area is impervious.

Total residential acreage in sub shed	15.51 acres
Total street right of way	7.32 acres
Total assessed acreage	22.83 acres
Assessment per acre	\$7,227.38 per acre

An assessment of \$7,227.38 per acre will be assessed to each parcel as follows:

**WINDJAMMER**

<u>Owner</u>	<u>Parcel</u>	<u>Lot</u>	<u>Acreage</u>	<u>Amount</u>
Youngs, Roger & Mary Ellen	13-15-09-03-08-030.000	26	0.28	\$2,067.84
Myers, Gary & MaryBeth	13-15-09-03-08-029.000	27	0.65	\$4,800.35
Stockman, James E. & Amy Shaw	13-15-09-03-08-028.000	28	0.62	\$4,578.80
Prugar, Mark & Dale	13-15-09-03-08-027.000	29	0.60	\$4,431.10
Oyler, Nicholas K. & Elizabeth A.	13-15-09-03-08-026.000	30	0.57	\$4,209.54
Brown, Megan	13-15-09-03-08-025.000	31	0.53	\$3,914.13
Miller, Lavinia & Joseph N. Frischmann	13-15-09-03-08-024.000	32	0.59	\$4,357.24
Oeff, Kevin & Brenda	13-15-09-03-08-023.000	33	0.59	\$4,357.24
Redman, Dianna	13-15-09-03-08-022.000	34	0.57	\$4,209.54
Engel, Frank & Kim Francis	13-15-09-03-08-021.000	35	0.42	\$3,101.76
Gaughan, Steven & Dianne	13-15-09-03-08-012.000	49	0.16	\$1,181.62
Temple, Phillip & Jennifer	13-15-09-03-08-013.000	50	0.15	\$1,107.77
Maloof, Mark & Aliceann	13-15-09-03-08-014.000	51	0.22	\$1,624.73
St. John, David & Deborah	13-15-09-03-08-015.000	52	0.12	\$ 886.22
DeBonis, Joseph & Jewell	13-15-08-03-08-032.000	55	1.80	\$13,293.27

**MASTHEAD**

<b><u>Owner</u></b>	<b><u>Parcel</u></b>	<b><u>Lot</u></b>	<b><u>Acreege</u></b>	<b><u>Amount</u></b>
Gustafson, Robert & Kathryn	13-15-09-03-02-001.000	263	0.67	\$4,948.05
Griesemer, Steve&Jane Jenson	13-15-09-00-01-001.000	264	0.26	\$1,920.14

**CAREFREE ESTATES**

<b><u>Owner</u></b>	<b><u>Parcel</u></b>	<b><u>Lot</u></b>	<b><u>Acreege</u></b>	<b><u>Amount</u></b>
Strauch, Charles & Jeanette	13-15-09-03-01-008.000	3	0.58	\$ 4,283.39
Shaffstall, Anthony & Julia	13-15-09-03-01-009.000	4	0.89	\$ 6,572.78
Grass, Bradley & Lori	13-15-09-03-01-007.000	5	0.35	\$ 2,584.80
Buchanan, Neal	13-15-09-03-01-006.000	6	0.46	\$ 3,397.17
Clements, Robert	13-15-09-03-01-005.000	7	0.62	\$ 4,578.80
Faulconer, Thomas & Jean	13-15-09-03-01-004.000	8	0.46	\$ 3,397.17
Koppin, John & Michelle	13-15-09-00-00-017.000	17	0.30	\$ 2,215.55
Ellis, Loren	13-15-09-00-00-018.000	18	0.34	\$ 2,510.95
Ellis, Loren	13-15-09-00-00-016.000	19	0.76	\$ 5,612.71
Oesterreich, Paul & Amy	13-15-09-00-00-015.000	20	0.72	\$ 5,317.31
Burtzlaff, George & Sharon	13-15-09-00-00-014.000	21	0.69	\$ 5,095.75
Hart, Craig & Irene	13-15-09-00-00-013.000	22	0.53	\$ 3,914.13
Palmer, David & Sherrie	13-15-09-00-00-012.000	23	0.01	\$ 73.85
Highway Department	\$3,000.00 + 7.32 (\$7,227.38)			\$57,059.30

The work will be performed within the drainage easements per Masthead Section 8 Plat, Plat Book 9, pages 98 through 101, Masthead Section 9 Plat, Plat Book 11, pages 1 through 4 and Windjammer Plat, Plat Book 12, page 180. The easement for the drain was increased from that which was platted as part of Sections 8 and 9 of the Masthead Subdivision. The additional easement is located on Lot 263 in Masthead Section 8 and is recorded as Instrument No. 8913832.

There are currently two (2) trees and four (4) shrubs that are on Lots 263 & 264 of Masthead. Because they are within the existing drainage easement the cost of replacement will be borne by the respective landowners. Also a portion of invisible fence and sprinkler systems will need to be relocated at the landowner's expense.

Because the proposed work will be within existing easements, I believe that no damages will result to landowners by the reconstruction of this drain. Therefore, damages for all parcels shall be set at \$0.00.

The maintenance assessments currently assessed for Windjammer should be increased at this time. The drain fund is currently in the red \$9,226.68. The drain is currently assessed at a rate of \$30.00 per lot which brings in an annual assessment of \$2,580.00. There are 83 lots and 12.68 acres assessed.

I recommend that the rates be increased to the following:

1. Maintenance assessment for roads and streets are set at \$10.00 per acre.
2. Maintenance assessment for agricultural tracts are set at \$2.00 per acre with a \$15.00 minimum.

3. Maintenance assessment for non-platted residential tracts are set at \$2.00 per acre with a \$15.00 minimum.
4. Maintenance assessment for commercial, institutional and multi-family residential tracts are set at \$10.00 per acre with a \$75.00 minimum.
5. Maintenance assessment for platted lots in subdivisions whose drainage systems will not be considered part of the regulated drain (those systems maintained by the Town of Fishers) shall be set at \$35.00 per lot - \$35.00 minimum. Common areas within subdivisions whose drainage system will not be considered part of the regulated drain (those systems maintained by the Town of Fishers) shall be set at \$35.00 per acre with a \$35.00 minimum.
6. Maintenance assessment for platted lots within subdivisions whose drainage system will be part of the regulated drain shall be set at \$65.00 per lot/minimum. Common areas within the regulated drain subdivisions shall be set at \$10.00 per acre with a \$65.00 minimum.

The annual maintenance collection for this extension will be \$5,586.00. The period of collection should be increased from four years to eight years as per IC 36-9-27-43.

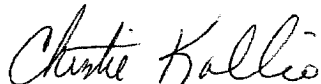
This drain was designated an urban drain by the Board on January 23, 2001.

Upon a check of the McCordsville USGS Quadrangle Map, I found that the upstream drainage shed to the existing headwall and 36" RCP inlet on the north side of Fall Creek Road is less than 1 square mile, therefore a permit from IDNR is not required.

This project will not require a Rule 5 NPDES permit since the area of disturbed land will be less than one (1) acre.

I recommend that the Board set a hearing for this reconstruction for January 26, 2009.

Sincerely,



Christie Kallio, P. E.  
Hamilton County Surveyor's Office

CLK/llm



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March 18, 2009

T0: Hamilton County Drainage Board

Re: Windjammer Drain Reconstruction – Amended report

The following report is a revision of my report dated November 14, 2008. At the January 26, 2009 meeting of the Hamilton County Drainage Board, the board conducted a hearing for the construction of the proposed Windjammer drain reconstruction. (See Drainage board minutes book 11, pg 443 to 450) At that time, the Drainage board continued the proposal in order to review the existing drainage easements on the North side of Fall Creek Road and to look into the cost of slip lining the existing CMP. I have added three alternate proposals to this report. Alternate I will utilize a cured in place pipe (CIPP), a new manhole and trash guard. Alternate II would install a manhole and the trash guard. Alternate III would install the trash guard only.

Attached are plans, specifications, drain map, drainage shed map, existing drainage and utility easement map and schedule of assessments for the reconstruction of the Windjammer Drain located in Fall Creek Township. The maintenance for the Windjammer Drain was approved at hearing on August 11, 1986 (Hamilton County Drainage Board Minute Book 2, Page 153). The Windjammer Drain Extension was approved at hearing on February 20, 1990. (Hamilton County Drainage Board Minutes Book 2, Page 413). The Windjammer Drain Extension asbuilts and additional easement (Instrument No. 8913832) was approved at hearing on August 25, 1997. (Hamilton County Drainage Board Minute Book 4, Page 419).

This project is required to prevent standing water that may pond outside the limits of the existing drainage easement on the north side of Fall Creek Road. The surveyor's office is concerned with safety issues with the standing water and lack of safety ledges surrounding the ponding water. There is a damaged section of 36 inch CMP south of the existing 20 foot deep standpipe. A section of this pipe is under water due to a downstream section of pipe having shifted downward allowing logs and debris to accumulate reducing the drainage area through this section of pipe. The cost of continued maintenance on this drain is excessive.

I feel a reconstruction of the existing piping system is required to allow the wooded area north of Fall Creek Road to drain more quickly, preventing ponding water outside the existing drainage easement. Attached is an exhibit showing the approximate ponding (June 2008) contour elevation of 805 ft. The pond exceeds the limit of the drainage easement.

Adding a large trash rack to the inlet on the north side of Fall Creek Road will stop the large tree limbs, Christmas trees and other debris from entering the existing pipe and jamming the drainage pipes downstream. This has been a recurring maintenance problem. The structure on the south side of Fall Creek Road is a 20' deep stand pipe without steps. The proposed reconstruction will install a reinforced concrete manhole with steps, which will allow us to clean out the manhole and pipes more readily. The new manhole will be raised to reduce the grade from the proposed sidewalk to the reservoir. This will eliminate the safety hazard of the existing sloping sidewalk that drops off next to the existing stand pipe.

During our investigation a survey of the existing pipes and manholes found the downstream invert at the manhole with the open grate to be 6" higher than the invert upstream at the deep manhole. The dogleg in the existing 36" CMP between structures allows debris to become wedged making it difficult to drain. The dogleg CMP is corroded and the flowline of the pipe will eventually wear through. Water stands in the bottom of each structure most of the time due to inlet constrictions.

The reconstruction will add almost 143 LF of 36" RCP between the new manhole and will tie into the existing manhole near the dock at Geist Reservoir.

The new regulated drain reconstruction shall also consist of the following:

- Trash guard
- Reinforced concrete manhole - 25' deep
- 143 LF of 36" RCP

The existing 36" CMP with dogleg will be blocked at the north end and 165 lineal feet will be vacated between the new manhole and the manhole on the Gustafason Property. The open grate manhole on the Gustafason property will remain because it accepts some surface water and functions well.

The drainage area covers portions of Section 9, Township 17N, Range 5E and consists of portions of Windjammer, Masthead Section 8 & 9 and Carefree Estates. The Windjammer Drain project will consist of a reconstruction of the manhole structure and pipe to connect to an existing manhole that outlet through an existing headwall at a dock on Geist Reservoir.

Below is the hydraulic data for the proposed pipe:

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Pipe capacity proposed 36" RCP	81 cfs
*Note: Existing 36" RCP under Fall Creek capacity	147 cfs
Existing 36" CMP @ Dock capacity	34 cfs

**COST ESTIMATE**

The cost estimate for this work is as follows:

**RECONSTRUCTION OF DRAIN**

Traffic Control	\$ 1,000.00
Tree and shrub removal	\$ 3,000.00
Remove 22'-standpipe	\$ 2,500.00
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Dewatering	\$15,000.00
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Trash Guard	<u>\$ 5,000.00</u>

**STORMWATER POLLUTION PREVENTION**

Construction entrance, install, remove	\$ 4,000.00
Silt fence and tree protection	\$ 1,500.00
Cut sod and replace	<u>\$ 3,500.00</u>

**HIGHWAY DEPARTMENT**

Remove and replace sidewalk	<u>\$ 3,000.00</u>
Subtotal	\$149,220.00
+15% contingency	\$ <u>22,383.00</u>
Total	\$171,603.00
Sidewalk, remove & replace per HCHD	- <u>\$ 3,000.00</u>
Distribute to drainage shed	<u>\$168,603.00</u>

I have reviewed the drainage shed for the Windjammer Drain, Masthead Lots 263 and 264, and Carefree Estates; upon considering all parcels individually: I believe that the acreage of each residential parcel draining to the reconstructed drain shall pay an equal per acre assessment. The Highway right of way acreage was increased slightly to reflect the fact that approximately 90% of area is impervious.

Total residential acreage in sub shed	15.51 acres
Total street right of way	7.32 acres
Total assessed acreage	22.83 acres
Assessment per acre	\$7,227.38 per acre



I have prepared the following alternates for the Windjammer Reconstruction Project.

### ALTERNATE I

The main issue with this drain is the damaged section of pipe near the existing 20 foot stand pipe and limited access to clear clogged pipes. Slip lining alone will not correct this constraint. Alternate I would install a new manhole where the existing standpipe is. This will provide access for future maintenance and repair the damaged pipe south of Fall Creek Road. Included in this alternate is the Trash guard and slip lining of the existing 36 in. CMP. The slip lining procedure is called cured in place pipe (CIPP). The CIPP will extend the life of the pipe approximately 50 years. Also the n value of CIPP is less than the existing n value of the CMP, allowing water to drain more quickly. If ponding does occur in high rainfall events it should stay within the limits of the existing drainage easement.

Alternate I does not change the length of pipe for the regulated drain.

### COST ESTIMATE

The cost estimate for Alternate I

#### RECONSTRUCTION COST

Traffic Control	\$ 1,000.00
Manhole and labor	\$ 33,500.00
36" Insituform CIPP (\$245/ft)	\$ 73,500.00
Heavy Cleaning of CMP \$15/ft)	\$ 4,500.00
Repair of collapse (estimate)	\$ 7,500.00
Dewatering	\$ 5,000.00
Trash Guard	\$ 5,000.00
Construction Entrance	\$ 4,000.00
Silt Fence and tree protection	\$ 1,500.00
Sod replacement	\$ <u>2,000.00</u>
Subtotal	\$137,000.00
+15% Contingency	\$ <u>20,550.00</u>
Total	\$157,550.00

\*The Highway Department would pay for the sidewalk construction.  
An assessment of \$ 6,901.01 per acre would be assessed to each parcel for Alternate I.

**ALTERNATE II**

This alternate will install the manhole on the south side of Fall Creek Rd. and the trash guard on the north side of Fall Creek Road. The County will wait a few years to see how long the existing CMP would remain structurally intact. This work removes the constriction but it doesn't extend the life of the pipe.

Alternate II does not change the length of pipe for the regulated drain.

**COST ESTIMATE**

The cost estimate for this work is as follows:

**RECONSTRUCTION COST**

Traffic control	\$ 1,000.00
Manhole and Labor	\$ 33,500.00
Repair of Collapse	\$ 7,500.00
Dewatering and cleaning	\$ 5,000.00
Trash Guard	\$ 5,000.00
Construction Entrance	\$ 4,000.00
Silt Fence	\$ 1,500.00
Sod replacement	\$ 2,000.00
Subtotal	\$ 59,500.00
+ 15% contingency	\$ 8,925.00
Sub Total	\$ 68,425.00
+ Lump sum to County Highway for sidewalk	\$ 3,000.00
Alternate II Total	\$ 71,425.00

\*The Highway Department would pay for the sidewalk.

An assessment of \$ 2,997.15 per acre would be assessed to each parcel for Alternate II.

**ALTERNATE III**

This alternate would install the trash guard and dewater the pipe to clean out the blockage. The county will wait to see if the ponding on the north side of Fall Creek Road will be reduced and how long the CMPs will last.

Alternate III does not change the length of pipe for the regulated drain.

**COST ESTIMATE**

The cost estimate for this work is as follows:

**RECONSTRUCTION COST**

Traffic Control	\$ 5,500.00
Dewatering and Cleaning	\$ 5,000.00
Trash Guard	\$ 5,000.00
Construction Entrance	\$ 4,000.00
Silt Fence	\$ <u>1,000.00</u>
Sub-total	\$ 20,500.00
+ 15% Contingency	\$ <u>3,075.00</u>
Total	\$ 23,575.00

\*The Highway Department would pay for and install the sidewalk.  
An assessment of \$ 1,032.63 per acre would be assessed to each parcel for Alternate III.

An assessment for each option is broken out per property owner as follows.

**WINDJAMMER**

<u>Owner</u>	<u>Parcel</u>	<u>Lot</u>	<u>Acres</u>	<u>Amount</u>	<u>Alter. I</u>	<u>Alter. II</u>	<u>Alter.III</u>
Youngs, Roger& Mary Ellen	13-15-09-03-08-030.000	26	0.28	2067.84	1932.28	839.20	289.14
Myers, Gary & MaryBeth	13-15-09-03-08-029.000	27	0.65	4800.35	4485.66	1948.15	671.21
Stockman, James E & Amy Shaw	13-15-09-03-08-028.000	28	0.62	4578.80	4278.63	1858.23	640.23
Prugar, Mark & Dale	13-15-09-03-08-027.000	29	0.60	4431.10	4140.61	1798.29	619.58
Oyler, Nicholas K.&Elizabeth A.	13-15-09-03-08-026.000	30	0.57	4209.54	3933.58	1708.38	588.60
Brown, Megan	13-15-09-03-08-025.000	31	0.53	3914.13	3657.54	1588.49	547.30
Miller, Lavinia & Joseph N							
Frischmann	13-15-09-03-08-024.000	32	0.59	4357.24	4071.60	1768.32	609.25
Oeff, Kevin & Brenda	13-15-09-03-08-023.000	33	0.59	4357.24	4071.60	1768.32	609.25
Redman, Dianna	13-15-09-03-08-022.000	34	0.57	4209.54	3933.58	1708.38	588.60
Engel, Frank & Kim Francis	13-15-09-03-08-021.000	35	0.42	3101.76	2898.42	1258.80	433.71
Gaughan, Steven & Dianne	13-15-09-03-08-012.000	49	0.16	1181.62	1104.16	479.54	165.22
Temple, Phillip & Jennifer	13-15-09-03-08-013.000	50	0.15	1107.77	1035.15	449.57	154.90
Maloof, Mark & Aliceann	13-15-09-03-08-014.000	51	0.22	1624.73	1518.22	659.37	227.18
St. John, David & Deborah	13-15-09-03-08-015.000	52	0.12	886.22	828.12	359.66	123.92
DeBonis, Joseph & Jewell	13-15-08-03-08-032.000	55	1.80	13293.27	12421.82	5394.87	1858.74

**MASTHEAD**

<u>Owner</u>	<u>Parcel</u>	<u>Lot</u>	<u>Acres</u>	<u>Amount</u>	<u>Alter. I</u>	<u>Alter. II</u>	<u>Alter.III</u>
Gustafson, Robert & Kathryn	13-15-09-03-02-001.000	263	0.67	4948.05	4623.68	2008.09	691.86
Griesemer, Steve&Jane Jenson	13-15-09-00-01-001.000	264	0.26	1920.14	1794.26	779.26	268.48

**CAREFREE ESTATES**

<u>Owner</u>	<u>Parcel</u>	<u>Lot</u>	<u>Acres</u>	<u>Amount</u>	<u>Alter. I</u>	<u>Alter. II</u>	<u>Alter. III</u>
Strauch, Charles & Jeanette	13-15-09-03-01-008.000	3	0.58	4283.39	4002.59	1738.35	598.93
Shaffstall, Anthony & Julia	13-15-09-03-01-009.000	4	0.89	6572.78	6141.90	2667.46	919.04
Grass, Bradley & Lori	13-15-09-03-01-007.000	5	0.35	2584.80	2,415.35	1049.00	361.42
Buchanan, Neal	13-15-09-03-01-006.000	6	0.46	3397.17	3174.46	1378.69	475.01
Clements, Robert	13-15-09-03-01-005.000	7	0.62	4578.80	4278.63	1858.23	640.23
Faulconer, Thomas & Jean	13-15-09-03-01-004.000	8	0.46	3397.17	3174.46	1378.69	475.01
Koppin, John & Michelle	13-15-09-00-00-017.000	17	0.34	2510.95	2346.34	1019.03	351.10
Ellis, Loren	13-15-09-00-00-018.000	18	0.30	2215.55	2070.30	899.15	309.79
Ellis, Loren	13-15-09-00-00-016.000	19	0.76	5612.71	5037.73	2277.88	784.80
Oesterreich, Paul & Amy	13-15-09-00-00-015.000	20	0.72	5317.31	4968.73	2157.95	743.50
Burtzlaff, George & Sharon	13-15-09-00-00-014.000	21	0.69	5095.75	4761.70	2068.03	712.52
Hart, Craig & Irene	13-15-09-00-00-013.000	22	0.53	3914.13	3657.54	1588.49	547.30
Palmer, David & Sherrie	13-15-09-00-00-012.000	23	0.01	73.85	69.01	29.97	10.33
Highway Department	\$3,000.00 + 7.32 (\$7,227.38)			57059.30	53515.39	24939.14	7558.87*

\*sidewalk excluded

The work will be performed within the drainage easements per Masthead Section 8 Plat, Plat Book 9, pages 98 through 101, Masthead Section 9 Plat, Plat Book 11, pages 1 through 4 and Windjammer Plat, Plat Book 12, page 180. The easement for the drain was increased from that which was platted as part of Sections 8 and 9 of the Masthead Subdivision. The additional easement is located on Lot 263 in Masthead Section 8 and is recorded as Instrument No. 8913832.

For the original reconstruction proposal there are currently two (2) trees and four (4) shrubs on Lots 263 & 264 of Masthead that will need to be removed. This landscaping is within the existing drainage easement and the cost of replacement will be borne by the respective landowners. Also a portion of invisible fence and sprinkler systems will need to be relocated at the landowner's expense. ( Alternates I, II and III will not impact these items)

The proposed work will be within existing easements, and I believe that no damages will result to landowners by the reconstruction of this drain. Therefore, damages for all parcels shall be set at \$0.00.

The maintenance assessments currently assessed for Windjammer should be increased at this time under any of the options. The drain fund is currently in the red \$9,226.68. The drain is currently assessed at a rate of \$30.00 per lot which brings in an annual assessment of \$2,580.00. There are 83 lots and 12.68 acres assessed.

I recommend that the rates be increased to the following:

1. Maintenance assessment for roads and streets are set at \$10.00 per acre.
2. Maintenance assessment for agricultural tracts are set at \$2.00 per acre with a \$15.00 minimum.
3. Maintenance assessment for non-platted residential tracts are set at \$2.00 per acre with a \$15.00 minimum.
4. Maintenance assessment for commercial, institutional and multi-family residential tracts are set at \$10.00 per acre with a \$75.00 minimum.

5. Maintenance assessment for platted lots in subdivisions whose drainage systems will not be considered part of the regulated drain (those systems maintained by the Town of Fishers) shall be set at \$35.00 per lot - \$35.00 minimum. Common areas within subdivisions whose drainage system will not be considered part of the regulated drain (those systems maintained by the Town of Fishers) shall be set at \$35.00 per acre with a \$35.00 minimum.
6. Maintenance assessment for platted lots within subdivisions whose drainage system will be part of the regulated drain shall be set at \$65.00 per lot/minimum. Common areas within the regulated drain subdivisions shall be set at \$10.00 per acre with a \$65.00 minimum.

The annual maintenance collection for this extension will be \$5,586.00. The period of collection should be increased from four years to eight years as per IC 36-9-27-43.

This drain was designated an urban drain by the Board on January 23, 2001.

Upon a check of the McCordsville USGS Quadrangle Map, I found that the upstream drainage shed to the existing headwall and 36" RCP inlet on the north side of Fall Creek Road is less than 1 square mile, therefore a permit from IDNR is not required.

This project will not require a Rule 5 NPDES permit since the area of disturbed land will be less than one (1) acre.

I recommend that the Board set a hearing for this reconstruction for March 23, 2009.

Sincerely,



Christie Kallio, P. E.  
Hamilton County Surveyor's Office

CLK/ilm

BEFORE THE HAMILTON COUNTY DRAINAGE BOARD  
IN THE MATTER OF

***Windjammer Drain Reconstruction***

NOTICE

To Whom It May Concern and: Vasquez, Michael R.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notice is hereby given of the hearing of the Hamilton County Drainage Board concerning the reconstruction of the **Windjammer Drain Reconstruction** on **January 26, 2009**, at **9:15 A.M.** in Commissioners Court, Hamilton County Judicial Center, One Hamilton County Square, Noblesville, Indiana. Construction and maintenance reports of the Surveyor and the Schedule of Assessments proposed by the Drainage Board have been filed and are available for public inspection in the office of the Hamilton County Surveyor.

Hamilton County Drainage Board

Attest: Lynette Mosbaugh

ONE TIME ONLY

STATE OF INDIANA     )  
                              ) SS                   BEFORE THE HAMILTON  
                              )  
COUNTY OF HAMILTON )                   DRAINAGE BOARD

IN THE MATTER OF **Windjammer Drain**

NOTICE

Notice is hereby given that the Hamilton County Drainage Board at its regular meeting **March 23, 2009** adopted the reconstruction report of the Surveyor and the Amended Schedule of damages and assessments including annual assessment for periodic maintenance, finding that the costs, damages and expense of the proposed improvement would be less than the benefits which will result to the owner of lands benefited thereby.

The Board issued an order declaring the proposed improvement established. Such findings and order were marked filed and are available for inspection in the Office of the Hamilton County Surveyor.

If judicial review of the findings and order of the Board is not requested pursuant to Article VIII of the 1965 Indiana Drainage Code as amended within twenty (20) days from the date of publication of this notice, the findings and order shall become conclusive.

HAMILTON COUNTY DRAINAGE BOARD

BY: Steven C. Dillinger  
PRESIDENT

ATTEST: Lynette Mosbaugh  
SECRETARY

Returned

OFFICE OF  
HAMILTON COUNTY DRAINAGE BOARD

Notice of Hearing on Reconstruction & Schedule of Assessments and Damages on the  
**Windjammer Drain.**

Vasquez, Michael R  
10978 Windjammer N  
Indianapolis, IN 46256

The reconstruction report of the Surveyor and schedule of damages and benefits as determined by the Drainage Board for the proposed improvement known as **Windjammer Drain** have been filed and are available for inspection in the office of the County Surveyor. The schedule of assessments shows the following lands in your name are affected as follows:

Description of Land	Benefit	Current Maintenance Assessment	Proposed Maintenance Assessment	Proposed Reconstruction Assessment	Percentage of Total Reconstruction
13-15-09-04-04-002.000					
WINDJAMMER BAY LOT 16	One Lot	\$30	\$65	n/a	n/a
Regulated Subd.					
Damages are set at zero.					

The hearing on the Surveyor's reconstruction report and on the schedules of damages and assessments are set for hearing at **9:15 A.M. on January 26, 2009** in the Commissioner's Court. The law provides that objections must be written and filed not less than 5 days before the date of the hearing. Objections may be for causes as specified by law and which are available at the Surveyor's Office. Written evidence in support of objections may be filed. The failure to file objections constitutes a waiver of your right to thereafter object, either before the Board or in court on such causes, to any final action of the Board. On or before the day of the hearing before the Board, the Surveyor shall and any owner of affected lands may cause written evidence to be filed in support of or in rebuttal to any filed objections.

HAMILTON COUNTY DRAINAGE BOARD  
One Hamilton County Square, Ste. 188  
Noblesville, IN 46060-2230



**WINDJAMMER RECONSTRUCTION**

Property Owner	Parcel Number	Acres Benefited	% Acreage	Current Maint.	Maint. Proposed	% Maintenance	Recons. Assmt.	% of Recons.
DeBonis, Joseph H & Jewell L	13-15-09-03-08-032.000	1.8	4.10%	\$30.00	\$65.00	4.65%	\$13,293.27	7.75%
Griesemer, Steve	13-15-09-00-01-001.000	0.26	0.59%	\$30.00	\$65.00	4.65%	\$1,920.14	1.12%
Gustafson, Robert L & Kathryn Lang Gustafson	13-15-09-03-02-001.000	0.67	1.53%	\$30.00	\$65.00	4.65%	\$4,948.05	2.88%
Koppin, John E & Michelle	13-15-09-00-00-017.000	0.3	0.68%	\$0.00	\$0.00		\$2,215.55	1.29%
Oesterreich, Paul & Amy H	13-15-09-00-00-015.000	0.72	1.64%	\$0.00	\$0.00		\$5,317.31	3.10%
Shaffstall, Anthony L & Julia A	13-15-09-03-01-009.000	0.89	2.03%	\$0.00	\$0.00		\$6,572.78	3.83%
Strauch, Charles A & Jeanette M	13-15-09-03-01-008.000	0.58	1.32%	\$0.00	\$0.00		\$4,283.39	2.50%
Manka, Steve R & Tamera B	19-15-09-00-16-003.000	0.36	0.82%	\$30.00	\$65.00	4.65%	\$0.00	0.00%
Miller-Frischmann, Lavina	13-15-09-03-08-024.000	0.59	1.35%	\$30.00	\$65.00		\$4,357.24	2.54%
Redman, Diana	13-15-09-03-08-022.000	0.57	1.30%	\$30.00	\$65.00		\$4,209.54	2.45%
Oeff, Kevin	13-15-09-03-08-023.000	0.59	1.35%	\$30.00	\$65.00		\$4,357.24	2.54%
Prugar, Dale W. & Mary L.	13-15-09-03-08-027.000	0.6	1.37%	\$30.00	\$65.00		\$4,431.10	2.58%
Clements, Robert E. M.D.	13-15-09-03-01-005.000	0.62	1.42%	\$0.00	\$0.00		\$4,578.80	2.67%
Youngs, Roger A	13-15-09-03-08-030.000	0.28	0.64%	\$30.00	\$65.00		\$2,067.84	1.21%
<b>Total</b>		<b>8.83</b>	<b>20.14%</b>	<b>\$270.00</b>	<b>\$585.00</b>	<b>18.60%</b>	<b>\$62,552.25</b>	<b>36.46%</b>



LEWIS & KAPPES  
Professional Corporation  
One American Square, Suite 2500  
Indianapolis, Indiana 46282  
Phone: 317-639-1210  
Fax: 317-639-4882

PAGES (including cover sheet): 3

TO: Hamilton County Drainage Board

FROM: Steve Griesemer

DATE: 12/15/08

TELECOPIER NUMBER: (317) 776-9628

COMMENT:

Please see attached letter.

The information in this facsimile is legally privileged and confidential information intended only for the use of the individual or entity to whom it is addressed. If the reader of this message is not the intended recipient you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the address above via the U. S. Postal Service. Thank you.

CLIENT NO. Firm

For questions or problems please contact Amanda at the above telephone number.



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ATTORNEYS AT LAW

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Fax: (317) 639-4882  
www.Lewis-Kappes.com

Steve Griesemer  
SGriesemer@lewis-kappes.com

December 15, 2008

**VIA FACSIMILE and CERTIFIED MAIL**

Hamilton County Drainage Board  
One Hamilton County Square, Ste 188  
Noblesville, IN 46060-2230

**RE: Windjammer Drain Reconstruction/Request for Continuance**

Members of the Drainage Board:

I am in receipt of the Notice of Hearing on Reconstruction and Schedule of Assessments and Damages on the Windjammer Drain ("Notice"). I write on behalf of myself, Windjammer parcel owners Joseph and Jewell DeBonis, and Carefree Estates parcel owners Charles and Jeanette Strauch, Anthony and Julia Shaffstall, John and Michelle Koppin and Paul and Amy Oesterreich (collectively, "Owners").

As you can imagine, the proposed imposition of \$168,603.00 in property assessments comes as a great surprise to Owners who are already concerned about the unprecedented economic downturn facing us (and the County) in 2009. For this reason, the costs and benefits of the proposed reconstruction require careful deliberation. The Owners therefore respectfully request a sixty (60) day continuance of the hearing currently scheduled for 9:15 a.m. on January 26, 2009. The Owners require this time in order to carefully study the Surveyor's reconstruction report, supporting documents, and undertake an independent assessment of the Windjammer Drain. In addition, I will be occupied throughout January with a utility rate case before the Indiana Utility Regulatory Commission (Cause No. 43526). Formal objections (if any) would then be due no less than 5 days before the revised date of the hearing.

In order to assist the Owners in their assessment of the Surveyor's reconstruction report, I am concurrently submitting the attached public record request pursuant to Indiana Code 5-14-3. As you can see, the request covers any and all documents related to the proposed Windjammer Drain Reconstruction project, including but not limited to any and all complaints, studies, surveys, notes, maintenance records, maps, photos, calculations, estimates, easements, ordinances, meeting minutes, correspondence and e-mails. I would very much appreciate it if you could facilitate this process with the Surveyor's office so that we are able to better understand and assess its report.

Thank you for your attention to this matter, and please feel free to contact my office with any questions or to discuss the foregoing.

Very truly yours,

LEWIS & KAPPES, P.C.



Steve Griesemer

cc: Joseph and Jewell DeBonis - 13-15-09-03-08-032.000  
Charles and Jeanette Strauch - 13-15-09-03-01-008.000  
Anthony and Julia Shaffstall - 13-15-09-03-01-009.000  
John and Michelle Koppin - 13-15-09-00-00-017.000  
Paul and Amy Oesterreich - 13-15-09-00-00-015.000  
Robert & Kathryn Gustafson - 13-15-09-03-02-001.000



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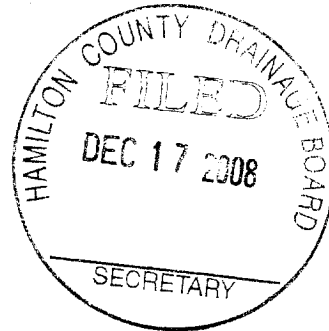
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Steve Griesemer  
SGriesemer@lewis-kappes.com

December 15, 2008

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Hamilton County Drainage Board  
One Hamilton County Square, Ste 188  
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LEWIS & KAPPES, P.C.



Steve Griesemer - 13-15-09-00-01-001.000

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Anthony and Julia Shaffstall 13-15-09-03-01-009.000  
John and Michelle Koppin 13-15-09-00-00-017.000  
Paul and Amy Oesterreich 13-15-09-00-00-015.000  
Robert & Kathryn Gustafson 13-15-09-03-02-001.000

December 16, 2008

Hamilton County Drainage Board  
One Hamilton County Square, Ste. 188  
Noblesville, IN 46060-2230



To: Hamilton County Drainage Board

**Re: Windjammer Drain Reconstruction**

Based on your letter dated November 14 that I received on December 13, 2008 concerning the Windjammer Drain Reconstruction, I would like to raise several objections concerning my property, Masthead 8th Lot #263.

First, the overall cost and proposed reconstruction assessment (\$4,948.05) seems very high and I'm surprised the county does not bear more of the cost.

The additional assessment # 8913832 that is located on my property, Lot 263, was approved on August 25, 1997 roughly 10 years after my house was built. Per your letter, the two trees and four shrubs, invisible fence and sprinkler systems on Lot 263 and Lot 264 of Masthead will all need to be relocated at the landowners' expense. I believe the county should reimburse us for these added expenses. Also, per your letter, damages for all parcels shall be set at \$0.00. I believe that if there is any damage to our sea walls or dock areas the county should also reimburse us for the additional expense. Lastly, I believe the lawn and shrub beds should be restored to their original condition and if there are added expenses to attain this condition, we should be compensated for this as well. Compensation could be estimated and deducted from the proposed assessment or paid upon presentation of receipts.

Please advise me of your decision and next steps.

13-15-09-03-02-001,000

Thank you for your consideration,

A handwritten signature in black ink that reads "Robert Gustafson". The signature is written in a cursive style with a long horizontal stroke at the end.

Robert & Kathryn Gustafson  
9749 Decatur Dr.  
Indianapolis, IN 46256  
Parcel 13-15-09-03-02-001.000  
Lot 263  
Phone: 317.841.0763



LEWIS & KAPPES  
Professional Corporation  
One American Square, Suite 2500  
Indianapolis, Indiana 46282  
Phone: 317-639-1210  
Fax: 317-639-4882

PAGES (including cover sheet): 3

TO: Hamilton Co. Drainage Board

FROM: Steve Griesemer

DATE: 12/30/08

TELECOPIER NUMBER: (317) 776-9628

COMMENT: Please see attached.

The information in this facsimile is legally privileged and confidential information intended only for the use of the individual or entity to whom it is addressed. If the reader of this message is not the intended recipient you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the address above via the U. S. Postal Service. Thank you.

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www.Lewis-Kappes.com

Steve Griesemer  
SGriesemer@lewis-kappes.com

December 29, 2008

**VIA FACSIMILE and CERTIFIED MAIL**

Hamilton County Drainage Board  
One Hamilton County Square, Ste 188  
Noblesville, IN 46060-2230

**RE: PUBLIC RECORDS REQUEST/REQUEST FOR CONTINUANCE**

Dear Board Members:

I am in receipt of the Board's response to my public records request dated December 15, 2008. In that request, I asked for copies of any and all documents related to the Windjammer Drain Reconstruction project. The response I received from the Hamilton County Surveyor's Office contained only two documents: (a) a preliminary drain reconstruction map and plan and (b) a power point presentation. The Surveyor's Office did not produce copies of correspondence, notes, maintenance records, calculations, estimates, meeting minutes, e-mails or other requested documents. The response is insufficient to provide the affected homeowners with a fair opportunity to evaluate the proposed Windjammer reconstruction and schedule of assessments and damages. Perhaps recognizing this, Christie Kallio of the Surveyor's Office has invited me to come look through the County files for additional relevant documentation. I will work with Ms. Kallio to have that done within the next 10 business days.

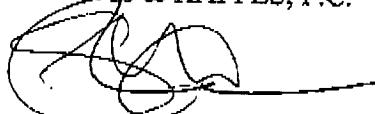
With respect to electronic files, including e-mails, Ind. Code § 5-14-3-3(d) states that "a public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system." It seems extremely unlikely that this drainage project and associated assessments and damages would be studied and proposed without a single electronic document being created. As such, please confirm that reasonable efforts have been made to search for electronic data relevant to my public records request, and that the County has no e-mails, electronic files or other electronic documents responsive to my request. Conversely, if there are documents for which the County intends to assert a claim of privilege, please provide a privilege log.

Any delay in production of documents means less time for the property owners to analyze and assess the proposed drainage project. In light of the fact that the hearing currently scheduled for January 26, 2009 is the only time that the affected property owners will be permitted to address the Board with respect to the proposed project, and to create a record of evidence subject to judicial review. I renew my previous request for a sixty (60) day continuance of the hearing.

Thank you for your attention to this matter, and please feel free to contact my office with any questions or to discuss the foregoing.

Very truly yours,

LEWIS & KAPPES, P.C.

A handwritten signature in black ink, appearing to be 'Steve Griesemer', written over a horizontal line.

Steve Griesemer

cc: Christie Kallio/Hamilton County Surveyor's Office  
Joseph and Jewell DeBonis  
Charles and Jeanette Strauch  
Anthony and Julia Shaffstall  
John and Michelle Koppin  
Paul and Amy Oesterreich  
Robert & Kathryn Gustafson



**From:** "Steve Manka" <smanka@comcast.net>  
**To:** <surveyor@co.hamilton.in.us>  
**Date:** 12/30/2008 12:54 PM  
**Subject:** Windjammer Drain Reconstruction

**CC:** <sah@co.hamilton.in.us>, <stevencdillinger@aol.com>, <cca@co.hamilton.in.us>  
December 30, 2008

*19-15-09-00-16-003.000*

Hamilton County Drainage Board

RE: Windjammer Drain Reconstruction and Proposed Maintenance Assessment Increase.

Dear Drainage Board,

I am writing to object to the proposed \$35.00 increase in the annual drain maintenance assessment. I have been paying the \$30.00 fee for the Windjammer Drain for 20 years, 12 as a resident of Windjammer Lot 2, and 8 as a resident of Windermere Point Lot 32. To date I have no evidence that fee has been used to improve drains that effect my property. The drain noted for improvement does not affect my property. The Windjammer Drain that might affect my property is .4 mi to the north of the one proposed for improvement. Money should be available from the previous year's collections.

The letter states "waster stands due to poor construction". Who from the county accepted this drain that was constructed poorly?

How about asking Fishers for a contribution since they now collect a \$65.00/year "Stormwater Utility" fee from the Fishers residents included in this notice. I believe the drain in question handles "stormwater". You could also use some of the money you have saved by firing the Township Assessor's. Between the Town of Fishers and the Hamilton County Commissioners you are trying to tax and fee us to death.

Finally if the homeowner who originated the complaint, Lynn Frishcman, would keep her lot clear of debris the drain would not become clogged.

We are in a recession, yet the Hamilton County Commissioners and the Town of Fishers continue to tax and spend. If the project is that critical and cannot wait, find the money without increasing costs to the taxpayers

(Delay another project, like widening 96th from Mollenkopf to Fall Creek. maybe at this time you should only put in the roundabout at 96th and Fall Creek and the widening of 96th will need to wait. Take a look at the proposed \$3,200,000 project on your website. I don't think we really need that elaborate of an intersection at 96th and Mollenkopf.)

This project however should be able to wait. Perhaps we can use some money from the next stimulus package that is being proposed to improve the countries infrastructure by our "President Elect". This is an infrastructure improvement is it not?

Thank you for you time and consideration. I respectfully ask you stop increasing taxes and fees.

Regards,

Steve Manka

11487 Muirfield Trace, Fishers, IN 46037

Followup Fax To: Kenton Ward

Date:

Fax #: 317-776-9628

December 16, 2008

Hamilton County Drainage Board  
One Hamilton County Square, Ste. 188  
Noblesville, IN 46060-2230



To: Hamilton County Drainage Board

**Re: Windjammer Drain Reconstruction**

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Please advise me of your decision and next steps.

Thank you for your consideration,

A handwritten signature in black ink, appearing to read "Robert &amp; Kathryn Gustafson".

Robert & Kathryn Gustafson  
9749 Decatur Dr.  
Indianapolis, IN 46256  
Parcel 13-15-09-03-02-001.000  
Lot 263  
Phone: 317.841.0763



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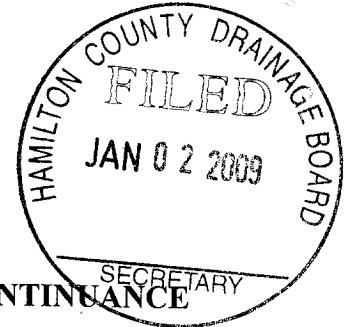
Tel: (317) 639-1210  
Fax: (317) 639-4882  
www.Lewis-Kappes.com

Steve Griesemer  
SGriesemer@lewis-kappes.com

December 29, 2008

**VIA FACSIMILE and CERTIFIED MAIL**

Hamilton County Drainage Board  
One Hamilton County Square, Ste 188  
Noblesville, IN 46060-2230



**RE: PUBLIC RECORDS REQUEST/REQUEST FOR CONTINUANCE**

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I am in receipt of the Board's response to my public records request dated December 15, 2008. In that request, I asked for copies of any and all documents related to the Windjammer Drain Reconstruction project. The response I received from the Hamilton County Surveyor's Office contained only two documents: (a) a preliminary drain reconstruction map and plan and (b) a power point presentation. The Surveyor's Office did not produce copies of correspondence, notes, maintenance records, calculations, estimates, meeting minutes, e-mails or other requested documents. The response is insufficient to provide the affected homeowners with a fair opportunity to evaluate the proposed Windjammer reconstruction and schedule of assessments and damages. Perhaps recognizing this, Christie Kallio of the Surveyor's Office has invited me to come look through the County files for additional relevant documentation. I will work with Ms. Kallio to have that done within the next 10 business days.

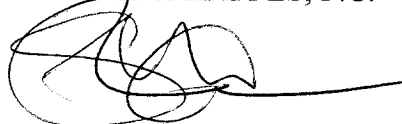
With respect to electronic files, including e-mails, Ind. Code § 5-14-3-3(d) states that "a public agency that maintains or contracts for the maintenance of public records in an electronic data storage system shall make reasonable efforts to provide to a person making a request a copy of all disclosable data contained in the records on paper, disk, tape, drum, or any other method of electronic retrieval if the medium requested is compatible with the agency's data storage system." It seems extremely unlikely that this drainage project and associated assessments and damages would be studied and proposed without a single electronic document being created. As such, please confirm that reasonable efforts have been made to search for electronic data relevant to my public records request, and that the County has no e-mails, electronic files or other electronic documents responsive to my request. Conversely, if there are documents for which the County intends to assert a claim of privilege, please provide a privilege log.

Any delay in production of documents means less time for the property owners to analyze and assess the proposed drainage project. In light of the fact that the hearing currently scheduled for January 26, 2009 is the only time that the affected property owners will be permitted to address the Board with respect to the proposed project, and to create a record of evidence subject to judicial review, I renew my previous request for a sixty (60) day continuance of the hearing.

Thank you for your attention to this matter, and please feel free to contact my office with any questions or to discuss the foregoing.

Very truly yours,

LEWIS & KAPPES, P.C.

A handwritten signature in black ink, appearing to be 'Steve Griesemer', written over a horizontal line.

Steve Griesemer

cc: Christie Kallio/Hamilton County Surveyor's Office  
Joseph and Jewell DeBonis  
Charles and Jeanette Strauch  
Anthony and Julia Shaffstall  
John and Michelle Koppin  
Paul and Amy Oesterreich  
Robert & Kathryn Gustafson

13-15-09-03-08-024.000

December 29, 2008

To: Hamilton County Drainage Board

Subject: Windjammer Drain Reconstruction



I received a letter dated November 14, 2008, from the Hamilton County Drainage Board. The schedule of assessments shows my land is affected by this "Special Assessment". Per the Hamilton County Surveyor's Office (HCSO), the Hamilton County Drainage is already in the "hole" with this particular drain because of the amount of maintenance done on it. This is how the Windjammer Drain Reconstruction originated.

I initially notified HCSO, June 2008, about the safety concerns to the children (since school was just out for the summer) in the area due to standing water approximately 5-6' deep in the common area. (Work Order #WO-2008-00204, Regulated Drain Repair, work done at NE of 96<sup>th</sup> to Mollenkopf per HCSO). Another concern was the significant health risk in which the standing water could pose to the surrounding families as a result of mosquito infestation.

Per the Notice of Hearing on Reconstruction & Schedule of Assessments and Damages, and the Law, objections must be written and filed not less than 5 days of the hearing. My objections to this special assessment for "Windjammer Drainage Reconstruction" are as follows:

1. The existing system, supposedly installed by several builders, South of Fall Creek Rd, is not hydraulically correct per HCSO. One of the downstream manholes-- the inverts of the pipe is higher than the manholes invert next to the road. As a result, things are getting lodged and not draining properly.
2. Hamilton County Drainage board accepted the builder's plans in the 80's. Per HCSO, the Developer of Windjammer subdivisions was not completely above board. The developers should have been required to put a better outlet to Geist. As a result, work completed downstream did not work. The county should have required higher standards from inception of the Windjammer Drain Construction in the 80's.
3. Per HCSO, Homeowners downstream wanted docks so they had to pickup the drainage that was coming from up North and get it to the reservoir so that they could utilize their property better. I do not see any Lots on the Reservoir which benefit from prior drainage request, attached to the "Special Assessment".
4. None of the Windjammer lots are on the water, none of Windjammer lots have docks, nor do the Windjammer lots have deeded boat docks similar to other neighborhoods living off the water. Windjammer is not benefiting from the construction decision which was approved for the water downstream. The people living on the reservoir appear to be benefiting from that decision.
5. It appears that others may be responsible for the damage that is occurring to the Windjammer Drain. How is it justifiable to assess current homeowners that are living in this area, and deem them responsible for past, faulty workmanship, bad decisions for standards, and docks for the homeowners living on Geist Water?




6. Why should new families that just moved in this area be responsible for paying for past practice, past behavior of other individuals?

7. Per HCSO, the expectation of payment for the schedule of assessments on the land affected, if approved, will be payable in a 5 year period with those payments being paid twice a year, in May and November until the "Special Assessed debt" is exhausted. This is unfair to those Homeowners affected considering that this Drainage issue has been on going since the 80's. In addition, the period of time should also be extended, if approved, to alleviate any hardships to the homeowners affected by the "Special Assessment for Windjammer Drainage Reconstruction.

8. My name and Lot information was disclosed in a public document referencing me and stating this project originated by a complaint from me dated June 6, 2008. Per the HCSO, the Drainage issue has been on going for years. I do not appreciate being the "Scapegoat" for Hamilton County's drainage issues and reason for a "Special Assessment". In addition, I hope this action does not pose a risk to my family from disgruntled neighbors. The origin of my complaint was merely a safety concern for the children in the area, health risk from mosquitoes in the stagnant water, as well as an immediate danger that the standing 5-6' water could pose to everyone in the area.

9. As of today, December 29, 2008, the water in the common area continues to drain improperly. The water was approximately 1-2 feet at the closest point to the drainage at Fall Creek. Work Order #WO-2008-00204, I was told, fixed this issue per HCSO.

  
Lynn Frischmann

13-15-09-03-08-022,000

January 11, 2009

Re: Windjammer Drain

From: Diana Redman  
10961 Windjammer S  
Indianapolis, IN 46256



To: Hamilton County Drainage Board & Christie Kallio;

**This is my formal objection to the Windjammer Drain Reconstruction.**

I strongly object to being charged for drainage reconstruction. This matter should be an issue for the developer of Windjammer to pay for and not each individual home owner. Or, this should be the "Town of Fishers" expense because the town took on or "inherited" the development from the developer and "the town of Fishers" did not do their due diligence before inheriting this from the developer to make sure the drainage system was acceptable. Now the developer and the town are expecting us, the homeowners, to pay for an issue that should have been paid for by the developer.

Sincerely,

Diana Redman

317-332-3614

de@deredman.com

13-15-09-03-08-023.000

January 16, 2009

Hamilton County Drainage Board  
One Hamilton County Square  
Ste. 188  
Noblesville, IN 46060-2230



Re: Proposed Reconstruction on Windjammer Drain

Members of the Drainage Board:

As a homeowner who owns the property (Lot 33 of Windjammer) adjacent to the Windjammer Drain, I object to the proposed reconstruction of this drain. I contend that we do not have a drainage problem. I look out on the ravine where the drainpipe is located and in my 30 months of living in Windjammer, I have noticed a backup of water only one time. In that occurrence, the rainfall was significant and the drain was jammed with debris. Even then, I believe that the assertion that the water level was 5' is incorrect.

After the surveyor's office cleaned out the blockage, we have not had any additional drainage problems. Also, a trash rack currently exists at the mouth of the drain and as long this is kept free from debris we should not have a backup of water. Since the drainage pipe borders my property and I have a clear view of it, I volunteer to periodically clear out the debris that may accumulate.

I have reviewed Indiana Code IC 36-9-27-34 and could argue that the regulated drain is not in need of reconstruction, point by point, as defined in the code. However, this does not seem necessary since we truly do not have a drainage problem.

Unfortunately, I will be out of town on business during the scheduled meeting but I would be happy to discuss this situation at your convenience.

Please vote against the drainage reconstruction in this matter.

Sincerely,

Kevin Oeff  
Windjammer Lot 33



10947 Windjammer South  
Indianapolis, IN 46256-9673

14 January 2009

Hamilton County Drainage Board  
One Hamilton County Square, Suite 188  
Noblesville, IN 46060-2230

References: 1) Letter from Hamilton County Surveyor's Office dated 14 November 2008  
2) Notice of Schedule Hearing from Hamilton County Drainage Board

Pursuant to the referenced #1 letter and in conjunction with the instructions provided by the referenced #2 notification, we are writing to file our objections to the proposed Windjammer Drain Reconstruction project. Our objections are based on the causes listed below. In addition, we are advising the Drainage Board of our intent to participate in the 26 January 2009 hearing and request that our objections be included in the public record. Moreover, presentation of this letter further secures our right to submit objections to this matter at future proceedings.

CAUSES FOR OBJECTIONS:

- Surveyor's letter indicates the recommended project was initiated as a result of a single complaint of standing water during the late spring suggesting the condition may be the result of extraordinary weather events as opposed to a reoccurring issue requiring significant expense to correct.
- No substantiating evidence to support the characterization of the one-time condition (i.e. standing water) as a safety concern.
- Project cost estimate includes tasks not required to correct the initial complaint.
- Reconstruction costs for enhancing access, correcting previous deficiencies and upgrading manhole features represent improvements to the system and are in excess of the effort needed to correct the initial complaint.
- Costs associated with enhancing the system and correcting previous deficiencies should not be borne solely by the few homeowners identified in the Surveyor's letter.
- Reasoning for assessing reconstruction costs directly to a small number of homeowners instead of utilizing other County budgets is not stated.
- Precedent for calculating reconstruction cost liability based on acreage as opposed to an alternate method is not stated.
- Proposed costs are not supported by independent contractor bids or similar project cost analysis.
- No alternative or potentially lower cost solutions were reviewed or analyzed.
- No cost/benefit analysis provided to substantiate conducting the proposed project.
- What affect does the annexation of this area by the Town of Fishers have on the proposed project?

Sincerely,

Handwritten signature of Mark L. Prugar in black ink.

Mark L. Prugar

Handwritten signature of Dale W. Prugar in black ink.

Dale W. Prugar

Hamilton County Drainage Board  
One Hamilton County Square, Suite 188  
Noblesville, IN 46060-2230

16 January 2009

Subject: Windjammer Drain Project Formal Objection

Gentlemen:

I own Lot #3 in Carefree Estates and wish to hereby formally object to the above subject project being assessed to the adjacent homeowners.

I am named by carbon copy notation on Mr. Steve Griesemer's letter dated December 29, 2008 on Lewis & Kappes, Attorneys at Law letterhead to the Hamilton County Drainage Board so my personal objection is also part of their legal efforts in this matter.

On a personal note, this is WRONG that this project's costs are being assessed to the adjacent landowners. Our property [which in-fact sits back from this subject "gully" with two other homes completely in-between our home and the gully] has NOT in the least bit added to this alleged "drainage problem". Therefore, we should NOT be financially liable for this project. If there is indeed a drainage problem in this gully, the problem lies with Hamilton County since the original drainage construction project wasn't engineered or constructed properly . . . and this improvement should NOT be at our expense. We have NOT contributed to this condition.

I am looking forward to voicing my opinion at the January 26<sup>th</sup> meeting at 9:15 am.

Sincerely,



Charles Strauch  
9801 N. Carefree Drive  
Indianapolis, IN 46256



**Robert E. Clements, M.D.**  
10935 Ridge Court  
Indianapolis, Indiana 46256-9674



January 17, 2009

Re: Windjammer Drain Reconstruction

Dear Sirs:

I am formally requesting a delay in the proposed January 26, 2009 hearing regarding the Windjammer Drain Reconstruction project.

As regards the proposed assessment for the "affected lots," I would like to state that I have done nothing to create this problem, and in fact, I have no drainage problem at all from my lot. I find it very hard to believe that there has ever been the alleged "standing water of over 5 feet" on any lot in this drainage area. Substantial proof of this claim should be provided to the affected lot owners before this project moves forward.

Your letter admits that "poor construction" is a significant contributor to this alleged problem. Is there no recourse against the original contractor who built this drain system? It would seem logical that such individuals should bear responsibility for the "poor construction" and that they should bear the financial burden to correct the problem which they have caused.

Finally, why exactly do I pay Hamilton County taxes if not to fund projects such as these? My taxes pay for road construction and repair on roads that I will probably never drive on. My taxes pay for bridge construction and renovation on bridges that I will probably never cross. My county taxes should pay for problems such as this as well.

I refuse to be held financially responsible for an issue which I have had no part in creating, and which does not affect me in any way. Either forget the project or fund it through the county taxes that WE ALL PAY.

Sincerely,

Robert E. Clements, M.D.

January 20, 2009

HAMILTON COUNTY DRAINAGE BOARD  
One Hamilton County Square, Ste. 188  
Noblesville, Indiana 46060-2230



Re: Windjammer Drain Reconstruction

Dear Sir or Madam:

I am in receipt of your letter dated November 14, 2008 showing an assessment for my property as covered by your "Special Assessment". At the outset, let me explain that I am not an attorney and, therefore, am not totally conversant with the laws. However, I have done my research and come up with several points that I think bear consideration before your proceed with this. Any communication must be delivered within 5 days of the scheduled hearing that is to be held on January 26, 2009. This letter will be hand delivered to your offices on January 20, 2009.

I do not know the normal protocol for communicating this type of information; therefore, I am simply going to list my objections to your intended course of action. They are as follows:

1 – The Hamilton County Surveyor's Office (HCSO) has indicated that the existing drainage system (South of Fall Creek) is not hydraulically proper or correct. My understanding of the situation is that one of the manholes downstream from the road is higher than those near the road. It is my understanding that this is causing items to become lodged and prevents proper drainage.

My concern with this is that the Hamilton County Drainage Board accepted and approved the builder(s)' plans for this back in the 1980's. The HSCO has indicated that the Windjammer developer(s) should have been required to install a better outlet to the Geist reservoir. The explanation states further that this caused problems downstream from the installation.

It would appear to me that the County was responsible for requiring the proper installation of the necessary drainage facilities at the time of construction. Through either malfeasance or ineptitude, this was not done. I do not understand how approximately 25 years later the County has now determined that existing homeowners are responsible for a complete overhaul of the drainage system. Further, I believe that the County is abdicating its responsibility for a mistake that they made, whether intentional or unintentional.

2 – Subsequent to the installation of the original drainage system, HSCO has indicated that homeowners downstream (and on the water) wanted to install docks. I am led to believe that in order to do so, they would have to tie in to the drainage coming from north of their property. They would then be able to send their drainage (along with that coming from the north) to the reservoir. After reviewing the materials provided, it does not appear that any of the properties on the water were provided any benefit whatsoever from the original drainage system in question. To me, that means that the property owners on the water should have been responsible for any necessary improvements, modifications or additions to the original system in order to make it operational for their specific needs.

Furthermore, none of the properties within Windjammer have water frontage, docks or deeded boat docks. Thus, the Windjammer homeowners received no benefit at all from the decision that was made to approve downstream inclusion and addition to the system. Therefore, it appears to me that if the problem is at the south end (waterfront homeowners), they should be the ones picking up the tab for the modifications required. If not, then I would suggest that they find another way to handle their drainage issues.

3 – Given that it appears that poor administration on the part of the Hamilton County Drainage Board is the root cause of the problem, I am mystified as to how you can expect people that have moved into the neighborhood in recent years to pick up the cost of correcting the mistake that was made by those tasked with proper governance. In essence, you are asking us to pay for poor decisions as to the standards for the drainage system (if that is all that it was – a bad decision), poor workmanship (where was the inspection/supervision on the placement of the manholes) or subsequent decisions to allow others to tie in to the admittedly (on your part) improper system.

Thus, it would seem to me that the Windjammer homeowners are not the ones responsible for this mess. How do you justify making them pay for all of these mistakes?

In summary, I believe that in these economic times, the County is attempting to abdicate its responsibility for its (at least) lax actions in the past. I do not know the parties involved at the beginning of the process in the 1980's, but it is inconceivable to me that anything other than incompetence or malfeasance on the part of the County is the underlying cause of the current situation. I believe the assessment to be unjust and merely a means of trying to avoid doing what is right by the County. If the issue is truly with the waterfront homeowners, they should be the ones (and the only ones) that pay for the modifications to the system, since they are the only ones that benefit from it.

Roger A. Youngs  
10946 Windjammer N.  
Indianapolis, Indiana 46256



January 19, 2009

Hamilton County Drainage Board



I am writing in objection to the proposed improvement know as Windjammer Drain that has been prepared and issued by the County Surveyor's office. We received a letter in late November identifying the project details, some background, and the proposed reconstruction assessment for our portion of the project as stated in the proposal. I am objecting to this project on several grounds:

- 1) In consultation with other affected homeowners that are deemed to be part of this project, including an indication from the homeowner that made the initial complaint, the root concern of this complaint has been blown way out of proportion relative to the potential problems and risks that might be associated with such a concern. Specifically, the standing water that was the original source of the complaint is an extremely infrequent event. I have lived in this neighborhood for almost 10 years, and during a couple significant periods of rainfall, and to my knowledge this is the only time that significant standing water in this ravine has been an issue.
- 2) I personally walked the affected area about 2 weeks ago. In my opinion (for what it's worth I am a Chemical Engineer, having some considerable experience in piping design), there is little chance that an accumulation of 5' of water in that ravine near the drain could occur without a virtual total pluggage of the drain pipe inlet due to debris. Currently there is a makeshift screen that attempts to act as a trash grate to protect the inlet. If there is any improvement that should be made to this area, it should be the installation of a proper trash grate to protect this inlet area.
- 3) The specific drain area in question (north side of Fall Creek Rd) lies in a deep natural ravine that is largely inaccessible by anyone other than a very determined individual, and therefore a very occasional, at best, accumulation of water should not be considered a significant safety risk
- 4) All of the other issues and items mentioned in the Surveyor's office report should be considered issues or design flaws of the original construction, which I presume was done by the County. Facts such as the inlet to the manhole with the open grate being 6" higher than the drainage pipe on the north side of the road is just one example of this. These issues are and should be completely assumed by the County for correction if ultimately deemed necessary.
- 5) In an economic environment such as currently exists in this Country, and as well this County, it is ridiculous for the Surveyor's office to propose a project totaling almost \$170,000 to "fix" an alleged problem that largely doesn't exist. My thoughts and feelings wouldn't be any different if there were no proposed

assessments to the affected homeowners and the cost was entirely borne by the County, as ultimately the cost of this project would still be assumed by the taxpayers, which is you and I. Collectively we need to be wiser about the scope of projects and managing our limited financial resources – especially as a governmental entity.

- 6) This proposed project is an extremely overzealous attempt at correcting a short-term drain pluggage problem with a grand-sized scheme without regard to the financial considerations for the County or the individuals that are proposed to be assessed.

My recommendation would be to significantly scale back the scope of this project, to only include the purchase and installation of an appropriate trash grate on the inlet of the pipe going under Fall Creek Rd, and that the cost be borne totally by the County.

I look forward to our meeting on January 26<sup>th</sup>.

Regards,



Paul Oesterreich  
9921 Ridge Dr  
Indianapolis, IN 46256  
317-579-0398

**STEVEN GRIESEMER**  
9670 NAUTILUS CIRCLE  
INDIANAPOLIS, IN 46256

**VIA E-MAIL, FACSIMILE and CERTIFIED MAIL**

March 20, 2009

Hamilton County Drainage Board  
One Hamilton County Square, Ste 188  
Noblesville, IN 46060-2230

**RE: Windjammer Drain Reconstruction/Objections**

Members of the Drainage Board:

I, on behalf of myself and those similarly situated, pursuant to Ind. Code 36-9-27-52(d)(1), object to the proposed imposition of \$168,603.00 in property assessments referenced in the Notice of Hearing on Reconstruction and Schedule of Assessments and Damages on the Windjammer Drain, received on or around December 13, 2008. ("2008 Notice"). Objections are also set forth herein to the revised Notice of Hearing on Reconstruction and Schedule of Assessments and Damages on the Windjammer Drain, received March 20, 2009 ("2009 Notice").

In support of this objection I offer the following:

- 1. The 2009 Notice, mailed March 19, 2009 – two business days prior to the public hearing scheduled for March 23, 2009 – violates the requirements of Ind. Code 36-9-27-52.**

Ind. Code 36-9-27-52(b) requires that the notice containing the schedule of assessments be mailed to affected landowners "Not less than thirty (30) nor more than forty (40) days before the date of the hearing, the board shall mail a copy of the notice in a five (5) day return envelope to each owner named in the schedules of damages and assessments." The Surveyor's Office violated this requirement by sending out an entirely new set of potential assessments less than two (2) business days before the public hearing, depriving affected landowners of a reasonable opportunity to investigate and analyze the alternatives set forth therein, and depriving them of their right to object within five (5) days of the hearing as permitted under Ind. Code 36-9-27-52(d).

I was informed that the hearing on the 2008 Notice was continued until March 23, 2009. (See Exhibit "A"). A revised notice was never sent out, and the 2009 Notice contains a completely different set of potential resolutions and assessments. As such, the affected landowners are entitled to the same due process rights afforded to them under Ind. Code 36-9-27-52(b), including thirty (30) days in which to review the contents thereof. In addition, crucial information required by Ind. Code 36-9-27-52 appears to be missing from the 2009 Notice. I therefore request confirmation that the 2008 Notice has been rescinded or superseded, and request that a hearing on the 2009 Notice occur no sooner than the later of April 23, 2009 or compliance with Ind. Code 36-9-27-35 (see below).

**2. The Windjammer drain is not currently classified as a "Drain in Need of Reconstruction", and there has been no notice or hearing on reclassification under Ind. Code 36-9-27-35.**

The Windjammer drain is currently classified as a drain in need of periodic maintenance as defined by Ind. Code 36-9-27-34. The "Notice of Hearing on Reconstruction and Schedule of Assessments and Damages on the Windjammer Drain" - presumably prepared under Ind. Code 36-9-27-52 - is not a notice of reclassification as a "Drain in Need of Reconstruction" as required by Ind. Code 36-9-27-35. Nor was any such notice produced in the course of discovery. As such, the Surveyor's Office is proposing reconstruction of a drain not classified as "in need of reconstruction". I therefore object on procedural grounds, and request a hearing on the reclassification of the Windjammer drain before moving on to the issues of assessments and damages.

**3. The Surveyor's own documents show that the Windjammer Drain does not satisfy the criteria for classification as a "Regulated Drain In Need of Reconstruction" under Ind. Code § 36-9-27-34.**

Pursuant to Ind. Code § 36-9-27-34, all regulated drains are classified into one of three categories: (1) in need of reconstruction; (2) in need of periodic maintenance; or (3) that should be vacated. A drain "in need of reconstruction" means that the drain must be (1) unable to perform the function for which it was designed and constructed; (2) no longer conforming to the maps, profiles, and plans prepared at the time when the legal drain was established; or (3) changed in such a way that make it inadequate to properly drain the lands affected without extensive repairs or changes. In contrast, a drain "in need of periodic maintenance" means that "it can be made to perform the function for which it was designed and constructed, and to properly drain all affected land under current conditions, by periodically [cleaning, spraying, removing obstructions and making minor repairs]."

The Surveyor's own documents demonstrate that the Windjammer Drain is "in need of periodic maintenance" and does not meet the criteria for a drain "in need of reconstruction."

**Exhibit B: June 2008 County Surveyor investigation: Windjammer Drain (the "Drain") is in need of periodic maintenance, no basis for reconstruction.** The internal memo of the Surveyor's Office dated June 12, 2008 cites "massive amounts of

debris, including fallen trees and branches" blocking the culvert entrance, and that the 36" CMP could be clogged with silt, wood or other material. The report recommends that the standing water giving rise to Ms. Frischmann's complaint could be addressed by "cleaning and removal of the fallen debris in the common area on the north side of Fall Creed Road" in addition to installation of "a large debris trap" in the upstream side of the 36" CMP under Fall Creek Road. The memo does not recommend or suggest a complete reconstruction of the Drain, nor is it clear how doing so would remedy the observed problem of "debris, fallen trees and branches" causing the blockage.

**Exhibit C: July 2008 County Surveyor internal recommendation: Maintenance at "minimum cost".** An e-mail from Ms. Callio to Mr. Ken Ward dated July 10, 2008 reflects that (1) water was again draining – possibly following drain maintenance (2) maintenance work can be done at minimum cost and (3) that check dams might be necessary to slow erosion. Again, there is no recommendation of a complete reconstruction of the Drain. Rather, Ms. Callio suggest that she "check" for a shifting of the down stream pipes if that has happened".

**Exhibit D: September 2008: No Slippage, No Infiltration; No basis for Reconstruction.** The internal memo of the Surveyor's Office dated September 23, 2008 reflects that an internal inspection of the dogleg pipe between the northern and center manholes of the drain show that "the pipe has maintained its integrity and hasn't slipped or come apart." (Emphasis added). There was no evidence of corrosion or water infiltration, and saw no sink holes above the ground in the vicinity of the pipe. Logs were noted between the northern manhole and the headwall on the north side of Fall Creek Road, which could be removed by use of chainsaws. The memo states "[w]e know that the problem is between the headwall on the standpipe near Fall Creek Road", and speculates that the RCP under Fall Creek may be damaged. The memo contains no explanation of how the inspection results justify the replacement of the dogleg pipe with a new straight pipe to the lowest manhole next to the dock.

**Exhibit E: Windjammer Drainage Study merely reflects "concerns".** The Surveyor's drainage study cites heavy debris and sediment as primary causes for continual maintenance issues – not the construction of the down slope pipe. The report states that the existing storm flow is "not ideal" and that Surveyor "ha[s] concern that the dogleg portion of the existing CMP dogleg may fail as other parts of the drain", but fails to elaborate further. However, "not ideal" or "has concerns" is not the standard for classification of a drain in need of reconstruction under § 36-9-27-34(b). As shown by the Surveyor's own investigations, the drain is able to perform its function when properly maintained so as to be clear of debris, and the drain shows no evidence of slippage, infiltration, corrosion or other changes.

**The Surveyor's Office has represented that the Windjammer Drain is not in immediate risk of failing.** According to Ms. Callio of the Surveyor's Office, the Windjammer Drain may continue to function for its intended purpose for another "five or ten years". This statement strongly indicates that, however desirable reconstruction of the drain may be in the long-term, the drain is not currently "in need of reconstruction".

Rather, maintenance should be sufficient unless and until corrosion, slippage, infiltration, or other change prevents the drain from performing its function.

**3. The County should be estopped from assessing homeowners to change the design and construction approved by the Surveyor's Office.**

Equitable estoppel should preclude the Drainage Board from imposing an assessment for reconstruction of the Windjammer Drain. Equitable estoppel is a doctrine by which a person may be precluded from asserting a right that he/she otherwise would have had. See Izaak Walton League of America v. Lake Co. Property Tax Assessment Board of Appeals, 881 N.E.2d 737, 743 (Tax Ct. 2008). While equitable estoppel is not ordinarily applied against government entities, however it is not absolutely prohibited. Id. The exception to the general rule exists where the public interest would be threatened by the government's conduct. Id. In this case, there is an overwhelming public interest in governmental accountability and the prudent use of public funds.

The County Surveyor is the technical authority on the construction and maintenance of all regulated drains in the county, and has the responsibility of investigating, evaluating and surveying all proposed regulated drains, and supervising all construction and maintenance. Ind. Code § 36-9-27-29 et seq. Unlike the assessed landowners, the Surveyor has the right of entry over and upon land within 75 feet of any regulated drain, and is able to inspect the drain. Ind. Code § 36-9-27-33. Moreover, the surveyor is required to inspect drain construction work, and may approve or disapprove the work and recommend payment of the contractor. Ind. Code § 36-9-27-82. Thus, the public must rely on the County Surveyor's exclusive authority to protect the public interest.

The current County Surveyor was in place during the construction of the Windjammer Drain. Unlike the affected landowners, the Surveyor was able to approve the plans for construction, set standards for construction, supervise and approve construction, inspect the completed construction, and recommend payment of the contractor. In each instance, he did so, finding on behalf of the Surveyor's Office that the plans and construction were "complete and acceptable" (See Exhibits F and G). Based on his findings, the County Surveyor recommended the release of performance bond monies and/or payment of contractors.

The affected landowners reasonably relied upon the Surveyor's office to perform its statutory duties and protect the public interest by careful oversight and supervision. There is no evidence that anything has changed with respect to the drain since approval, construction and inspection by the County Surveyor. No slippage, corrosion or infiltration has been detected. Rather, the evidence reflects the existence of maintenance-related issues unrelated to the approved design and construction of the drain. That the County may have underperformed in its duty of proper maintenance does not then justify the complete redesign and reconstruction of the Windjammer Drain at an additional cost of \$185,000 to the affected landowners.

In summary, there was (1) a public representation that the drain was designed and constructed correctly; (2) by the Surveyor's office with vastly superior knowledge of the facts; (3) with the

intention that the public would rely on those representations; (4) which induced the public to accept and pay for the construction of the drain. There is an important public interest in the proper design and construction of drainage projects, the performance of oversight duties reserved exclusively to the county surveyor, and the responsible use of public funds for such projects. As such, the elements of equitable estoppel have been satisfied.

**4. Indiana Code 36-9-27-46 contemplates removal of obstructions and repairs of any damage, rather than redesign and reconstruction.**

The Surveyor's reports strongly indicate that the primary cause of obstruction of the Windjammer Drain is an accumulation of logs, trees, brush and other debris rather than inadequate design or construction. Such obstructions are not unusual (indeed expected), and Indiana Code 36-9-27-46 contemplates the immediate removal of these items as a remedy rather than complete redesign and reconstruction. Moreover, Chapter 46 sets forth a procedure by which private landowners may be held accountable for causing such obstructions or damage. Thus, one option – in addition to maintenance – is to seek the cooperation of affected landowners in keeping the drainage shed clear of debris. This option is certainly more equitable and cost-effective than redesign and reconstruction of the drain.

As discovery in this matter is ongoing with respect to the 2009 Notice, I reserve the right to assert objections in addition to those contained herein as permitted by law. Thank you for your attention to this matter, and please feel free to contact my office with any questions or to discuss the foregoing.

Very truly yours,



Steve Griesemer

Tel: (317) 504-5497  
Fax: (317) 639-4882  
SGriesemer@lewis-kappes.com

cc: Joseph and Jewell DeBonis  
Charles and Jeanette Strauch  
Anthony and Julia Shaffstall  
John and Michelle Koppin  
Paul and Amy Oesterreich  
Robert & Kathryn Gustafson

**EXHIBIT "A"**



**Steve W. Griesemer**

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**From:** Christie Kallio [clk@co.hamilton.in.us]  
**Sent:** Monday, January 12, 2009 4:26 PM  
**To:** Steve W. Griesemer  
**Subject:** Windjammer Public Hearing

Steve,

Kent Ward and Mike Howard presented your request for a 60 day continuance on the public hearing on the above referenced project. The drainage board has approved your request and will formally grant the continuance on January 26th. The board will open the public hearing on January 26th in case someone is there to speak to the project and then set the public hearing for March 23rd at 9 am.

A second notice will not go out.

Let me know if you have any questions.

Christie Kallio

**EXHIBIT "B"**

## MEMO

To: Kent Ward, Steve Baitz  
Windjammer File

From: Christie Kallio

Date: June 12, 2008

Subject: Windjammer Subdivision

Site Visit June 12, 2008

The Hamilton County Surveyors Office received a complaint from a homeowner about the standing water behind their home along the Windjammer Legal Drain. Lynn Frischmann of 10955 Windjammer Drive.

*not common area - Lot 55 WINDJAMMER*

I walked the open swale between lots 32 & 33 of Windjammer Subdivision. There are signs of erosion because of the steep elevation of the swale. There is a large pond of standing water in the common area at an approximate contour elevation of 803 feet. I could not visibly see the 36" CMP going under Fall Creek Road and draining south to Geist Reservoir. There are massive amounts of debris, including fallen trees and large branches piled on the northern creek side of Fall Creek Road. I feel this is significantly blocking the culvert entrance. The invert elevation from previous construction plans show an invert elevation of 789'. This 36" CMP could be clogged with silt, wood or other material.

On the south side of Fall Creek Road there is an existing open grate with rip rap surrounding the inlet. I heard water rippling through the pipe. I feel there may be trapped debris in the 36" CMP under Fall Creek Road that is passing small amounts of water slowly. There also may be a blockage in the bottom of the structure at the large concrete cover.

The 36" pipe that connects through the seawall and outfalls into Geist Reservoir is submerged.

I recommend the cleaning and removal of the fallen debris in the common area on the north side of Fall Creek Road. A large debris trap needs to be installed in the upstream side of the 36" CMP under Fall Creek Road.

Site Visit June 17, 2008

I returned to view the standing water in the common area. The water elevation has fallen approximately 2.5 to 3 feet. I was able to walk all the way around the ponded area adjacent to the slope on the north side of Fall Creek Road. The inlet pipe under Fall

Creek Road was still submerged but I found a rusted metal debris trap that was separated from the inlet pipe. It had been submerged on my previous site visit. I also saw an orange stake (previously submerged) that Steve Baitz told me marked the pipe inlet.

I also probed the submerged outlet into Geist Reservoir and found the outlet pipe. I could not detect any blockage at the outfall location.

I called the homeowner Lynn Frischmann who filed the drainage complaint. She confirmed that the water level had gone down significantly and in some areas she could see the bottom of the valley.

Lynn was concerned for the safety of the children playing in the area and the eroding of the vertical swale between her property and her neighbors.

I told Lynn that the county would be in to do work and clean out the pipe under Fall Creek Road and revise the grate / trap at the inlet pipe. We will also work to repair any pipe connections on the south side of Fall Creek Road. We have to wait until more water is lowered in the common area before our contractor can gain access.

I will also look at rock dams or some method to stop the erosion of the vertical swale between Lynn's property and her neighbors.

**EXHIBIT "C"**

(1/6/2009) Christie Kallio - Windjammer

Page 1

**From:** Christie Kallio  
**To:** Kenton Ward  
**Date:** 7/10/2008 8:40 AM  
**Subject:** Windjammer

**CC:** Steven Baitz  
Hi Kent,

The water is gone in the common area on the north side of Fall Creek Road. The trash guard has slipped down at the inlet and there is silt and debris that I believe should come out. Steve B. believes this work can be done with minimum cost.

The homeowner that filed the complaint said that the steep sloping swale between her home and the neighbor to the east is eroding. I walked that area also, it is eroding, not drastically, she has two down spouts that tie into this earthen swale. The neighbor has none and may be losing their back yard due to water draining from their down spouts.

In regards to this swale I believe some check dams are needed to slow down the water.

I can design the check dams if necessary, and have the concrete cover lifted off of the pipe on the south side of Fall creek road and locate a shifting of the down stream pipes if that has happened? This fix will be more costly.

I checked the balance of the maintenance fund and we are currently in the hole.

Please let me know how to proceed.

Thanks,

Christie

## **EXHIBIT "D"**

Windjammer Drain

September 23, 2008

To: Kent Ward, Steve Baitz, File  
From: Christie Kallio

Per my last memo, Harold Harvey had one of his guys (Brian) walk inside the dogleg pipe between the northern MH with concrete lid and the center MH with the open grate and rock garden. The center MH is dry and he crawled up the pipe and could see the CMP walls very well. He said the pipe has maintained its integrity and hasn't slipped or come apart at the dogleg. I asked if he saw any corrosion where water would be leaking and he said he did not see any infiltration. He also looked for sink holes above ground in the vicinity of the pipe which may indicate infiltration and he has seen none.

Moving on to the northern MH, with the concrete lid, Brian pushed over the lid and looked down into the standpipe. He said there was water in the bottom but he could see what looked like logs or timber of some sort. He feels there is one giant log jam between this MH and the headwall on the north side of Fall Creek road. He crawled into the 36 in RCP from the headwall and said it was hard to see. A camera would not go through the blockage.

Brian called Chip at Fluid Waste for suggestions. Chip said that he had a cart that he would have a man with a chainsaw go into the pipe, chop everything up and remove it. He could then put the camera in if we wanted it videoed.

Based on the latest site inspection we know that the problem is between the headwall on the standpipe near Fall Creek Road. My first question, "Is the RCP under Fall Creek the responsibility of the Highway Dept. or ours?" This RCP may be damaged because Steve Baitz has pictures of broken concrete pipe that was cleaned out of the area before.

*Hamilton Co - Surveyor's office*

We have confirmed that the middle manhole doesn't have a pipe entering from the west; therefore we could install a new manhole where the standpipe is and run the pipe straight to the lowest manhole next to the dock. This would save pipe and 2 manholes. We would still have costly backfill if the underlying soil has marginal bearing capacity. I am checking the existing drainage easement and I believe we have the room. This easement has been enlarged with the construction of the existing drain construction. We can block the inlet to the dogleg pipe but the open grate MH in the middle is taking surface water. I hope we can leave that connection in tact.



**EXHIBIT "E"**

# Windjammer Drainage Shed #218

Hamilton County  
Indiana

## Drainage Study

Prepared by

Christie Kallio PE

### DRAINAGE ISSUE:

An existing drainage line picks up surface water on the North side of Fall Creek Road. An existing concrete headwall and 36" RCP picks up water and outlets the water to GEIST RESERVOIR.

The pipe under Fall Creek Road has been a continual maintenance issue. Heavy debris from the steep sloping wooded terrain & sediment cause blockage in the pipes & structures causing the low wooded land north of Fall Creek Rd. to fill with water. An existing leaf guard at the inlet has been crushed by falling tree limbs - The large mounds of dead trees, leaves and other debris cover the inlet to the 36" storm drain.

The entire drainage shed doesn't flow to this drain. A sub shed of 15.4 ACRES DRAINS TO THIS location.

### DRAINAGE ANALYSIS:

A Hydrology analysis will be performed to

find  $Q_2$ ,  $Q_{10}$  &  $Q_{100}$

The existing condition of the drain will be analyzed as well as two alternatives.

## EXISTING CONDITION

THE EXISTING STORM FLOWS UNDER PRESSURE with  $Q_{10}$  &  $Q_{100}$ . The hydraulic gradeline exceeds the top of pipe.

This is not ideal because it exerts considerable pressure on the joints. We have concern that the dogleg portion of the existing ~~and dogleg~~ may fail as well as other parts of the drain.

This analysis assumes there are no blockages in the existing pipes.

At the 100 yr storm event the existing center manhole will have water flowing out of it as well as ponding water on the north side of Fall Creek Rd.

Check 2 alternatives of reconstruction.

**EXHIBIT "F"**



*Kenton C. Ward, Surveyor*

*Phone (317) 776-8495*

*Fax (317) 776-9628*

*Suite 146*

*One Hamilton County Square*

*Noblesville, Indiana 46060-2230*

To: Hamilton County Drainage Board

May 28, 1997

**Re: Windjammer Drain Extension**

Attached are as-builts, and other information for the Windjammer Drain Extension. An inspection of the drainage facilities for this section has been made and the facilities were found to be complete and acceptable.

During construction of the drain there were not any significant changes made to the drain. Subsequently, there were not any significant changes made to the plans submitted with my report dated November 21, 1989. Therefore, the length of the drain extension remains at **302 feet**.

The additional easement is located on Lot 263 in Masthead Section 8 and is recorded as instrument number #8913832.

The bond or letter of credit was not required since the project was completed on maintenance.

I recommend the Board approve the drains construction as complete and acceptable.

Sincerely,



Kenton C. Ward,  
Hamilton County Surveyor

**EXHIBIT "G"**

Richard Allen Corporation  
706 Tamenend Trace  
Noblesville In. 46060

September 7, 1988

Board of Hamilton County Commissioners  
Hamilton County Court House  
Noblesville, In. 46060

Re: Windjammer Drain

Dear Commissioners:

Mr. Kent Ward has made the final inspection of the drainage facilities for the Windjammer Drain and recommends the Board of Commissioners release the performance bond requirement.

It is requested that letter of credit number 1146 dated April 28, 1986 from The Fidelity Bank of Carmel be released.

Respectfully,



Richard A. Lewis,  
President

cc: Mr. Kent Ward




FINDINGS AND ORDER  
CONCERNING THE MAINTENANCE OF THE  
Windjammer Drain


On this 23<sup>rd</sup> day of March 2009, the Hamilton County Drainage Board has held a hearing on the Maintenance Report and Schedule of Assessments of the *Windjammer Drain*.


Evidence has been heard. Objections were presented and considered. The Board then adopted the original/amended Schedule of Assessments. The Board now finds that the annual maintenance assessment will be less than the benefits to the landowners and issues this order declaring that this Maintenance Fund be established.

HAMILTON COUNTY DRAINAGE BOARD

  
\_\_\_\_\_  
President

  
\_\_\_\_\_  
Member

  
\_\_\_\_\_  
Member

Attest: 

STATE OF INDIANA )  
 ) ss:  
COUNTY OF HAMILTON )

BEFORE THE HAMILTON COUNTY  
DRAINAGE BOARD  
NOBLESVILLE, INDIANA

IN THE MATTER OF THE  
RECONSTRUCTION OF THE  
*Windjammer Drain Reconstruction*

FINDINGS AND ORDER FOR RECONSTRUCTION

The matter of the proposed Reconstruction of the *Windjammer Drain Reconstruction* came before the Hamilton County Drainage Board for hearing on *March 23, 2009*, on the Reconstruction Report consisting of the report and the Schedule of Damages and Assessments. The Board also received and considered the written objection of an owner of certain lands affected by the proposed Reconstruction, said owner being:

Evidence was heard on the Reconstruction Report and on the aforementioned objections.

The Board, having considered the evidence and objections, and, upon motion duly made, seconded and unanimously carried, did find and determine that the costs, damages and expenses of the proposed Reconstruction will be less than the benefits accruing to the owners of all land benefited by the Reconstruction.

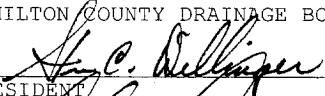
The Board having considered the evidence and objections, upon motion duly made, seconded and unanimously carried, did adopt the Schedule of Assessments as proposed, subject to amendment after inspection of the subject drain as it relates to the lands of any owners which may have been erroneously included or omitted from the Schedule of Assessments.

The Board further finds that it has jurisdiction of these proceedings and that all required notices have been duly given or published as required by law.

Wherefore, it is ORDERED, that the proposed Reconstruction of the *Windjammer Drain Reconstruction* be and is hereby declared established.

Thereafter, the Board made inspection for the purpose of determining whether or not the lands of any owners had been erroneously included or excluded from the Schedule of Assessments. The Board finds on the basis of the reports and findings at this hearing as follows:

HAMILTON COUNTY DRAINAGE BOARD

  
PRESIDENT

  
Member

  
Member

ATTEST:   
Executive Secretary