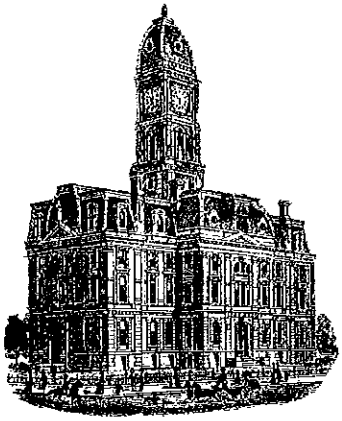

SURVEYOR'S OFFICE

Hamilton County

Kenton C. Ward, CFM
Surveyor of Hamilton County
Phone (317) 776-8495
Fax (317) 776-9628

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

To: Hamilton County Drainage Board

June 7, 2016

Re: Elwood Wilson Drain, Gascho-County Farm Arm, 2000 E. Conner Street Relocation

Attached are plans for the proposed relocation of the Elwood Wilson Drain, Gascho-County Farm Arm by Warstler Acquisitions, LLC. The proposal is to relocate and reconstruct a portion of the existing tile drain located on parcel 11-07-31-00-00-023.000 owned by Deines Properties, LLC, parcel 11-07-31-00-00-024.000 currently owned by Greenfield Environmental Multistate Trust LLC (Trustee of Multistate Environmental Response Trust), parcel 11-07-31-00-00-046.000 currently owned by Kerr-McGee Oil Industries, and the Conner Street (SR32/38) right-of-way per construction plans for "Elwood Wilson Regulated Drain Reroute 2000 Conner Street" by Insight Engineering, Inc. project number 1511, dated 1/25/2016. The upstream end of this relocation will begin at an existing manhole structure near the south property line on the Deines Properties parcel. The downstream end of this relocation will end at a new storm manhole located near the north right-of-way line of Conner Street (SR32/38). The plan is to reroute the drain inside the west perimeter of the site to allow for the construction of a proposed O'Reilly Auto Parts store.

This relocation will consist of the following:

301' of 21" RCP

The newly installed drain will have a length of 301'. The existing 194' of tile drain between existing stations 57+06 and 59+00 will be removed and abandoned. This proposal will add 107 of footage to the drain's total length.

The new drain will involve the following structures: 701(ex), 702, 703, and 704. The existing structure was installed in 2000 with the Elwood Wilson Drain, Arbortorium Relocation project.

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The Gasho-County Drain was established in 1910 (See Viewers Report, July 5, 1910) and later combined with the Elwood Wilson Drain. The Elwood Wilson Drain was established in 1891 (See Viewer's Report December, 1891 found in Commissioners Record book #7, page 153). This drain was also referenced in my report to the Board for the Arbortorium Relocation project dated June 8, 2000 as found in Hamilton County Drainage Board minutes book 5, page 377.

Water Quality Note: Previously, a Kerr-McGee gas station was located on this site. During the 1990's, the fuel tanks were removed and water quality test wells were installed. The site was then monitored for the next ten years. Per attached IDEM letter dated November 12, 2012, this site successfully satisfied the requirements for ground water quality.

The cost of the project is to be paid by the developer. The petitioner has submitted surety for the proposed drain at this time. The surety which is in the form of a Letter of Credit from the developer is as follows:

Agent: The National Bank of Indianapolis
Date: May 19, 2016
Expiration Date: May 19, 2017
Number: 420170301
For: Relocation of the Elwood Wilson Drain at 2000 E. Conner Street
Amount: $59,356.00
Hamilton County Number: HCDB-2016-00012

The easements shall be 75' from the center of the tile at per IC 36-9-27-33. A non-enforcement will be submitted at a later date when the proposed building and site layout has been determined. Therefore, the statutory easement will remain in force at this time.

I recommend that this drain be classified as an urban drain.

I believe this proposed drain meets the requirements for relocations as set out in IC 36-9-27-52.0. Therefore, a hearing with public notice is required.

I recommend the Board set a hearing date for July 25, 2016.

Sincerely,

Kenton C. Ward
Hamilton County Surveyor

KCW/stc

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HAMILTON COUNTY DRAINAGE BOARD
NOBLESVILLE, INDIANA

FILED
JAN 26 2016
OFFICE OF HAMILTON COUNTY SURVEYOR

IN RE: 2000 East Conner St., Noblesville, IN)
Hamilton County, Indiana)

PETITION FOR RELOCATION AND RECONSTRUCTION

Warstler Acquisitions, LLC. (hereinafter Petitioner"), hereby petitions the Hamilton County Drainage Board for authority to relocate and improve a section of the Elwood Wilson Drain, and in support of said petition advises the Board that:

1. Petitioner owns real estate through which a portion of the Elwood Wilson Drain runs.
2. Petitioner plans to develop its real estate with roads, buildings, utilities, storm drains, sanitary sewers and other structures.
3. Petitioner's proposed development of its real estate will require relocation and reconstruction of a portion of the Elwood Wilson Drain, as specifically shown on engineering plans and specifications filed with the Hamilton County Surveyor.
4. The work necessary for the proposed relocation and reconstruction will be undertaken at the sole expense of the Petitioner and such work will result in substantial improvement to the Elwood Wilson Drain, without cost to other property owners on the watershed of the Elwood Wilson Drain.

WHEREFORE, Petitioner requests that an Order issued from the Hamilton County Drainage Board authorizing relocation and reconstruction of the Elwood Wilson Drain, in conformance with applicable law and plans and specifications on file with the Hamilton County Surveyor.

Signed

Robert A. Warstler
Printed

Adobe PDF Fillable Form

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FINDINGS AND ORDER

CONCERNING THE PARTIAL VACATION OF THE

Elwood Wilson Drain, Gascho-County Farm Arm, 2000 E. Conner Street Relocation

Station 57+06 to Station 59+00

On this ***25th day of July, 2016***, the Hamilton County Drainage Board has held a hearing on the Maintenance Report and Schedule of Assessments of the **Elwood Wilson Drain, Gascho-County Farm Arm, 2000 E. Conner Street Relocation - Station 57+06 to Station 59+00.**

Evidence has been heard. Objections were presented and considered. The Board then adopted an order of action. The Board now finds that the costs of continued maintenance to the portion of the above drain exceed the benefits to the real estate benefited by the portion of the drain to be abandoned and issues this order vacating the above section of the **Elwood Wilson Drain, Gascho-County Farm Arm, 2000 E. Conner Street Relocation - Station 57+06 to Station 59+00.**

HAMILTON COUNTY DRAINAGE BOARD

President

Member

Member

Attest:

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STATE OF INDIANA)
) ss:
COUNTY OF HAMILTON)

BEFORE THE HAMILTON COUNTY
DRAINAGE BOARD
NOBLESVILLE, INDIANA

IN THE MATTER OF THE
RECONSTRUCTION OF THE
Elwood Wilson Drain, Gascho-County Farm Arm - 2000 E. Conner Street Relocation

FINDINGS AND ORDER FOR RECONSTRUCTION

The matter of the proposed Reconstruction of the ***Elwood Wilson Drain, Gascho-County Farm Arm, 2000 E. Conner Street Relocation*** came before the Hamilton County Drainage Board for hearing ***on July 25, 2016,*** 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 ***Elwood Wilson Drain, Gascho-County Farm Arm, 2000 E. Conner Street Relocation*** 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

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Insight Engineering, Inc.

9765 Randall Drive
Suite C
Indianapolis, IN 46280

(317) 848-9040
(317) 848-9080 fax
www.insightengineering.com

Engineer's Estimate of Construction Costs for

The Relocation of a portion of the Elwood-Wilson Drain

2000 East Conner Street, Noblesville, IN

1)	Construction Layout/ Staking	$2,000.00
2)	Soil/Backfill Testing	$1,500.00
3)	Erosion Control Fence	$1,600.00
4)	Temporary Seed/Straw	$3,000.00
5)	RCP Pipe and Manholes	$36,364.00
6)	Abandon existing pipe/ flowable fill grout	$5,000.00
	Total Construction cost for relocation	$49,464.00

Estimate prepared by Don Fisher, P.E., Insight Engineering, Inc. on March 15, 2016 for

Warstler Acquisitions, LLC. Estimate is based on plans prepared by Insight Engineering, Inc. dated 1/26/2016 and revised 3/15/2016.

Donald W. Fisher

Donald W. Fisher, P.E.

President

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COPY

IRREVOCABLE LETTER OF CREDIT

Borrower: Robert B. Warstler
10450 Windemere
Carmel, IN 46032

Lender: The National Bank of Indianapolis
Main Office
107 N. Pennsylvania St.
Indianapolis, IN 46204

FILED
MAY 26 2016
OFFICE OF HAMILTON COUNTY SURVEYOR

Beneficiary: Hamilton County Board of Commissioners
One Hamilton County Square
Noblesville, IN 46060

HCDB-2016-00012

NO.: 420170301

EXPIRATION DATE. This letter of credit shall expire upon the earlier of the close of business on 05-19-2017 and all drafts and accompanying statements or documents must be presented to Lender on or before that time, or the day that Lender honors a draw under which the full amount of this Letter of Credit has been drawn (the "Expiration Date").

AMOUNT OF CREDIT. Lender hereby establishes at the request and for the account of Borrower, an Irrevocable Letter of Credit in favor of Beneficiary for a sum of Fifty-nine Thousand Three Hundred Fifty-six & 00/100 Dollars ($59,356.00) (the "Letter of Credit"). These funds shall be made available to Beneficiary upon Lender's receipt from Beneficiary of sight drafts drawn on Lender at Lender's address indicated above (or other such address that Lender may provide Beneficiary in writing) during regular business hours and accompanied by the signed written statements or documents indicated below.

WARNING TO BENEFICIARY: PLEASE EXAMINE THIS LETTER OF CREDIT AT ONCE. IF YOU FEEL UNABLE TO MEET ANY OF ITS REQUIREMENTS, EITHER SINGLY OR TOGETHER, YOU SHOULD CONTACT BORROWER IMMEDIATELY TO SEE IF THE LETTER OF CREDIT CAN BE AMENDED. OTHERWISE, YOU WILL RISK LOSING PAYMENT UNDER THIS LETTER OF CREDIT FOR FAILURE TO COMPLY STRICTLY WITH ITS TERMS AS WRITTEN.

DRAFT TERMS AND CONDITIONS. Lender shall honor drafts submitted by Beneficiary under the following terms and conditions:

Upon Lender's honor of such drafts, Lender shall be fully discharged of Lender's obligations under this Letter of Credit and shall not be obligated to make any further payments under this Letter of Credit once the full amount of credit available under this Letter of Credit has been drawn.

Beneficiary shall have no recourse against Lender for any amount paid under this Letter of Credit once Lender has honored any draft or other document which complies strictly with this Letter of Credit, and which on its face appears otherwise in order but which is signed, issued, or presented by a party or under the name of a party purporting to act for Beneficiary, purporting to claim through Beneficiary, or posing as Beneficiary without Beneficiary's authorization. By paying an amount demanded in accordance with this Letter of Credit, Lender makes no representation as to the correctness of the amount demanded and Lender shall not be liable to Beneficiary, or any other person, for any amount paid or disbursed for any reason whatsoever, including, without limitation, any nonapplication or misapplication by Beneficiary of the proceeds of such payment. By presenting upon Lender or a confirming bank, Beneficiary certifies that Beneficiary has not and will not present upon the other, unless and until Beneficiary meets with dishonor. Beneficiary promises to return to Lender any funds received by Beneficiary in excess of the Letter of Credit's maximum drawing amount.

USE RESTRICTIONS. All drafts must be marked "DRAWN UNDER The National Bank of Indianapolis IRREVOCABLE LETTER OF CREDIT NO. 420170301 DATED 05-19-2016," and the amount of each draft shall be marked on the draft. Only Beneficiary may complete a draft and accompanying statements or documents required by this Letter of Credit and make a draw under this Letter of Credit. This original Letter of Credit must accompany any draft drawn hereunder.

Partial draws are not permitted under this Letter of Credit.

PERMITTED TRANSFEREES. The right to draw under this Letter of Credit shall be nontransferable, except for:

A. A transfer (in its entirety, but not in part) by direct operation of law to the administrator, executor, bankruptcy trustee, receiver, liquidator, successor, or other representative at law of the original Beneficiary; and

B. The first immediate transfer (in its entirety, but not in part) by such legal representative to a third party after express approval of a governmental body (judicial, administrative, or executive).

TRANSFEREES REQUIRED DOCUMENTS. When the presenter is a permitted transferee (i) by operation of law or (ii) a third party receiving transfer from a legal representative, as described above, the documents required for a draw shall include a certified copy of the one or more documents which show the presenter's authority to claim through or to act with authority for the original Beneficiary.

COMPLIANCE BURDEN. Lender is not responsible for any impossibility or other difficulty in achieving strict compliance with the requirements of this Letter of Credit precisely as written. Beneficiary understands and acknowledges: (i) that unless and until the present wording of this Letter of Credit is amended with Lender's prior written consent, the burden of complying strictly with such wording remains solely upon Beneficiary, and (ii) that Lender is relying upon the lack of such amendment as constituting Beneficiary's initial and continued approval of such wording.

NON-SEVERABILITY. If any aspect of this Letter of Credit is ever declared unenforceable for any reason by any court or governmental body having jurisdiction, Lender's entire engagement under this Letter of Credit shall be deemed null and void ab initio, and both Lender and Beneficiary shall be restored to the position each would have occupied with all rights available as though this Letter of Credit had never occurred. This non-severability provision shall override all other provisions in this Letter of Credit, no matter where such provision appears within this Letter of Credit.

GOVERNING LAW. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Indiana without regard to its conflicts of law provisions, and except to the extent such laws are inconsistent with the 2007 Revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, ICC Publication No. 600. This Agreement has been accepted by Lender in the State of Indiana.

EXPIRATION. Lender hereby agrees with Beneficiary that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to Lender on or before the Expiration Date unless otherwise provided for above.

AUTOMATICALLY RENEWABLE. This Irrevocable Letter of Credit is automatically renewable for successive one-year periods with a 60-day written notice.

ADDITIONAL TERMS. For the relocation of the Elwood Wilson Drain at 2000 E. Conner Street, Noblesville, Indiana by developer, Robert B. Warstler.

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Dated: May 19, 2016

LENDER:

THE NATIONAL BANK OF INDIANAPOLIS

By: V.P.
Douglas R Cowan, VP Corporate Banking

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OFFICE OF
HAMILTON COUNTY DRAINAGE BOARD

RETURNED

June 24, 2016

Notice of Hearing on Reconstruction & Schedule of Assessments and Damages on the **Elwood Wilson Drain, Gascho-County Farm Arm, 2000 E. Conner Street Relocation**

Kerr-McGee Oil Industries
P.O. Box 268859
Oklahoma City, OK 73126

Under the Indiana Drainage Code, all land which drains directly, or indirectly, may be assessed for either maintenance cost or reconstruction cost within the drain. In making the calculation for each parcel, the Drainage Board must calculate the percentage of the cost attributable to each parcel of land benefitted. The Drainage Board has received a reconstruction report and schedule of assessments which affects your land. The purpose of the reconstruction project is to perform work which will substantially improve the drainage for the entire watershed served by the drain.

You are hereby notified that the reconstruction report of the County Surveyor and the schedule of assessments made by the Drainage Board have been filed and are available for public inspection in the office of the County Surveyor. The chart below contains your proposed assessment and your percentage of the total reconstruction assessment.

The reconstruction report of the Surveyor and schedule of damages and benefits as determined by the Drainage Board for the proposed improvement known as the **Elwood Wilson Drain, Gascho-County Farm Arm, 2000 E. Conner Street Relocation** 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. <u>This assessment is not a charge for services associated with regulating the quality of storm water within your city or town.</u>

Description of Land	Acres Benefited	Damages	Reconst. Assmt.	% of Total	Maint. Assmt.
11-07-31-00-00-046.000					
S31 T19 R5 0.20 Ac	*	Zero	*	*	*
*Relocation to be paid by developer. No change in current maintenance assessment rates.					

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 July 25, 2016**, 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

For a copy of the Surveyor's Report to the Drainage Board and a copy of the map, if applicable, please go to <u>www.hamiltoncounty.in.gov/drainageboardnotices</u>.

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BEFORE THE HAMILTON COUNTY DRAINAGE BOARD
IN THE MATTER OF

Elwood Wilson Drain, Gascho-County Farm Arm
2000 E. Conner Street Relocation

NOTICE

To Whom It May Concern and: Kerr-McGee Oil Industries

Notice is hereby given of the hearing of the Hamilton County Drainage Board concerning the reconstruction of the **Elwood Wilson Drain, Gascho-County Farm Arm, 2000 E. Conner Street Relocation** on **July 25, 2016** 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

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

IN THE MATTER OF **Elwood Wilson Drain, Gascho-County Farm Arm, 2000 E. Conner Street Relocation**

NOTICE

Notice is hereby given that the Hamilton County Drainage Board at its regular meeting **July 25, 2016** 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: Christine Altman
PRESIDENT

ATTEST: Lynette Mosbaugh
SECRETARY

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