

**DEVELOPMENT CODE
ORDINANCE # 2016-03-(03-30)**

Section:

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#1. PURPOSE AND INTENT:

It is the purpose and intent of the chapter to provide minimum standards and a permitting process for allowing the development of ponds or lakes within the county.

#2. AUTHORITY:

The Surveyor is hereby authorized and directed to administer and enforce all the provisions of this chapter as applicable.

#3 APPLICATION AND INTERPRETATION:

Whenever any words or phrases used herein are not defined herein but are defined in other applicable county ordinances or state laws regulating development and/or drainage, any such definition therein shall be deemed to apply to such words and phrases used herein, except when the context otherwise requires.

#4 DEFINITIONS:

For purposes of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

COUNTY: Henry County, Indiana

COUNTY COMMISSIONERS: The Board of Commissioners of Henry County, Indiana.

DEVELOPMENT: The construction, reconstruction, conversion, structural alternation, relocation or enlargement of any building; or any clearing, grading, or other movement of land.

DRAINAGE BOARD: Henry County, Indiana Drainage Board. See also IC36-9-27.

EXCAVATION: The process in which dirt is hauled into or out of the given area.

IMPROVEMENT: Any structure or man-made feature, which becomes part of; placed upon, or is affixed to land.

LAND PARCEL: A tract or plot of land. The term is usually in the context of land use or legal ownership.

POND: A body of water smaller than a lake, sometimes artificially formed.

SURVEYOR: Henry County Surveyor.

#5 PERMIT REQUIRED:

No pond or lake shall be constructed, or increased in size, without a permit issued by the Surveyor. Said permit shall be issued only in conformity with the provisions of this chapter. The following information shall be submitted with the application for a pond permit.

(A) Site plan of the property showing the location of the proposed pond. Including:

- (1) The proposed distance of the pond will be from all property lines (as measured in accordance with #6)
- (2) The direction of flow of water prior to and after the construction of the pond.
- (3) The size, location, and elevation of the outlet of the pipe, and the direction of the flow of water exiting the property.
- (4) If any disturbance of the soil is prior to occur in any of the setback areas, spot elevations will need to be performed in those areas prior to the disturbance of the soil. Setback areas will then need to be returned to the original elevation prior to final inspection of the pond.

(B) A permit fee for \$350.00 shall be paid to the Henry County Surveyor's Office when the permit is issued. This fee shall be deposited into the Surveyor's non-reverting fund.

(C) Permits shall be valid for one (1) year after the date of issuance. Any change to the plans is that one (1) year period shall require approval by the Drainage Board. After one (1) year has

passed, a new permit will need to be issued and an additional permit fee will need to be paid.

#6 MINIMUM STANDARDS:

- (A) All ponds or lakes shall adhere to the following setbacks from property lines.
- (B) The pond shall be separated from any road right of way by no less than fifty (50) feet measured from the top of the bank or the 100 year pool if no defined top of the bank is present. Guard rails, berms or other structural measures may be considered in lieu of the above noted setbacks.
- (C) Forty (40) feet from all other property lines (high water level or excavating /site work, whichever is closet to property lines).
- (D) The setback for the side and rear property lines shall be measured to the toe of the slope of the bank of the pond, or the high water level of the pond, whichever is closer to the property line or roadway. In no case shall any excavation occur, or fill be placed, in the 100 feet building or any structure required setback area or within any regulated drain easement.
- (E) In no case shall the direction or volume of water exiting the property be permanently altered due to the construction of the pond.
- (F) All ponds shall have a safety ledge placed below water level. The minimum width of the safety ledge shall be six feet (6'). The maximum depth of the safety ledge shall be thirty inches (30"). An alternative to the safety ledge is a 4:1 slope for the first eighteen feet (18') of the pond around the entire area of the pond.
- (G) All ponds shall have one foot (1') contours at least two hundred feet (200") from the pond limit.
- (H) The Surveyor shall be notified by the property owner and/or excavation contractor 48 hours before work commences of the pond. Prior to the removal of excavating equipment, the Surveyor will be contacted and will give final approval of the newly constructed pond.
- (I) The pond should be constructed with a drain of sufficient size to drain the pond in a 3 to 7 day period without causing flooding to any downstream landowner.
- (J) An adequate spillway shall be installed to release overflow floodwaters shall be directed to an adequate conveyance configuration that will safely convey the water to an adequate outlet. Water shall not be discharged in a manner that causes erosion at or downstream of the point of discharge.
- (K) The pond dam shall be grassed immediately after the construction to prevent erosion. If this is not applicable, appropriate erosion control measures shall be used until the area can be grassed and any disturbed areas shall be seeded.
- (L) Two sets of plans shall be submitted to the Surveyor for review by the Surveyor and the Drainage Board for compliance with the standards of the Ordinance. Plans shall be sealed by an engineer or surveyor licensed by the State of Indiana.
- (M) Proposed elevations of all disturbed areas shall be approved within the sole discretion of the Henry County Surveyor.
- (N) Upon completion of their review, the Surveyor and the Drainage Board may either approve or deny the project. If the project is approved, then the two copies of the approved project

plans will receive the signature and approval of both the Surveyor and the Drainage Board. One copy will be maintained on file in the Henry County Surveyor's Office and the other copy will be returned to the owner.

- (O) Where the outfall from the pond flows through real estate owned by others prior to reaching a regulated drain or private drain, no approval shall be granted until all impacted landowners either consent in writing to such use of their real estate, or are notified of such proposal by way of certified mail and their rights to appeal any approval of the design. Proof of this notification, e.g. a letter granting permission by proof of certified mailing, must be submitted to the Henry County Surveyor's Office.
- (P) The discharge from the pond shall not outlet onto the road right of way. Nor shall discharge be conveyed to a culvert under a road, unless the culvert can adequately handle the water (design calculations shall show the capacity during a 100 year storm).
- (Q) The discharge from the pond shall drain to a tile or open ditch with adequate capacity and a good outlet.

#7 VARIANCE PROCEDURES:

Variance from the minimum requirements of this section shall be filed in the Henry County Surveyor's Office to be reviewed by the Henry County Drainage Board.

A request for a variance for the minimum setback requirements or alteration of the direct volume flow from the property shall be submitted to the Henry County Surveyor. A filing fee of one hundred dollars (\$100.00) shall be paid to the county.

#8 RESPONSIBILITIES OF LANDOWNER:

In the event that any tiles are cut, broken down, or rendered less effective in any way during the development activity on a parcel, the landowner shall be solely responsible for the repair, replacement, or relocation of the tile on the land parcel to maintain the amount on drainage through the lot that existed prior to the development act.

Prior to issuance of any permit pursuant to this ordinance, the landowner shall execute a waiver of liability, assumption of risk, and indemnity agreement.

#9 ENFORCEMENT, VIOLATION, REMEDIES AND PENALTIES:

(A) Complaints regarding violation. Any person may file a written complaint whenever a violation of this Ordinance occurs or is reasonably believed to have occurred. The complaint shall state reasonably, fully and accurately the particulars thereof, and be filed with the Surveyor. The County shall investigate and may take action upon such complaint as provided in this Ordinance.

- (B) Enforcement Official. The Henry County Surveyor or its designee is hereby designated as the enforcement official who is authorized and directed to implement the enforcement of the Ordinance.
- (C) Access to property and inspections.
 - (1) The Enforcement Official, and designated persons acting on its behalf may inspect any property in the County at any reasonable time for the purposes of determining or enforcing compliance with the provisions of this chapter.
 - (2) By making application for a permit as provided in this chapter the landowner is required to sign the application to act on his/her behalf.

#10 VIOLATIONS, REMEDIES AND PENALTIES:

It shall be the duty of the Enforcement Official to enforce the provisions of this Ordinance.

- (A) The following shall constitute a violation of this Ordinance and shall be subjected to the enforcement remedies and penalties provided by this Ordinance.
 - (1) The construction, erection, or location of any improvement – such as buildings along the banks, changes to the structure of the pool, or any improvement not shown on the plan presented to the Drainage Board – that has not been approved by the Drainage Board is in violation of the provisions of this Ordinance.
 - (2) The use or development of property in a manner which does not conform to the provisions of this Ordinance;
 - (3) Any act contrary to the provisions and requirements of this Ordinance; or
 - (4) Altering, damaging, or removing any drainage-related improvements, e.g. spillways, drain pipes, dams, etc., required by the Surveyor and/or Drainage Board as part of a development plan or subdivision approval as part of a variance or special exception approval, or any other action that compromises the development standards.
- (B) Any activity considered a violation of this Ordinance is declared to be a common nuisance.
- (C) A person acting as owner, agent, principal, lessee, contractor, engineer, surveyor, or otherwise who, whether individually or in concert with another, knowingly acts contrary to the provisions and requirements of this Ordinance, shall be liable for maintaining a common nuisance.
- (D) Private covenants or agreements imposing standards different from these in this Ordinance shall not impose an enforcement obligation on the Drainage Board.
- (E) The owner, tenant or occupant of any structure or land and any architect, engineer, surveyor, contractor, or other person who participates in, assist, directs, creates, or maintains any situation that is contrary to the requirements of this Ordinance may be held responsible for the violation and suffer the penalties and be subject to the remedies provided herein.
- (F) The following process shall be followed by the Enforcement Official when pursuing a violation of this Ordinance.
 - (1)
 - (a) The Enforcement Official shall send written notice to the property owner indicating the nature of the alleged violation and ordering the action necessary to correct it.

- (b) The Enforcement Official may provide up to thirty (30) days for a violation to come into compliance with this Ordinance. If at the time the violations have not been corrected, then:
 - (2) If the violation is not corrected, the Enforcement Official shall send a written notice identified as being the final notice, and shall state what action the Enforcement Official can take if the violation is not corrected. The notice shall indicate that an appeal may be filed to the Henry County Drainage Board and the procedure for filing an appeal.
 - (3) In all violation notices, a reasonable time period shall be expressed and allotted for compliance.
 - (4) If the compliance is not achieved by the deadline specified in the final notice, the Enforcement Official may impose one or more of the remedies listed in subsection (G) below.
 - (5) The Enforcement Official may file a complaint against the person responsible for and prosecute the alleged violation.
- (G) The Enforcement Official may impose any one or all of the following remedies listed below for any violation of this Ordinance:
 - (1) A "STOP WORK ORDER" whereby all work on the construction authorized by issuance of a permit on the property shall cease at the time of the posting. A written "STOP WORK ORDER" shall be sent to the property owner, contractor, and/or other appropriate individual specifying what action is necessary to release the Order within the time limitation. Failure to adhere to this limitation is a violation of this Ordinance.
 - (2) A revocation of any permit issued for work on the property.
 - (3) Bring an action to invoke any legal, equitable, or special remedy for the enforcement of this Ordinance, or action taken under this Ordinance. Further, any violation of this Ordinance is punishable as a Class "A" infraction.
 - (4) Bring action for injunction. This action may seek to enjoin a person or entity from violating, or continuing to violate any provisions of this Ordinance and/or maintaining a common nuisance. Further, it may seek the prevention, removal, or abatement of the violation.
 - (5) Any other remedy or penalty provided for herein, or other applicable authority.
- (H) Any person found to be in violation of this Ordinance in an enforcement action brought under this Ordinance shall be responsible to pay reasonable costs and expenses, including attorney's fees, incurred to the County in connection with the prosecution of such action.

#11 FEE SHCHEDULE:

As a condition of the submittal and the review of the plans by the Surveyor and/or Drainage Board the applicable fee shall be first paid.

#12 EFFECTIVE DATE:

This Ordinance shall go into effect _____, after advertising as required by law.

ADOPTED this _____ day of _____.

Joel Magiera, Chair Person

Paula Chapman, Vice Chair

Ed Yanos, Commissioner

Steve Houchins, Board Member

Jeff Cates, Board Member

ATTEST: _____
Stephen L. Rust
Henry County Surveyor