

To WFCB Board

As the remaining non-WFCB Board members to the pond committee, Rhett Salisbury, Beckie Owens, and Sandy Martin, along with Terry Halloran, the following represents our reaction to the document that was presented by Gary Wiggins. A summary of our reactions is as follows and more detailed reactions to specific points are inserted into the document.

Summary: *Overall the WFCB response did not reflect and acknowledge of the impatience of our residents and the urgency to address this problem. The document seemed to be focused more on the history of this situation than the ability to provide any actions to resolve the problem. This has been the complaint for many years. With each reconfiguration of the WFCB Board, the same questions appear resulting in the same delay in action. This has been the pattern for too many years. **Management should have, and now needs to, serve a stronger role in resolving the problem. If management is unable to provide the necessary leadership than maybe new management should be considered.***

Overall, the response was viewed as nothing more than another attempt to delay work and to possibly spend funds from the extremely limited resources for items that will do little to nothing to resolve the problem. *The response implies a willingness to accept the status quo and avoid the work to creatively solve the problems. Specifically, no details were provided that would indicate that the issues plaguing pond #3 would be satisfactorily rectified this season and no mention was made as to how the erosion would be corrected behind Terry Halloran's residence.*

To be clear, in summary, here are the resulting reactions to the WFCB responses:

1. **Forego the discussion of turning pond #3 into a dry creek bed,** thereby, eliminating any need to spend thousands of dollars on studies, new designs and permits. Keep pond #3 as it is and clean it up. The various arguments for this approach are listed in the reactions #7.
2. **Do not waste another \$5000 on pond #3** which will not address the overriding issues. Given how little sediment was effectively removed last year at a cost of \$5000, an additional \$5000 will do little to remove the majority of the sediment and it will do nothing to address the erosion issues. [See reaction # 1.] Pond #3 should be drained, thoroughly dredged, liner repaired or replaced as deemed necessary, and the appropriate banks reinforced to prevent erosion. To spend another \$5000 will be just a waste of money. **Bite the bullet and expend the funds necessary to restore pond #3.**
3. **Specifically, the area behind Terry Halloran needs to be replaced and reinforced.**
4. As the season to complete the work is drawing to a close, there seems to be no evidence that an attempt has been made to meet again with Moss Creek HOA. Given this observation, **arranging a meeting with MC HOA should no longer be used as a delaying technique. Just get the work done on pond #3 without resolving the boundary issues.** Ignore the possible limitations that the Deckard survey seemed to uncover. The water in the pond created the erosion and therefore, WFCB becomes responsible for rectifying the erosion problems.
5. It remains advisable that **efforts should still be made to reach out to MC HOA to develop an agreement for contributions towards repairs and/or maintenance of pond #3.** Reaction # 6 provides a possible suggestion towards how a contribution could be attained from MC.

Respectfully,

Sandy Martin
Rhett Salisbury
Beckie Owens
Terry Halloran

**Response of the WFCB Board to the WFCB Pond Committee's
"Letter of Recommendation to the WFCB Board of Directors"**

July 22, 2020

We apologize for the delay in responding to the recommendations presented to the WFCB Board of Directors on March 11. There are sound suggestions contained in the document. Although the WFCB Board has neither accepted nor rejected the document as a whole, you will see that we endorse a number of the recommendations and have already acted on some.

Dredging and Barrier Construction

In early spring, inquiries about continuing the dredging of pond #3 were sent out for bids.

1. The RFP for the continuation of the dredging went in March to: Bledsoe Riggert Cooper Jones, Eco Logic LLC, Reed and Sons, Young Trucking, G&G Lawn Care, Nature's Link, Eco-Systems, Inc., Sowders Landscaping, Evergreen HI, Sturgeon Stone and Landscape, and other companies. Only one bid for dredging was received. That was from C&H Lawn & Landscaping, Inc. for \$111,540. This is the same company that bid \$19,486 for construction of a 180-foot wall on the west side of pond #3 to protect Terry Halloran's property and that of others from flooding. It would be best if the dredging project is coordinated with whatever company is to do the construction work of the barrier behind Terry's property, especially since there is potential damage to the pond liner during construction.
2. The company that did the dredging work last year for \$5,000, Sowders Landscaping, prefers to wait until this fall to continue the work, but we are looking for another company that might dredge sooner. As you know, finding a dry spell of sufficient duration to perform the work in optimum conditions has been difficult in recent years, due to the weather. (1) **[Reaction #1]**

***[Reaction #1]:** The current WFCB Board has not indicated as to what extent pond #3 will be dredged. The dredging performed in 2019 for \$5,000 barely cleared the narrow "neck" of the pond next to the bridge. It is highly unlikely that an additional \$5,000 will do little to rectify the sediment build up in the major portion of the pond. In fact, since much sediment has "backwashed" into the previously dredged area that it would be surprising if any progress will be made much beyond was achieved last year. It will be surprising if dredging will appear much past Betsy Osborn's unit, if that far. It is unreasonable to think that \$5,000 will do anything noticeable to rectify the problem. Why is the only discussion of awarding only \$5,000 towards dredging this year when the pond committee recommended that the entire issue of pond #3 be addressed?*

Long-Term Maintenance Plan

A clear and concise (1- to 2-page) pond maintenance guideline statement has been developed a few times over the years (at least since 2008). Most recently, a set of guidelines was under consideration by the Pond Committee in spring 2019, but never formally acted on by the Board. (2) Such a document would be useful as a guide to best practices for both the Management Agent and contracting companies to follow in dealing with the ponds. Just as important, it would give Winslow Farm homeowners something to refer to in judging whether adequate day-to-day maintenance is being provided. The WFCB Board would welcome submission of this or a revised document.

The Davey Resource Group's *Pond System Management Plan*, prepared at the request of the 2017 WFCB Board at a cost of \$5,000, was accepted by the Board in September 2018. (3) It is unfortunate that the Davey Plan seems to be largely ignored now, joining the dust bin with other pond plans paid for with WFCB funds during the past twelve years that never managed to come to fruition.

There is an implication in the letter that little or no maintenance of the ponds has taken place over the years, and that is incorrect. Such opinions detract from the possibility of finding agreement with Moss Creek and Moss Creek Village Homeowners Associations. **[Reaction #2]** Maintenance work continues to be done, though improvement is always possible, both in the maintenance itself and the communication of those actions to Winslow Farm homeowners. **As an example, Nature's Link submitted a bid on 3/10/2020 to plant perennial plugs in the Flexamat at Ponds 1 and 2, and a number of plugs were planted earlier this summer to test their viability. A cursory look at the northeast end of pond #1 shows that at least some of them took hold and are quite attractive as of this writing.** **[Reaction #3]**

[Reaction #2] *The criticism concerning long term maintenance refers to structural issues and not just the surface maintenance of abating algae and invasive plant life. Aside from major work on ponds #1 and #2 it is widely accepted that long term maintenance of the structural integrity of the overall pond system has been ignored and "kicked down the road" until we are now faced with overwhelmingly expensive repairs. It has long been established that a regular schedule of dredging and bank reinforcement has been needed and ignored. To imply otherwise is to further support the contention that this need has been unheeded.*

Additionally, there is little evidence that WFCM management has ever made a sincere effort to reach out to the management of Moss Creek to resolve differences. A minimum effort by a Board member to acquire a signature for a cooperative agreement was made. But there seems little evidence that there was an effort to acquire input into the actual formation of that cooperative agreement. More recently a zoom meeting was held that was reportedly without an agenda and provided little intention of creating an atmosphere that would lead to a cooperative agreement. It is time to remove the involvement of the WFCM management company which is viewed as antagonistic and invite members from both sides who truly have the best interests of the community as a priority to resolve this long standing feud. The rancor between the management companies needs to be put to an end.

[Reaction #3] *In all honesty, this assessment, "some of them took hold and are quite attractive" cannot be taken seriously. There is very little, if any assessment that the pitiful effort to plant plugs can be found to be attractive. The amount spent is unknown, but regardless it was a waste of funds. Most have died. The remainder appear pathetic. Frankly, this was never a rational suggestion. A suggestion had been made repeatedly to consider low growing, fast growing vegetation such as succulents, ground covers and/or vines that would not need trimming or mowing and would adapt well and cover the hard flexamat surface. The current "plugs," if they survive, will still continue to look spindly and until (if they ever!) spread will look better when they are cut back in the fall when they die---again requiring someone to be responsible for their care. Until (IF) they spread, weeds should be removed and the area maintained much better than it is. The issue of providing a suitable solution to the flexamat issue is another example of neglect and failure to address an unsightly issue in a timely manner. The management company should have been more aggressive in its attempts to maintain an attractive environment. This has been an issue for approximately five years. Under any other circumstances it should have been resolved within the first two growing seasons.*

Agreements with Winslow Farm Homeowners Associations (Moss Creek and Moss Creek Village) and Timetable

We agree that ongoing channels of communication need to be opened with the two HOAs most closely affected by the ponds. You will recall that a proposal was made to both HOAs by the WFCM Board in January 2019 with the goal of "negotiating a cooperative agreement that can serve as an initial component of a long-range plan for improving the watershed areas associated with the wet ponds in Winslow Farm and safeguarding the properties of current homeowners from future catastrophic water events." (4) Although signed by the President of the WFCM Board and the Management Agent at the June 11, 2019 Board meeting, no response was ever received from the Boards of the two HOAs. The priorities identified in that document are still valid and include many that are covered in your Letter of Recommendation.

We agree that settling the boundary questions is the key to moving forward with work on pond #3, and we have recently asked for a second meeting with the Moss Creek Homeowners Association Board to discuss this issue, among others. **[Reaction #4]** The first meeting of the two Boards to discuss pond issues, called at our initiative, took place via Zoom on May 6, 2020 and did not produce many results.

Given the confused state of deeds and legal documents concerning the ponds, it is difficult to see how the Deckard Survey could be improved on, but that certainly can be among the options considered at the next meeting with the Moss Creek HOA Board. A further complication is our lack of knowledge about Indiana boundary laws that govern situations where a waterway shifts location over time.

[Reaction #4]: *Assuming the Deckard survey is correct, does not negate the need to sit with Moss Creek and to discuss the ramifications of those survey lines. It would also help such discussions to first request input from Moss Creek for any documentation that its management company might have to provide alternate boundaries for the area in question. If there is a discrepancy and a mutual agreement cannot be achieved than it may be necessary to seek legal opinions. However, it would seem much more economical to avoid legal fees and develop a mediated agreement that could then be submitted for legal recognition to avoid future battles. During discussions there are arguments that can be presented that would encourage all parties to find mutual compromises. Such discussion points could include:*

- 1. Homeowners who live on the ponds (as well as Moss Creek HOA community in general) benefit not only from the beauty of well-cared for ponds, their property values are improved if the ponds are well-maintained. It behooves MC HOA to work with WFCA to ensure that the ponds are maintained in a manner that pleases MC HOA and the immediate homeowners. It would be best if they provided input both as suggestions and financial contributions to ensure quality.*
- 2. WFCA would benefit from asking for input from MC HOA. The community of MC represents a significant number of voting members for any approvals needed for the overall management of WFCA. It is not unreasonable that as a voting block the neighborhood could press for significant changes in the management of WFCA.*
- 3. A mutually agreed upon maintenance program will serve to avoid future disagreements, vital to a better functioning community. However, a "mutual agreement" is not one that one party creates, and to which the other party asks to agree. It is one that is created together.*
- 4. Lastly, whatever is created between MC HOA and WFCA can be used as a model as WFCA will need to work with Moss Creek Village.*

There are significant hurdles to be crossed in reaching an agreement on sharing the costs of the pond projects. At this point in time, it is not known whether the Moss Creek and Moss Creek Village HOAs might contribute anything on an ongoing basis to the maintenance and upgrading costs of the ponds. **The current versions of the CCRs of both Moss Creek and Moss Creek Village HOAs contain a section on Common Expenses that excludes " . . . expenses assumed or incurred by the Community Association."** The "Community Association" in both cases is defined as Winslow Farm Community Association, Inc. (5) **If this prohibition is strictly applied and combined with the narrow view that the ponds are totally the responsibility of WFCA, then clearly there will be no cost sharing with either the Moss Creek or the Moss Creek Village Homeowners Associations. Nevertheless, there have been indications in recent years that some residents of Moss Creek and Moss Creek Village lean toward financial support for the ponds by their HOAs.** **[Reaction #5]**

Reaction #5: *What about the sections in both MC and MCV that reference the ponds as part of the Common Area for Moss Creek at Winslow Farm. The following are provided from the Moss Creek CCRs. For the issue of pond #3 only the MC references are provided for the sake of brevity and not the Moss Creek Village CCRs.*

1.3. **Association.** "Association" means Moss Creek at Winslow Farm Homeowners' Association, Inc., its successors and assigns, an Indiana not-for-profit corporation which is the incorporated association of Owners, more particularly described in Section 10. A copy of the Articles of Incorporation for the Association is attached as Exhibit "A".

1.6. Common Area. "Common Area" means all the area in Moss Creek outside the boundaries of any Lot.

1.7. Common Expenses. "Common Expenses" means the expenses of administration of the Association, expenses for the upkeep, maintenance, repair and replacement of the Common Area and other costs and expenses incurred by the Association for the common benefit of all Owners; provided, however, that Common Expenses shall not include any costs of initial construction of any Patio Home or any expenses assumed or incurred by the Community Association.

Section 5. Common Area. Common Area includes all area within Moss Creek, except the Lots, including but not limited to the interior roads, sidewalks, parking areas, entrance signage and ponds. Declarant warrants and guarantees to the Association, for one year from the date Declarant executes the Warranty Deed to the Association transferring the Common Area, that all materials and workmanship are free from material defects and that all improvements in the Common Area have been constructed in substantial compliance with the requirements of applicable government ordinances. This warranty specifically excludes any claims for defects in landscaping materials, paving surfaces or ponds. ...

Section 12. Real Estate Taxes. Real estate taxes are to be separately assessed and taxed to each Lot. In the event that for any year the real estate taxes are not separately assessed and taxed to each Lot, but are assessed and taxed on the Real Estate as a whole, without a breakdown for each Lot, then each Owner shall pay his proportionate share of the real estate taxes assessed to the land comprising the Real Estate assessed as a whole, which shall be the ration that the square footage in his Lot bears to the total square footage of all the land comprising the Real Estate assessed as a whole; and shall pay his proportionate share of the real estate taxes assessed on any improvements constructed on his Lot. Any real estate taxes or other assessments which are chargeable against the Common Area shall be paid by the Association and treated as a Common Expense *[Who pays the real estate tax for the ponds?]*

Section 14, Maintenance, Repairs and Replacements. Each Owner... to the Patio Home. Maintenance, repairs, replacements and upkeep of the Common Area shall be furnished by the Association, as a part of the Common Expense....

In addition to the maintenance of the Common Area, the Association shall provide exterior maintenance ...

Address the Issues Plaguing Pond #3 No Later than Fall 2020

Obviously, committing to meet and work together to address the issues plaguing pond #3 no later than fall 2020 is something that we on the current Board of WFCA desire. Given the unusual time we are now living in, there is significant uncertainty attached to a deadline to accomplish any goal. In a given fiscal year, the WFCA Board is limited to contracts under \$5,000 for any project that is not specifically included in the FY budget without approval of the Winslow Farm homeowners. *[Reaction #6]* As Sandy Martin noted in her 2019 presentation at the WFCA annual meeting, "Interest is related to distance from the ponds." That is, the farther away you live from the ponds in Winslow Farm, the less enthusiastic you are likely to be for increased assessments to cover higher pond costs.

Funding possibilities recently mentioned include an Indiana state grant and a loan from the City of Bloomington (or a bank loan). The WFCA Board has no authority to act outside the framework of the WFCA governing documents, but in discussions with the Moss Creek and Moss Creek Village HOAs, all legitimate options for funding should be considered.

[Reaction #6] *The issues plaguing pond #3 have been ignored for several years and residents have rightfully grown impatient. It is inappropriate to postpone work on this situation any longer. It will only become worse and more expensive to address. Seeking a grant or even a loan should have been done years ago. If that is truly an option, then consider it for the future needs of ponds #4-#7. Upon review, the expenses for ponds #1 and #2 went beyond the budgeted amounts and reserve funds were used to pay expenses. Why is pond #3 being held to a different standard? There are funds in the reserves. When and how can they be tapped to use for what is becoming urgent situation? Why does the management of WFCOA continue to guard against the use of those funds?*

*It is true that enthusiasm to support the work on the ponds is directly related to how close or far away a member resides from the ponds. However, if a long-term viable plan can be presented to the membership, greater support can be obtained. **The WFCOA Board has failed to provide such a plan.** Sandy Martin provided a template for such at the 2019 Annual General Meeting. However, because management did not cooperate to provide adequate explanation as to the bookkeeping details for the reserves, she did not feel that it was appropriate to call it “the plan”. Additionally, when presented to management and the WFCOA Board there seemed to be little to no interest in pursuing such. Such a budget/long-term plan is essential in garnering support for the necessary increase in membership dues. A copy of the “template” will be provided upon request. However, the WFCOA Board was provided a copy as part of the presentation made at the Annual Meeting. It is essential that a final decision be made as to how pond #3 will be restored or redesigned. Additional comments will be reflected in response 7.*

*It should be noted that the CCRs of both WFCOA and MC HOA provide for the option of conducting a special meeting of the respective members for the purpose of voting on a **special assessment**. If a viable long-term plan could be created, a special assessment could be considered. However, any plan must be sufficiently detailed and reasonable to provide the essential rationale that the members would require to pass such an effort. Is it feasible that a separate special assessment could be arranged by Moss Creek HOA for Moss Creek to make a separate contribution towards this project? After all, the work on the ponds directly impacts them and their property values and several have been heard saying that they would be willing to pay a little more just to rectify the situation. (An example: If Moss Creek could produce a special assessment of \$75 to the approximate 90 Moss Creek members, approximately \$6,750 could be collected from Moss Creek. If an additional \$25 could be assessed to the remaining 327 members of Winslow Farm another \$8,175.00 could be added to whatever amount can be dedicated from the reserves, (potentially, 6,750 + 8,175+5,000 from budget+30,000 from reserves), a total of almost \$50,000 could be earmarked for pond #3.)*

Additional Considerations and Hopes for the Pond Committee’s Continued Work

The Board had hoped that it might eventually receive from the Pond Committee **a clear recommendation as to whether pond #3 should be restored or converted back to a creek bed.** **[Reaction #7]** At the very least, clear criteria for making the decision (economic, aesthetic, environmental, and ecologic) would be good to have, perhaps as a fleshing out of the factors included in Sandy Martin’s 2019 PowerPoint presentation at the annual meeting (aesthetics, health, erosion prevention, maintenance costs).

Way back in November 2008 a special meeting of the WFCOA was held to discuss modification of the entire pond system (except the required detention pond #7) to creek beds. After the meeting, the Moss Creek Board at the time responded, “We do not think sufficient information, study, and financials, especially the construction and implementation costs were provided in the two presentations made on November 13.” (6) The same might be said of some of the options presented in the current Pond Committee’s Letter of Recommendation.

It is imprudent for lay people with no or limited expertise in civil engineering or construction to make predictions of future pond costs that involve new construction. Nevertheless, there are known costs for past maintenance of the ponds over a long period of time and these can confidently be used to project normal maintenance costs over a five-year period.

[Reaction #7]: Without a budget it was impossible for the pond committee to make specific clear recommendation. The pond committee never felt it was given guidance as to money that was available. However, the pond committee did provide significant concerns and suggestions. Essentially, a dry creek bed does not appear to be feasible given the limited funds, the immediacy of the need to rectify pond #3 and most importantly concerns for the topography to accommodate a new design. It is recommended that if a dry creek bed is the objective that such a design be created for the future, especially when ponds #1 and #2 will need to be dredged again. **The following is a repeat of those concerns listed in the recommendation to the WFCA Board. As is evident, it was not recommended that pond #3 be redesigned.**

- a. “Specifically, pond #3 needs attention to the following:
 - i. Dredging the entire pond. (Obviously, draining is required before dredging can occur.)
 - ii. Since ponds #1 & #2 were renovated without seeking permits, the committee suggests that no permits be requested to complete work on pond #3. If, however, during the discussions with the city officials, the city requires the approval of permits, then such should be obtained.
 - iii. Contingent as to what is revealed after the pond is drained and dredged, possible installation of a new liner may be required. However, it may be feasible to salvage the existing liner.
 - iv. While the pond is dredged and before it is lined, a barrier needs to be installed that will divert the water away from Terry Halloran’s residence and restore some of the bank between her unit and the barrier wall. The barrier will need to be built either on or near the current boundary line. (This is the grant for which Terry is requesting funds from the city stormwater project ~~if approved, city funds would go towards the cost of the installation.~~) [This application was not selected (See Attachment A)]
 - v. Other areas of erosion need to be analyzed to see if there is a need for additional reinforcements. Some of areas are in a similar position in that the bank has eroded to the point it is no longer inside the boundary currently considered to be WFCA common area. [~~See attachment B~~]
 - vi. The renovations of the north end of the pond [~~See attachment C~~] should address the need to reduce sediment build-up with options that could include, but not be limited to:
 1. Sediment trap
 2. Solid underlying bed that would facilitate ease of clean-out and discourage vegetative growth. (This bed could be large river rock, cement or other alternatives that can be “flushed” of sediment periodically.)
 3. Design and install a circulating system that could maintain a constant flow of water by pumping water from the deeper south end to the narrow north end of the pond.
 - vii. Provide for the finishing of the “access” point to be built-up and seeded that, when completed, will extend the lawn area located near the curve in Winslow Farm Dr and the bridge. (See attachment D.) Additionally, there may be a need for an erosion barrier to be installed. (quarry rock, large boulders, cement wall, rip rap)”

A decision on the direction we are to go with pond #3 (restore or return to creek bed) is required to lend an air of legitimacy to future requests for proposals on the part of those who might do the work. It is difficult to envision how a reasonable decision can be made without concept designs for both potential projects. Such engineering work would cost around \$10,000. [Reaction #8]

[Reaction #8]: Given that a few thousand dollars have already be spent on plans and studies for what has been insignificant results, it would seem unwise to spend this amount of money when WFCA has so little to dedicate to this project. The recommendations are to restore pond #3 and there seems little need to acquire additional designs. In conversations with more than one contractor, they have always provided ideas and recommendations. Their input would suffice in restoring pond #3 to an acceptable condition. In actuality, it was feedback which Sandy Martin received in

conversations with potential contractors that provided input into the design of the RFP that was issued for work on pond #3.

Another area of concern is the suggestion that no permits need be obtained to complete dredging work on pond #3, an activity that should be done regardless of whether it is to remain a pond or be converted back to a creek bed. This is surprising in view of numerous cautionary notes in the Davey Resource Group's 2018 *Pond System Management Plan* that permits should be obtained from both the Indiana Department of Environmental Management and the US Army Corps of Engineers. The author, Caleb Asbury, refers to permits or permitting more than two dozen times in the body of the report. He notes that "Artificial ponds do not typically fall under federal or state Clean Water Act Section 404/401 permit requirements; however, the pond system was constructed within an existing stream network." (7) Mr. Asbury goes on to say that "This type of pond system is referred to as 'in-line-detention' and is likely to fall within the jurisdiction of USACE and IDEM Clean Water Act Permitting requirements." (8) Even stronger emphasis is placed on permitting later in the report:

A jurisdictional determination should be performed prior to implementing the rain garden installation or any other work within the ponds involving placement or dredging of soil, stone, or other fill materials. Failure to perform agency coordination could lead to a violation notice mandating construction activity stop immediately and require remediation. Violations are very costly and burdensome to the landowner. (9)

Permits are necessary for the protection of the financial assets of the Winslow Farm associations and homeowners. Furthermore, any state or federal grant applications require firm designs and proper permits. **[Reaction #9]**

[Reaction #9]: *Given the limited funds, the need to address pond #3 THIS SUMMER and the fact that no permits were required and no repercussions were experienced, it seems that contacting the Army Corps of Engineering is a superfluous exercise. However, it is understandable that the city needs to be consulted. However, there does not seem to be overwhelming evidence that restoring the pond will be a concern to the city. This seems to be a mission of only one person. If this is a major concern, given that there seems to be plans for some work to be done yet this summer, **has anything been done to contact the city for the proposed work?** It would seem that this step, if necessary, should have been accomplished by now, but it is doubtful since **there was no effort to contact the city or any other governing body when the north end of pond #3 was dredged last summer.***

Because of the Davey report's emphasis on permitting, a US Army Corps of Engineers representative visited the site in March 2019, and her recommendation resulted in the Preliminary Jurisdictional Determination which was signed on June 25, 2019 with WFCA Board approval. The PJD acknowledges the jurisdictional authority of the USACE and implicitly accepts the responsibility for permitting. (10) (11)

Equally perplexing is that no mention is made of interacting with the City Utilities Department and the Planning Department. Prior to the 11/13/2008 meeting referred to earlier, an e-mail exchange took place between a member of the Pond Committee and Tom Micuda, City Planning Director at the time. Mr. Micuda indicated that draining one or more of the ponds requires both City Utilities Department and Plan Commission approval. (12) The Summary of a 10/19/2018 meeting of the Pond Committee included the advice of City Utilities Engineer Phil Peden that we must decide *first* what route we want to take in modifying or restoring the areas currently occupied by the ponds in Winslow Farm. Then we can rationally discuss the need for permitting with the appropriate agencies.

It would be good to know how you justified the assertion on page 2 that installation of a circulating system to keep water flowing from under the bridge to the weir between #3 and #4 at all times will reduce sediment accumulation. .

[Reaction #10] A prior study around 2008 recommended a sediment trap near the south side of the Winslow Farm Drive bridge, claiming that 90% of the sediment entering the ponds comes from the creek that originates in Winslow Woods and that accumulation of sediment only occurs at the Olde Mill inlet, with other potential bottom sediment being swept away by the vigor of the typical storm. (13) This was apparently incorrect, as evidenced by the deep sediment that is found throughout pond #3 and in other Winslow Farm ponds twelve years hence. A sediment trap in that area may still

be a good idea, but a proper access route must be provided for equipment, and regular cleaning of the pit is required if it is to be effective.

[Reaction #10] *You will note the phrase: "The renovations of the north end of the pond ...should address the need to reduce sediment build-up **with options that could include, but not be limited to:**" Obviously these are OPTIONS—to be considered by the contractor and comparison of cost The option of a circulating system is based upon one that was observed AND the WFCAs designed system to keep water flowing. Pond #3 has a history of water slowing/pooling in the north neck and a constant flow from the north end to the deeper portion of the pond could slow the sediment rate. It is **ONLY ONE OPTION, NOT THE RECOMMENDATION.***

Concluding Remarks

We appreciate the Letter of Recommendation and its information on long-term plans and accompanying attachments. It is understandable that there is frustration on the part of the Pond Committee at the slow pace of improvements to pond #3, but the Board is glad that some work was accomplished in 2019 to improve the ponds (notably, the dredging of a portion of pond #3 and the replacement of drains at ponds 4 and 5). **It is our hope that discussions with Moss Creek and Moss Creek Village Boards will result in the reconstitution and reinvigoration of the Pond Committee with a clear charge to make definite recommendations and provide accurate cost estimates.** **[Reaction #11]**

[Reaction #11]: *The following is a summary of remarks made by Sandy Martin during the WFCAs July 14th Board meeting.*

There are three important issues for the WFCAs Board to address:

1. **The dispute between MC HOA and WFCAs must be resolved.** *At this point it is recommended that legal mediation be obtained to resolve the issues. If this last effort to meet informally with MC is rejected, then mediation should be the next attempt. (However, it would be wise to meet with representatives of MC to discuss circumstances under which they would be more willing to meet, such as NO managers present in the initial discussions.)*
2. **The status of pond #3 must be rectified THIS SEASON:** *to not only address dredging but to fortify the eroding banks and restore a suitable earthen buffer (lawn space) between Terry's unit and the water.*
 - *It will not be acceptable to just dump more riprap along the same bank without extending the lawn area behind Terry's unit. The "lawn area" needs to be extended to no less than five feet from the current bank and the bank at the end of her steps needs to be built up to make it more level. (She has indicated that she would be willing to landscape the area and install a landscape blocked wall to add to the attractiveness of the area and possibly provide protection from extreme flooding.)*
 - *Additionally, careful consideration needs to be given as to the direction of the water flow to avoid future erosion throughout this area. Specific consideration should be given to fortifying the bend in the bank behind Betsy Osborn's property to redirect the flow away from the downstream bank, (currently Terry's property). A couple of contractors suggested the installation of large boulders or quarry blocks.*
 - *If the option to turn pond #3 into a "dry creek bed" is pursued, than professional engineered plans **MUST** be obtained to provide acceptable details to its design as an assurance that the costs are feasible and the new configuration will accommodate flooding without creating stagnant standing water.*
 - *First, a significantly deep channel must be formed to direct the water during heavy rains. Pond #3 cannot merely be "filled in" without creating significant flooding problems. Since the area between the units on either side of the area are in close proximity, the channel must be significantly deep to accommodate large amount of water. A hydrologist has already provided information concerning this issue.*
 - *This leads to an issue that an agreement must be made ahead of time as to how and who will be responsible for maintaining the newly created "channel banks". Theoretically the channel banks will be steep and deep. There will be weeding and landscaping*

responsibilities that will essentially fall back onto resolving the disputes between MC and WFCOA. It is essential that this area not become another muddy weedy mess.

- *A dry creek bed will necessitate the removal of the weir between #3 and #4: at what expense? Also, given that there are considerable lengths of retaining walls that the weir helps to support, what will happen to the existing retaining walls and what will replace them if they are removed? Without these walls or a replacement, erosion in those areas will become a problem.*
 - *If a dry creek empties into #4 how will water be prevented from backing up into the newly created channel and will there be the threat of unsightly and potentially unhealthy water pooling if backed up water becomes stagnant water in the area of what is pond #3?*
 - *Is it possible to create a dry creek bed in #3 without simultaneously converting #4 to a dry creek bed? If #4 is converted, since there is no elevation change between #4, #5, #6 (and minimal change as # 6 empties into #7), is it possible to create the necessary channel "drop" that will force water to flow through the system? Typically to create the flow a drop in elevation from one point to another is necessary. Without a change in elevation, water will pool and become stagnant. What will keep water from "backing up"?*
3. ***The WFCOA Board must develop a specific reserve "budget/schedule" that identifies future costs to rectify the pond situations and most importantly a plan for WFCOA assessments that can meet those needs by instituting reasonable increases in assessments over time. Should a major legal action be decided against WFCOA, the community could be facing a large increase in fees to cover what the court will determine. It would be more acceptable to present PLANNED incremental increases rather than be forced to assess a large surprising increase. A detailed plan that outlines anticipated costs and justifies increases will make this process much easier to pass with the membership than what has been the approach used with the membership in the past: simply "we need to increase assessments".***

However, given the passage of an additional month and the response issued from the WFCOA Board, the remaining members of the pond committee have revised our FINAL RECOMMENDATIONS:

1. ***Forego the discussion of turning pond #3 into a dry creek bed, thereby, eliminating any need to spend thousands of dollars on studies, new designs and permits. Keep pond #3 as it is and clean it up. The various arguments for this approach are listed in the reactions #7.***
2. ***Do not waste another \$5000 on pond #3 which will not address the overriding issues. Given how little sediment was effectively removed last year at a cost of \$5000, an additional \$5000 will do little to remove the majority of the sediment and it will do nothing to address the erosion issues. [See reaction # 1.] Pond #3 should be drained, thoroughly dredged, liner repaired or replaced as deemed necessary, and the appropriate banks reinforced to prevent erosion. To spend another \$5000 will be just a waste of money. Bite the bullet and do the work.***
3. ***Specifically, the area behind Terry Halloran needs to be replaced and reinforced. (see reaction #12 at the end)***
4. ***As the season to complete the work is drawing to a close, there seems to be no evidence that an attempt has been made to meet again with Moss Creek HOA. Given this observation, the meeting with MC HOA should no longer be used as a delaying technique. Just get the work done on pond #3 without resolving the boundary issues. Ignore the possible limitations that the Deckard survey seemed to uncover. The water in the pond created the erosion and therefore, WFCOA becomes responsible for rectifying the erosion problems.***
5. ***It remains advisable that efforts should still be made to reach out to MC HOA to develop an agreement for contributions towards repairs and/or maintenance of pond #3. Reaction # 6 provides a possible suggestion towards how a contribution could be attained from MC HOA.***

6. The WFCB Board must develop a specific reserve "budget/schedule" that identifies future costs to rectify the pond situations and most importantly a plan for WFCB assessments that can meet those needs by instituting reasonable increases in assessments over time.

NOTES

1. For comparison purposes, a bid was submitted last September by Green Kings Outdoor Services for \$17,800 for work on the north end of pond #3, but their bid included considerably more than just dredging. Likewise, a bid from Nature's Link to do work on the north end of pond #3 was submitted in late August 2019 for \$22,429.66. Neither bid was accepted.
2. Winslow Farm Community Association (WFCB) Wet Pond Standards. (2019) <http://hoosierpewter.com/GW/WFCB%20Pond%20Guidelines%202019.pdf>
3. Davey Resource Group. *Pond System Management Plan*. September 2018, p. 8. The Davey report, prepared at the request of the 2017 WFCB Board at a cost of \$5,000, was accepted in September 2018. The plan has been denigrated by at least one current member of the Pond Committee, who stated that most of the information could have been gleaned from the Web. http://hoosierpewter.com/GW/Davey_report_final.pdf
4. Winslow Farm Community Association (WFCB) Pond Committee Recommendations for Cooperative Agreements. (1/5/2019) http://hoosierpewter.com/GW/Coop_among_HOAs.pdf
5. Moss Creek Documents at Hallmark: <https://hallmarkrentals.com/homeowner-associations/moss-creek/> and Moss Creek Village Documents at Hallmark: <https://hallmarkrentals.com/homeowner-associations/moss-creek-village/>
6. "Statement of Moss Creek Board to the Winslow Farm Board" concerning presentations on November 13, 2008 to convert pond 3 to a creek bed/rain garden environment.
7. Davey Plan, *op. cit.*, p. 8.
8. Davey Plan, *op. cit.*, p. 9.
9. *Ibid.*
10. *Preliminary Jurisdictional Determination (PJD) Form*. (May 8, 2019, signed June 25, 2019). http://hoosierpewter.com/GW/PJD_PrelimJurisdDeterm.pdf and Minutes of the June 11, 2019 WFCB Board meeting. https://f0ccbf61-3c27-4580-879f-13394a6c70b0.filesusr.com/ugd/37ba6e_b2bff99ed67d49e187aa3ea43cf3bfcc.pdf
11. One of the members of the current Pond Committee was given the folder with relevant documents on permitting when the chair of the committee resigned in late spring 2019.
[Reaction #12]: *The box with the files are available to whomever would like to receive them. And, in fact, the person that possesses them would prefer that they be removed as soon as possible.*
12. An e-mail of 11/13/2008 from Tom Micuda to a Pond Committee member (who also now serves on the current Pond Committee) stated that the ponds were presented by the developer as both a project amenity as well as a mechanism to retain stormwater runoff. Mr. Micuda summarized his view as: "In a nutshell, I believe any future action to reconfigure the pond system should first be submitted to both City Planning and City Utilities. More than likely, City Planning will defer to City Utilities unless there's a proposal to completely drain one of the ponds. At such point Plan Commission review would be necessary."
13. "Statement of Moss Creek Board . . .," *op. cit.*

[reaction #12]: Terry Halloran has explained that she would like to see an area of ground to extend approximately 5 feet behind her porch. Once this has been completed, she has expressed an interest in landscaping the area. There have been differing ideas as to how to resolve the issue of erosion. Previously riprap was used to abate the situation but it has not proven effective. It did not extend the area to allow effective lawn maintenance and has allowed unsightly weeds to grow. This is not the recommended solution. Contractors have suggested large boulders or quarry blocks with a back fill to create a "lawn" area. Another idea that has emerged as to what is being done to hold back the earth along E Rogers Road across from the Stands complex. Large iron beams have been inserted deep into the ground as supports to keep the hillside from sliding onto the new pathway. Could such beams/pilings be used in the pond with retaining "netting", such as seen along the highway embankments, to retain riprap under the water? Then an earthen back fill could be laid on top of the riprap above the water line. This could provide the extension of the lawn as requested. This is offered as an OPTION for consideration not knowing costs or effectiveness.