

**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)

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. 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.

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 WFCA 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 WFCA 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. 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.

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.

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. As Sandy Martin noted

in her 2019 presentation at the WFCAs 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 WFCAs Board has no authority to act outside the framework of the WFCAs governing documents, but in discussions with the Moss Creek and Moss Creek Village HOAs, all legitimate options for funding should be considered.

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. 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 WFCAs 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.

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.

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.

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. 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.

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.

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 (WFCA) Wet Pond Standards. (2019) <http://hoosierpewter.com/GW/WFCA%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 WFCA 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 (WFCA) 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 WFCA 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.
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.*