

JAN 12 2020

Before the Shelbyville Board of)
Zoning Appeals)
In the Matter of W. Taylor Sumerford, Jr.)
and Sumerford Land Trust)

AFFIDAVIT BY ROBERT ADAMS

Robert Adams, being first duly sworn upon his oath, says as follows:

1. That he has personal knowledge regarding the matters in this Affidavit on events occurring in the year 2020. I am an attorney in Shelbyville, Indiana.
2. That Paul Munoz on behalf of Arbor Homes, a real estate developer, contacted me as attorney for W. Taylor Sumerford, Jr. in late July of 2020. Mr. Munoz prearranged a telephone conference for discussion of drainage easements from an Arbor Homes' development west of State Road 9 north of Shelbyville.
3. In the conference, Mr. Munoz went over a single page plan for drainage that I indicated would probably not be feasible. Mr. Munoz provided no back up or documents to support his drawing. The Arbor Homes drainage would likely result in a backflow of Blue River to the west side of State Road 9. E-mails on the subject matter are attached as Exhibit A.
4. Mr. Sumerford's engineer, Christopher B. Burke Engineering, confirms Mr. Sumerford's explanation on flooding west of State Road 9. The firm is a professional engineering firm in Indianapolis.
5. Currently, State Road 9 operates as a buffer to prevent Blue River's floodwater from west of State Road 9. There are 6 feet to 8 feet diameter pipes near the railroad (recently installed by the State), which increase the backflow already to the west into a junkyard and adjacent property. The opening of an area to the north would cause a backflow similar to the present flooding on (a) the Knauf Fiber Glass land on the east side of State Road 9 and (b) the junkyard area west of the Michigan Road. Affected property owners include:

St. Luke's Episcopal Church
Residence owners (at least 6 residences)
Shelby County Highway Garage
Crystal Flash Service Center
Shelby Bottled Gas
W. Taylor Sumerford

The properties are shown on attached Exhibit B from the Burke Engineer's Report.

6. Mr. Munoz, the project manager for Arbor Homes, said regardless he wanted the easement for Arbor Homes to drain stormwater from his proposed development.

7. Mr. Munoz in our July conference said that he spoke on behalf of the City of Shelbyville and its Planning Department. If Mr. Sumerford did not grant the easement, then there would be major issues and problems for Mr. Sumerford caused by the City of Shelbyville. That Arbor Homes was furnishing information to the City for action by the City, so that the City could bring actions against Mr. Sumerford.

8. Mr. Munoz said he was authorized to speak on behalf of the City of Shelbyville on all matters in the conference. I expressed my disbelief, because the City does not authorize a developer to act for it, especially to intimidate a property owner.

9. Mr. Munoz indicated that there would be no problems with the City for Mr. Sumerford if easements were granted by Mr. Sumerford as Munoz requested. The City and its planning department would then not pursue an action against Mr. Sumerford. I indicated that the City should act for itself and contact Mr. Sumerford. However, there was no contact by the City.

10. Shortly thereafter, on August 18, 2020, Adam M. Rude issued a letter stating zoning violations. The first page asserting multiple zoning violations against Mr. Sumerford is attached as Exhibit C.

11. In my subsequent conversations with Mr. Rude, he first stated that there were complaints against Taylor Sumerford causing his notice of August 18, 2020. Later, after I

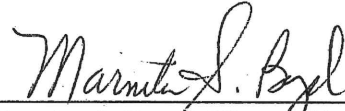
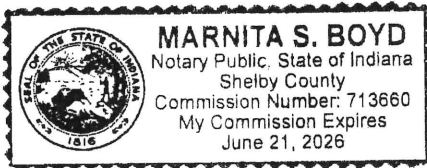
requested that he produce the complaints, Mr. Rude changed his response and said that no one had objected or complained. The City has given no prior notices or contact to Mr. Sumerford or me on the matters in his notice.

Respectfully submitted,



Robert Adams, Affiant

Subscribed and sworn to before me this 12 day of January, 2021.



Marnita S. Boyd, Notary Public
Commissioned in Shelby County, Indiana

Robert Adams

From: Robert Adams
Sent: Friday, July 10, 2020 8:30 AM
To: 'Paul Munoz'
Subject: RE: Taylor Summerford - Drainage Options

Paul,

Mr. Sumerford is in the process of working with an engineer to review the drainage routes and other issues. The only matter presented that you presented to me is a single sheet of paper, with some alternatives on it. You indicated that you had substantial documents on the drainage including the history, that you were going to provide me.

Would you please give me in customary useable form all documents compiled by your engineer and Arbor Homes, including memoranda, communications, studies, and plans relating to drainage. Electronic format would be fine. There has been no statement or agreement that Mr. Sumerford is contemplating an easement or conveyance for drainage purposes. We already met with your engineer about six months ago on the same subject matter.

Thank you.

Bob Adams

Robert Adams
Adams & Cramer
33 W. Washington Street
P.O. Box 746
Shelbyville, IN 46176
(317) 398-6626
(317) 392-1962 – Fax
radams@adamsandcramer.com

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From: Paul Munoz <Paulm@YourArborHome.com>
Sent: Wednesday, July 8, 2020 8:41 AM
To: Jeff Smith <jsmith@projectsplus.org>; Robert Adams <radams@adamsandcramer.com>
Cc: Christian Rector <christianr@YourArborHome.com>; Adam Rude <arude@cityofshelbyvillein.com>
Subject: RE: Taylor Summerford - Drainage Options

Bob,

Good Morning. We wanted to follow up and see if you and Taylor had formulated a response to the emails that we have sent regarding the drainage issues. Please contact me at your soonest convenience.

Thank you and have a great day.

Paul

To: Donald J. Smith, Attorney at Law - Katz Korin Cunningham

From: Jon Stolz, PE - Christopher B. Burke Engineering, LLC

Subject: Preliminary Findings Regarding Flooding at Burnside and E-shaped ponds

Date: December 7, 2020

Project Name: Burnside and E-shaped Pond Flood Impacts, Shelbyville, Indiana

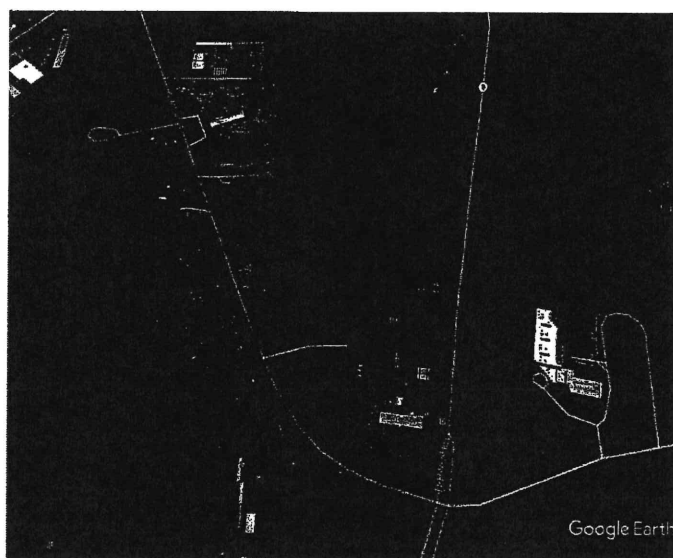
Project No.: 20-0481.00000

Cc:

The purpose of this study was to evaluate the impact of fill activity and a proposed development on two separate, existing ponds located on the north side of Shelbyville, Indiana. The City and the property owner of the ponds would like to have a hydrologic study of the area performed to examine the impact of earlier fill activity at one site and proposed construction adjacent to the second site.

Site 1: Burnside Pond

The site is located on the west side of Riley Highway (formerly State Road 9) about 3,300 feet north of the Big Blue River. Burnside Pond is currently 13.6 acres in size under normal non-flood conditions. It is bounded by agricultural ground to the north, which is also the site of the proposed development. To the east is Riley Highway, to the south there are additional undeveloped low ground and light commercial, and to the west there is also light commercial, a few homes, and the Shelby County Highway Garage.



The Burnside pond was presumedly created for extraction of gravel material many decades ago. The pond is of unknown depth and does not appear to have any dedicated drainage infrastructure for maintaining a water level or

E-Shaped Pond Storage Values

Modeled Condition	2-Year Flood	10-Year Flood	100-Year Flood
Pre-Existing Condition	25.4 acre-feet	38.7 acre-feet	59.1 acre-feet
Existing Condition	25.4 acre-feet	38.7 acre-feet	59.1 acre-feet
Change in Storage*	0 acre-feet	0 acre-feet	0 acre-feet

* There was not a substantial change to runoff conditions in either analysis, therefore no change in runoff volume.

E-Shaped Pond Water Surface Elevations

Modeled Condition	2-Year Flood	10-Year Flood	100-Year Flood
Pre-Existing Condition	758.6 ft	759.4 ft	760.5 ft
Existing Condition	759.0 ft	760.0 ft	761.4 ft
Change in Elevation	0.4 ft	0.6 ft	0.9 ft

Since there is no outflow from the pond, it is the assumption that flow in the subject watershed eventually gets to the pond where it is ultimately stored. There has not been a routing of flows or hydraulic analysis of conveyance capacity in the contributing storm sewer network or overall watershed. This study has focused on the volumetric impact due to the reduction in flood storage from the placement of fill in the pond. The assumption is made that the drainage network will ultimately convey flows to the E-Shaped Pond. Also, there is the awareness that the stored water from flood events would infiltrate via subsurface flow in time but this outflow potential is assumed relatively slow as compared to a flood event and has not been analyzed as part of this study.

Conclusion

The placement of fill in the E-Shaped pond has increased the water surface elevation up to 0.9 feet from the pre-fill condition during the 24-hour, 100-year flood event. This noted increase is due to the location of fill that displaced a portion of the storage volume in the pond.

There is no positive outlet from the E-Shaped Pond and therefore changes in water surface elevations as described are expected. However, the anticipated flood pool elevations for both pre-existing and current conditions appear to be contained within the banks of the pond. To give scale to this pond and its capacity to retain water, the entire rainfall of a 100-year, 24-hour event could be contained and still have extensive storage available within the pond.

Floodplain Issues for Area

The area of both Burnside Pond and the E-Shaped Pond is exceptional as the landscape consists of several large, excavated gravel pits and has experienced large scale grading. Another key element of the area and potential impact to work within it is the Big Blue River floodplain. Since it is the common outlet to both watersheds that were examined, it is important to understand how the floodplain might affect the results of this study along with existing or proposed development in the area.

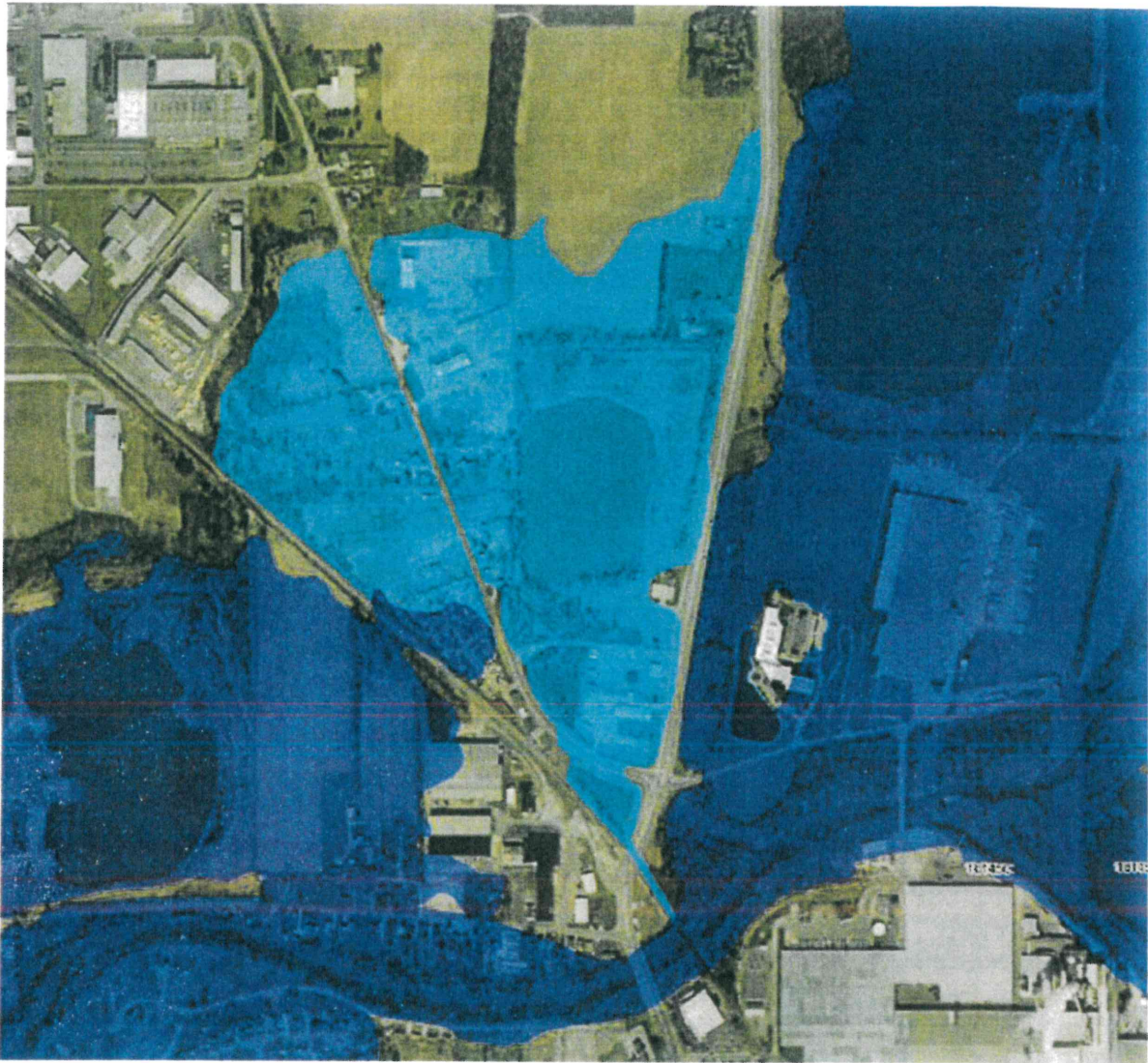
With the Big Blue River in lower flood stages, the findings of this study will not likely change. The elevations of the river are generally low enough to not impact drainage significantly at Burnside Pond or the E-Shaped Pond. However, with the Big Blue River at or near the 100-year elevation, the results will appear to impact the Burnside Pond system

and could also have an effect on the E-Shaped Pond. For this discussion, the Burnside site is of greater concern due to its location and applicable elevations, while the E-Shaped Pond is likely less impacted.

The concern is that the Burnside Pond appears to be hydraulically connected to the river without backflow protection. In short, water from the Big Blue River can currently backflow into the pond and surrounding property. The 100-year flood elevation at the bridge crossing near Harrison Street (Riley Highway) is at approximately 760 feet. This elevation is hydraulically connected in one if not multiple directions to the Burnside Pond, meaning water can achieve the 760 feet elevation level of the river. This elevation currently would back up well into property of the Arbor Homes development in its undeveloped condition.

To further complicate the situation, the current floodplain mapping of the area does not fully indicate the flood risk of the area between Riley Highway and Michigan Road. The Burnside Pond and adjoining property are not mapped within the floodplain even though flood flows of the Big Blue River could back up into this area. The following image indicates the area of the 100-year floodplain. The dark blue is what the floodplain maps currently indicate. The light blue is an approximate delineation of the area that is also at risk from the 100-year flood from the Big Blue River but is not indicated on published best available mapping.

EXHIBIT B-3



The floodplain risk to the Burnside Pond site is significant but has not been examined in detail for other factors related to it. It is important to share the information about this apparent risk and the management of projects in this area along with awareness of those who work or live in the area. An additional consideration for this area is the ability of existing or proposed drainage infrastructure to provide an adequate outlet from localized runoff. The absence of a positive, free-flow outfall for property in this area should be examined if the drainage system is located in a floodplain such as this area.

EXHIBIT B-4

SUMMARY OF FINDINGS

1. The Burnside Pond will experience an additional increase in flood pool elevations as a result of the proposed development north of the pond. This increase is approximately 1.2 feet in the 24-hour, 100-year frequency flood event; however, this increase is contained in the pond area.
2. The E-Shaped Pond has increased flood pool elevations as a result of fill placement for over 10 years along the western edge of the property. The increase is approximately 0.9 feet in the 24-hour, 100-year frequency flood event; however, this increase is contained within the pond area.
3. The flood risk from the Big Blue River is not apparent from best available floodplain mapping despite hydraulic conductivity to the area between Riley Highway and Michigan Road. Significant flood depths could impact this area if this risk is confirmed by additional study.

Overall, this area includes a large volume of runoff retention potential due to the excavated ponds that are prevalent along Riley Highway. While the storage exists, there does not appear to be dedicated outlets or control from these facilities if that is the need for either landowners or the community overall. The basis for all findings in this study were from available information and could be refined further if discussion warrants it and if additional information is provided. Evaluation of the floodplain risk is important not only for the potential risk from a major flood, but also to potential drainage improvements in the area. Background information from this study is available if needed.

EXHIBIT B-5



CITY OF SHELBYVILLE, INDIANA | PLANNING AND BUILDING DEPARTMENT
MAYOR THOMAS DEBAUN | DIRECTOR ADAM RUDE

FROM THE DESK OF ADAM RUDE | DIRECTOR | ARUDE@CITYOF SHELBYVILLE.IN.COM

August 18th, 2020

Property Owner:
Taylor Sumerford Jr.
BURNSIDE LLC
1849 E 350 S
Shelbyville, IN 46176

Property Owner:
Andrew M Sumerford &
Todd Kuntz as Trustees
Sumerford Land Trust I
1849 E 350 S
Shelbyville, IN 46176

Subject Properties:
Parcel IDs:
73-07-29-300-097.000-002
73-07-29-300-080.000-002
73-07-32-100-004.000-002

Notice of Zoning Violation

RE: Zoning Violation on Subject Properties

To Whom It May Concern:

The above mentioned properties are currently in violation of the City of Shelbyville's Unified Development Ordinance. A listing of the specific violations for each property can be found on the following pages of this document.

Pursuant to UDO 10.11, the aforementioned zoning violations must be resolved within **30 days** of the date of this letter. If the violations are not brought into conformance with the City's Unified Development Ordinance, the City will be forced to pursue fines (up to \$2,500 per violation per day) and legal remedies to resolve the violation.

Please be aware that interested parties may, in accordance with UDO 9.04, appeal any decision, interpretation, order, determination, or action of the Zoning Administrator before the Board of Zoning Appeals. If you chose to appeal this order, all appropriate documentation must be filed with the Plan Commission Office within 30 days of this letter per the Board of Zoning Appeals Rules and Procedures. Applications for Administrative Appeal are available through the Plan Commission Office.

For any further questions, feel free to contact our office.

Respectfully,

Adam M. Rude
Director, Planning and Building Department
City of Shelbyville, Indiana