

MAY 3, 2021

REGULAR SESSION

The LaGrange County Commissioners met in Regular Session on Monday, May 3, 2021, in their meeting room, County Office Building, 114 W. Michigan Street, LaGrange, Indiana, 46761, at 8:30 a.m., with the following present: Commissioners, Mr. Terry A. Martin, Mr. Kevin R. Myers, and Mr. Peter A. Cook; and LaGrange County Auditor, Kathryn Hopper. Mr. Terry Martin, President, called the meeting to order and led in saying the Pledge of Allegiance to the Flag. Mr. Kevin Myers made a motion to adopt the proposed agenda with flexibility. Mr. Peter Cook seconded the motion and it carried unanimously.

TERMINATION OF SERVICES AGREEMENT – MERV BEECHY, LAMBRIGHT FARM

Mr. Kurt Bachman, County Attorney, presented a Termination of Services Agreement with Merv Beechy to provide and perform services for the County on the property known as the Lambright Property. Mr. Kevin Myers made a motion to approve the termination of services agreement. Mr. Peter Cook seconded the motion and it carried unanimously.

TRANSFER OF PROPERTY FROM INDIANA DEPARTMENT OF NATURAL RESOURCES

Mr. Kurt Bachman, County Attorney, presented a letter of interest to acquire property owned by the Indiana Department of Natural Resources in LaGrange, Indiana. Once the property is acquired, the County would transfer the property to LaGrange Communities Youth Center. Mr. Peter Cook made a motion to approve the letter and authorize the president to sign. Mr. Kevin Myers seconded the motion and it carried unanimously.

PARKVIEW LAGRANGE HOSPITAL

Mr. Kurt Bachman, County Attorney, presented a letter to Parkview LaGrange Hospital, granting them permission to replace an existing sign EMS sign on the premises with a new but similar sign for the EMS Building on Townline Road, LaGrange, Indiana. Mr. Peter Cook made a motion to approve to replace the sign on the County Property. Mr. Kevin Myers seconded the motion and it carried with Mr. Terry Martin abstaining.

AN ORDINANCE CREATING AN OPERATING FUND FOR THE COUNTY DRAINAGE BOARD

Mr. Kurt Bachman, County Attorney, presented the following Ordinance for consideration:

COUNTY OF LAGRANGE
ORDINANCE NO. 2021-05-03 A

AN ORDINANCE CREATING AN OPERATING FUND FOR THE COUNTY DRAINAGE BOARD.

WHEREAS, the Board of Commissioners of the County of LaGrange ("Commissioners"), on behalf of LaGrange County, Indiana ("County"), is the legislative body of the County;

WHEREAS, pursuant to IC § 36-1-3-4(b)(2), the County has all other powers necessary or desirable in the conduct of its affairs, even though not granted by statute; *and*

WHEREAS, the Commissioners desire to create an operating fund for the Drainage Board.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF LAGRANGE THAT:

SECTION I – NAME

The name of this ordinance shall be the "Drainage Board Operating Fund Ordinance."

SECTION II – FUND ESTABLISHED

- A. Establishment. The Commissioners hereby establish the Drainage Board Operating Fund ("Fund") as a nonreverting operating fund, and it shall exist in perpetuity until terminated or repealed by a subsequent ordinance.

MAY 3, 2021

REGULAR SESSION

- B. Purpose. The purpose of the Fund is to hold fees collected pursuant to the Drainage Board Permit Administration Ordinance and other income related to Drainage Board activities or drainage law generally that is not designated for other funds.
- C. Appropriations. The County Council shall administer the Fund. No money may be disbursed from the Fund without a prior appropriation from the County Council.
- D. Restrictions. Money in the Fund shall be spent for purposes related to the administration of County drains including, but not limited to, per diems, office supplies, and attorney fees.
- E. Investment. All money in the Fund, and any interest earned on such money, shall be invested and reinvested pursuant to the County's standard investment procedures.
- F. Non-Reverting. All money in the Fund, including any interest earned on the Fund, shall remain in the Fund and shall not revert to the General Fund at the end of the fiscal year.

SECTION III – MISCELLANEOUS

A. References.

- 1. Except where a specific version or edition is given, reference to another section of this ordinance or to another law, document, fund, program, department, office, employee, or public servant, shall extend and apply to the same, as may be subsequently amended, elected, revised, recodified, renamed, or renumbered from time to time.
- 2. Reference in this ordinance to a public servant, department, office, commission, committee, board, or fund, either generally or by title, without reference to another jurisdiction, shall be construed as though it were preceded or followed, as appropriate, by the words “(of the) LaGrange County (Indiana).”
- 3. Should a provision of this ordinance require an act to be done which, by law, an agent or deputy as well may do as the principal, the requirement is satisfied by the performance of the act by an authorized agent or deputy.

B. Conflicts. No part of this ordinance shall be interpreted to conflict with any local, state, or federal laws, and all reasonable efforts should be made to harmonize same.

C. Severability. Should any section or part thereof of this ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the ordinance as a whole, or any other portion thereof, and for this purpose the provisions of this ordinance are hereby declared to be severable.

Mr. Peter Cook made a motion to approve the Ordinance. Mr. Kevin Myers seconded the motion and it carried unanimously. Mr. Kevin Myers made a motion to waive the requirement for second reading. Mr. Peter Cook seconded the motion and it carried unanimously.

ORDINANCE CREATING A PERMITTING PROCESS TO REGULATE ENCROACHMENTS ON COUNTY DRAINAGE RIGHT-OF-WAYS

Mr. Kurt Bachman, County Attorney, presented the following Ordinance for consideration:

COUNTY OF LAGRANGE
ORDINANCE NO. 2021-05-03 B

MAY 3, 2021

REGULAR SESSION

**ORDINANCE CREATING A PERMITTING PROCESS TO REGULATE ENCROACHMENTS ON
COUNTY DRAINAGE RIGHT-OF-WAYS.**

WHEREAS, the Board of Commissioners of the County of LaGrange ("Commissioners") on behalf of LaGrange County, Indiana (County) desires to provide for the efficient and prosperous operation of the County drainage tile and drainage right-of-ways;

WHEREAS, pursuant to Indiana Code Section ("IC §") 36-9-27-4, the LaGrange County Drainage Board ("Board") is established;

WHEREAS, pursuant to IC § 36-7-2-6 and Ordinance 2020-10-19-F, the Board may regulate excavation, mining, drilling, and other movement or removal of earth below ground level with respect to County drains;

WHEREAS, pursuant to IC § 36-8-2-4 and Ordinance 2020-10-19-F, the Board may regulate the conduct, or use or possession of property, that might endanger the public health, safety, or welfare with respect to County drains;

WHEREAS, pursuant to IC § 36-2-2-23 and Ordinance 2020-10-19-F, the Board may grant a permit to use County property if the permit is not exclusive and is of a definite duration;

WHEREAS, pursuant to IC § 36-9-27-33(d), permanent structures may not be placed on the right-of-way without consent of the Board;

WHEREAS, pursuant to IC § 36-9-27-33(d), trees, shrubs, and woody vegetation may not be planted in the right-of-way without the written consent of the Board;

WHEREAS, pursuant to IC 36-9-27.4, the Board may, upon petition, require removal of an obstruction in a mutual drain (non-regulated private drain) without consent of a landowner;

WHEREAS, the Board desires to ensure the structural integrity of the County drainage right-of-ways, especially with respect to grazing cattle and other large livestock;

WHEREAS, the Board has been admonished by the St. Joseph River Basin Commission to reduce the impact of grazing cattle and other large livestock from contaminating the water that flows through the drains with their waste contaminants; *and*

WHEREAS, the Board desires to regulate work performed on County drainage right-of-ways by monitoring such work through a permitting system and by providing for the subsequent restoration of those right-of-ways.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF LAGRANGE, INDIANA THAT:

SECTION I – NAME

The name of this ordinance shall be the "Drainage Board Permit Administration Ordinance," or the "Administration Ordinance" when the context is obvious.

SECTION II – DEFINITIONS

Whenever the following terms are used in this ordinance, they shall have such meanings herein ascribed to them unless the context clearly indicates or requires a different meaning.

- "Alter" means, with respect to land, any action that materially:
 - changes its contour;
 - changes its elevation;
 - increases the runoff rate;
 - decreases the rate at which water is absorbed;
 - changes the drainage pattern;
 - creates or changes a drain; *or*
 - creates a water impoundment.

The term may include, but is not limited to, terracing, grading, excavating, drilling, constructing earthwork, draining, installing drainage tile, filling, and paving.

MAY 3, 2021

REGULAR SESSION

- “Applicable law” includes, but is not limited to:
 - this ordinance;
 - all applicable federal statutes and regulations;
 - all applicable rules and orders of federal and state agencies, such as the Environmental Protection Agency or the Indiana Department of Environmental Management;
 - all applicable state statutes and regulations;
 - all applicable court precedent binding on the County;
 - all other County ordinances, as applicable; *and*
 - the permit issued to Owner.
- “Applicant” means the person who applies for a permit on behalf of an owner.
- “Application” means, collectively, all documentation submitted to the Board to obtain a permit, including, but not limited to, the Board’s form and its attached terms and conditions, the plans and specifications, the proof of insurance, the permit bond, any fees required, and any addendums to any such document.
- “Board” means the County Drainage Board.
- “Bond” means a bond or set of related bonds procured from a Surety in conjunction with an application made pursuant to this ordinance. The term includes a performance bond, Surety bond, a performance bond, a maintenance bond, a utility bond, a construction bond, a right-of-way bond, irrevocable letter of credit, or other form of financial assurance in an amount that is sufficient to meet an Owner’s financial responsibilities under a permit.
- “Commissioners” means the Board of Commissioners of the County of LaGrange, Indiana.
- “Drain” means a tile or ditch under the jurisdiction of the Board and includes all facilities related thereto.
- “Emergency” means a condition that poses a clear and immediate danger to life or health, or of a significant loss of property, or requires immediate repair or replacement in order to restore utilities to the public.
- “Encroach” means to place, to attempt to place, or to knowingly allow to be placed a facility, permanent structure, shrubbery, or livestock without a permit.
- “Facility” means any tangible thing, other than naturally occurring substances, that an Owner places under a right-of-way. The term especially includes, but is not limited to, drainage tile, wires, pipes, switches, etc. that belong to a public or private utility.
- “Graze” means to put livestock to graze, to attempt to put livestock to graze, or to knowingly allow livestock to be put to graze.
- “Officer” means any competent authority that enforces this ordinance including, but not limited to, the Drainage Board, the Surveyor, the Commissioners, the County Attorney, a prosecutor, a judge, or a law enforcement officer.
- “Ordinance” refers to the following ordinances, as follows:
 - “Reorganization Ordinance” refers to the County Drainage Board Reorganization Ordinance, or Ordinance 2020-10-19-F, adopted on October 19, 2020.
 - “Administration Ordinance” refers to this ordinance.
 - “Enforcement Ordinance” refers to the County Drainage Board Permit Enforcement Ordinance, or Ordinance 2021-05-03-C, adopted May 3, 2021.

MAY 3, 2021

REGULAR SESSION

- “Owner” means each person who owns a respective facility, permanent structure, shrubbery, or livestock that is the subject of an application. The term also includes, as applicable, the Owner’s respective agents, representatives, successors, and assigns.
- “Permit” means a non-expired, non-revoked written authorization, as signed and issued by competent authority, that is required to complete a project pursuant to this ordinance; it also covers the time after project completion as applicable.
- “Person” means any natural or corporate person, business association, or other business or governmental entity, including any of their legal representatives, successors, or assigns.
- “Project” means any action that involves the placement, modification, maintenance, or restoration of a facility, drain, permanent structure, or shrubbery, or the grazing of livestock on the right-of-way, usually pursuant to a permit.
- “Project completion” means, with respect to an underground facility or project to alter land, the specific termination date regarding the installation, maintenance, or repair activities of such facility or project.
- “Right-of-Way” means a drainage right-of-way under the jurisdiction of the Board.
 - “On” includes, with respect to a right-of-way, on, over, above, under, in, or along that right-of-way.
- “Shrubbery” includes trees, shrubs, woody vegetation, and any other plant matter that the Board reasonably believes to endanger the structural integrity of the drains or the waters that flow within.
- “Surety” means a person who is authorized to do business in the State of Indiana and named on the current list of “Surety Companies Acceptable on Federal Bonds” as published in the U.S. Treasury Board’s Circular No. 570, as amended.
- “Surveyor” refers to the County Surveyor.

SECTION III – SCOPE

- A. This ordinance relates to a project performed or contemplated on a drainage right-of-way on behalf of a person other than the Board or the Commissioners. A project that the Board or the Commissioners have commissioned and approved as a primary party to an executed contract is beyond the scope of this ordinance.
- B. Nothing in this ordinance shall be construed to allow Owner or his or her agents to enter any landowner’s private property or the County’s highway (non-drainage) right-of-ways. Such consents, if required, must be obtained separately.
- C. Nothing in this ordinance shall be construed to allow Owner or his or her agents to place any facility or permanent structure on any landowner’s private property. Such consents, if required, must be obtained separately.
- D. Nothing in this ordinance shall be construed to regulate:
 - 1. the County’s permanent structures; *or*
 - 2. a County or state official, employee, or agent acting under competent authority.
- E. Nothing in this ordinance shall be construed to limit any officer in enforcing this ordinance.
- F. Nothing in this ordinance shall be construed to limit the right of the Commissioners or Board and another person to enter into and abide by a special contract.

MAY 3, 2021

REGULAR SESSION

1. Where this ordinance conflicts with the terms of a contract entered into by the Commissioners or Board, the terms of the contract control with respect to that person.
 2. If an act would be considered a violation under this ordinance but is specifically permitted in the contract, the act is instead not a violation.
- G. Nothing in this ordinance shall be construed to limit the right of the Commissioners or Board to bring a civil action against any person to recover any damages sustained as a result of a violation of this ordinance or other applicable law.
- H. Nothing in this ordinance shall be construed to create a cause for civil action against the County, the Commissioners, the Drainage Board, or any of their employees, or agents.

SECTION IV – PURPOSE

The purpose of this ordinance is to protect the County drains and right-of-ways, the projects of other persons who have been granted a permit, and to protect the waters in the County into which the drains flow.

SECTION V – PERMIT REQUIRED

- A. A permit issued pursuant to this ordinance is a privilege and not a right.
- B. On a right-of-way, without having first obtained a new or modified permit, no person may:
1. allow a permanent structure or shrubbery to encroach thereupon; *nor*
 2. reconstruct a permanent structure already permitted; *nor*
 3. graze livestock; *nor*
 4. alter land so as to affect a right-of-way or drain.
- C. Except as provided by applicable law, the Board makes a final determination as to whether:
1. an Owner's actions are material;
 2. an Owner's actions are located on the right-of-way;
 3. an Owner's actions are within or beyond the scope of the permit;
 4. an Owner's actions affect a right-of-way or drain; *or*
 5. a person's actions are or would be subject to this ordinance.
- D. The permit is valid only for the area of the right-of-way(s) specified in the permit.
- E. The Board may impose reasonable conditions or restrictions upon issuing a permit.
- F. The permit expires if there has been no project completion within a year of issuance; provided, however, that a project approved by the Board upon project completion has an additional term of ten (10) years from date of project completion.
- G. After the ten-year term, each unrevoked permit automatically renews for consecutive one-year terms on its anniversary date.
- H. The permit runs with the land unless the Board has indicated otherwise.
- I. The Board may limit the permit scope to specific days.
- J. An Owner who desires to change a material term shall apply for a permit modification.
- K. While an Owner, other than a landowner on whose property the right-of-way lies, or the Owner's agent is present in a right-of-way, such person shall keep a copy of the permit in his or her possession at all times.
- L. If, before the permit expiration date, the Owner determines that the scope of the permit received is insufficient with regard to the time remaining to complete initial installation or some other *de minimus* project detail, the Owner may

MAY 3, 2021

REGULAR SESSION

make a written request to the Surveyor for an appropriate extension of the scope of the work without completing a separate project application. The Surveyor may review the request and grant or deny the permit extension.

- M. To the extent it is found that a project interferes with a drain, a previously permitted project, or a public maintenance or reconstruction work, the Board may order the Owner to cease the interference at Owner's cost and modify the permit as necessary.

SECTION VI – APPLICATION PROCESS

- A. The Board shall create a permitting process in which an Owner who desires to undertake a project must receive a permit from the Board prior to beginning work.
- B. The Board may waive an irregularity in a particular application or the application process generally.
- C. If an applicant is acting in an agency capacity, the Board may require proof that such person has authority to act on behalf of the prospective permittee.
- D. The Board may require an applicant to submit all information necessary to determine whether a proposed project would adversely impact the drain, the right-of-way, or any other project previously permitted thereon. The Board may make reasonable stipulations as to the form of the information to be provided (text, plans, drawings, photos, colors, etc.).
- E. The Board may require an applicant to submit a legal description of any property and/or specific area thereon that would be subject to the permit.
- F. As a condition for obtaining a permit, the Board may require an Owner to first obtain the permission of the underlying landowner or otherwise have independent rights, with respect to the landowner, to encroach upon the right-of-way (e.g., eminent domain condemnation of an easement).
- G. The Board shall collect the application fee owed pursuant to the applicable fee schedule.
- H. The Board may reject any application that the Board deems unsuitable for structural, design, safety, or emergency reasons; for failure to deliver all required documents with appropriate responses; for an Owner's perceived lack of professional or financial responsibility; for calendaring conflicts with other owners or special events; for reasons related to the disruption of County affairs or limitations of County resources; because the Owner owes money to the County; or for any other reasonable cause. If the Board should reject an application, the Board shall communicate in writing the reason(s) for the rejection.
- I. An Owner whose application has been rejected by the Surveyor may resubmit the application with the deficiencies corrected. In such case, neither the Owner nor Applicant need pay a subsequent application fee unless the Board determines that one or both of the applications was frivolous and communicates to the Applicant in writing the reason(s) for that determination.
- J. The Surveyor shall ensure that all permits that may foreseeably endure beyond the tenure of the present landowner on whose property the right-of-way lies are in recordable form and duly recorded when approved by the Board.

SECTION VII – FEES

- A. The Board may adopt, revise, and administer a fee schedule to recoup some or all of the costs that it reasonably anticipates in the management and review of the permit process and of all costs reasonably associated with degradation of the work site as a result of the proposed project. Such management costs include, but are not limited to, costs associated with assisting applicants; issuing, processing, and verifying permit applications; recording permits and permit revocations; creating and maintaining information on a Geographical Information System ("GIS") or other mapping system; inspecting project sites; inspecting restoration activities; maintaining, supporting, protecting, or moving facilities during work on the right-of-ways; determining the adequacy of right-of-way

MAY 3, 2021

REGULAR SESSION

restoration; restoring work inadequately performed; and revoking permits and performing all of the other tasks required, including legal fees and other costs the County may incur in managing the provisions of this ordinance.

- B. The fees in the fee schedule should approximate the average respective costs actually incurred over the recent past for similarly situated owners.
- C. The Board may charge the fee upon submission of the application, regardless of whether a permit is ultimately approved.
- D. The application fees are non-refundable; provided, however, that the Board may waive or partially refund an application fee in appropriate cases.
- E. All fees collected pursuant to this ordinance shall be deposited within a reasonable time in the Drainage Board Operating Fund.

SECTION VIII – BONDS

- A. This section does not apply to an application related only to shrubbery and/or permit modifications or as may be waived by the Board.
- B. An Owner shall submit a permit bond using a form approved by the Board as part of the application process; provided, however, that the Board may instead accept a letter of intent to acquire the bond, with provision thereof prior to beginning work on the project.
- C. The bond must name “LaGrange County, Indiana” as the exclusive owner or obligee. Failure to state the name in this manner shall not, per se, void the bond.
- D. The bond shall be made in an amount of Fifteen Thousand Dollars (\$15,000.00), or another amount approved by the Board in accord with IC § 36-1-4-22 and other applicable law.
- E. If the bond is executed by an attorney-in-fact on behalf of the Surety, it shall have affixed thereto a certified, current copy of the power of attorney indicating the monetary limit of such power.
- F. The bond must be acknowledged by the Owner and Surety in a notarized statement.
- G. The bond must jointly and severally bind the Owner and Surety to ensure that the terms and conditions of the application and/or permit are fulfilled.
- H. The bond shall sufficiently identify the project.
- I. The bond must, whether by its own terms or in reference to this ordinance or the permit, contain a guarantee that Owner and/or Surety shall:
 - 1. not damage or interfere with the facilities, permanent structure, shrubbery, or livestock of other owners; *and*
 - 2. return the project work site after project completion to a condition substantially equal to or better than in all respects it had been immediately before the project had begun.A court shall construe a provision of any such bond towards the finding of such a guarantee where possible.
- J. At any time during the bond’s effect, the Owner and/or Surety shall, upon written notice from the Surveyor, conduct all restoration required by the Surveyor.
- K. If Owner should default against the terms and conditions of the permit or this ordinance, the Board will give Owner and Surety written notice of the default. If Owner does not remedy the default within ten (10) days to the satisfaction of the Surveyor, the Surveyor may declare a formal default, terminate Owner’s right to complete the Project, and give written notice of such to Owner and Surety. Surety shall have a further twenty (20) days, at Surety’s expense, to arrange for another contractor, satisfactory to the Engineer, to promptly cure the default.

MAY 3, 2021

REGULAR SESSION

Alternately, Surety shall use that time period to determine its liability and tender a proposed payment to the Board to satisfy its liability or shall deny its liability in whole or in part and notify the Board as to the reasons therefor.

- L. If the Board should deem the Surety to be in default of Subsection (K), or if the Board should refuse the Surety's tendered payment or reject the Surety's denial of liability, the Board shall be entitled to enforce any remedy available.
- M. By becoming a Surety to Applicant, Surety thereby waives any notice from the County, the Commissioners, the Board, the Surveyor, or their agents of any change to the application and/or permit or separate contract.
- N. Surety shall not be liable to the Board for a default of the Owner unrelated to the Project.
- O. The bond shall not be allowed to expire during the lifetime of the project, but may be renewed from time to time by the Owner. Notwithstanding this provision, it will be sufficient that a bond for a permanent aboveground-only structure cover the period of installation plus one year.
- P. The bond must be interpreted in accord with the laws of the State of Indiana.
- Q. Any action in any way arising from or relating to the permit or its accompanying bond must be brought to the state courts located in LaGrange County or the United States District Court for the Northern District of Indiana, Fort Wayne Division. The court shall have exclusive jurisdiction over such matters.
- R. Each separate project application shall require a separate bond.

SECTION IX – OTHER REQUIREMENTS

- A. The Board may waive the requirements of this subsection. While work at the project site is in progress, Owner shall maintain in full force and effect general liability insurance from an Indiana-authorized insurer that names the Board as an additional insured. It must contain a single-occurrence limit of at least One Million Dollars (\$1,000,000) and a general aggregate limit of at least Two Million Dollars (\$2,000,000). As part of his or her application, an applicant shall furnish the Board with the certificates of insurance or other satisfactory evidence that such insurance is in full force and effect. This subsection does not apply to shrubbery projects.
- B. By submitting an application, Owner does thereby indemnify, hold harmless, and defend the County, the Board, the Board, and their agents from and against any and all actions or causes of action, claims, demands, liabilities, loss, damage, or expense, including attorneys' fees, or other casualties of whatever kind, or by whomsoever caused, to person or property of anyone on the right-of-way arising out of or relating to the project, or from the installation, existence, use, maintenance, conditions, repairs, alteration, or removal of any facility, permanent structure, shrubbery, or livestock due in whole or in part to any act, omission, or negligence of the Owner, including any claims arising out of the Worker's Compensation Act or any other law, ordinance, order, or decree. In the event the bodily injury, including death, or damage to property is due to the sole negligence of the Board, then and only then shall the Owner not be liable.
- C. The Owner shall bear any and all risks and costs relating to and in compliance with the project, including indemnifying other persons against damage or loss to their respective facilities, structures, shrubbery, or livestock; obtaining all other necessary permits, licenses, and authority; and paying all fees required by any other town, city, county, state, or federal rules, laws, or regulations.
- D. The Owner of a facility, permanent structure, or project to alter land shall notify the Board in writing at least seven (7) days before beginning any work on the project and again within seven (7) days after project completion.
- E. The Owner shall comply with all applicable law, acquire all applicable permits or easements or rights-of-entry, adhere to all terms and conditions of the application and/or permit, and follow all instructions from the Board and/or Surveyor before, during, and after project completion.

MAY 3, 2021

REGULAR SESSION

- F. Except in an emergency, and then with the approval of the Surveyor, the Owner shall not perform active work on any right-of-way when conditions are unreasonable for such work.
- G. Owner shall provide Surveyor with a set of "as-built" drawings and maps after project completion showing all drain, right-of-way, or other project crossings.

SECTION X – EMERGENCIES

- A. The Owner, whether or not his or her permit has expired, shall immediately notify the Surveyor of any event that it considers to be an emergency with respect to the Owner's facilities. The Owner may proceed to take whatever actions are necessary in order to respond to the emergency. Within three (3) days after the occurrence of the emergency, the Owner shall apply for a new permit, pay the fees associated therewith, and fulfill the rest of the requirements necessary to bring itself into compliance with this ordinance for the actions it took in response to the emergency.
- B. In the event that the Surveyor becomes aware of an emergency regarding an owner's facilities, the Surveyor may attempt to contact the Owner. In any event, the Surveyor may take whatever action he or she deems necessary in order to respond to the emergency, the cost of which shall be borne by the person whose facility occasioned the emergency.

SECTION XI – MISCELLANEOUS

- A. References.
 - 1. Except where a specific version or edition is given, reference to another section of this ordinance or another law, document, fund, program, or public office, shall extend and apply to the same, as may be subsequently amended, elected, revised, recodified, renamed, or renumbered from time to time.
 - 2. Reference in this ordinance to a public servant, Office, commission, committee, board, or fund, either generally or by title, without reference to another jurisdiction, shall be construed as though it were preceded or followed, as appropriate, by the words "(of) LaGrange County (Indiana)."
 - 3. Should a provision of this ordinance require an act to be done which, by law, an agent or deputy as well may do as the principal, the requirement is satisfied by the performance of the act by an authorized agent or deputy.
- B. Conflicts. No part of this ordinance shall be interpreted to conflict with any local, state, or federal laws, and all reasonable efforts should be made to harmonize same.
- C. Severability. Should any section or part thereof of this ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the ordinance as a whole, or any other portion thereof, and for this purpose the provisions of this ordinance are hereby declared to be severable.
- D. Incorporated Materials. Two (2) copies of all materials incorporated herein shall be on file in the office of the Auditor for public inspection.
- E. Effective Date. This ordinance shall be effective immediately upon adoption.

Mr. Peter Cook made a motion to approve the Ordinance. Mr. Kevin Myers seconded the motion and it carried unanimously. Mr. Kevin Myers made a motion to waive the requirement for second reading. Mr. Peter Cook seconded the motion and it carried unanimously.

AN ORDINANCE CREATING ENFORCEMENT MECHANISMS FOR THE DRAINAGE BOARD PERMIT ADMINISTRATIVE ORDINANCE

Mr. Kurt Bachman, County Attorney, presented the following Ordinance for consideration:

COUNTY OF LAGRANGE

MAY 3, 2021

REGULAR SESSION
ORDINANCE NO. 2021-05-03 C

**AN ORDINANCE CREATING ENFORCEMENT MECHANISMS FOR THE DRAINAGE BOARD
PERMIT ADMINISTRATION ORDINANCE.**

WHEREAS, pursuant to Indiana Code ("IC §") 36-2-2-2, the Board of Commissioners of the County of LaGrange, on behalf of LaGrange County, Indiana, is the County executive;

WHEREAS, pursuant to IC § 36-1-3-4, the Commissioners have all powers necessary or desirable in the conduct of their affairs; *and*

WHEREAS, pursuant to IC § 36-1-4-6, the Commissioners may use, improve, develop, insure, protect, maintain, lease, and dispose of its interests in property; *and*

WHEREAS, pursuant to IC § 36-8-2-4, the Commissioners may regulate the conduct, or use or possession of property, that might endanger the public health, safety, or welfare;

WHEREAS, pursuant to IC § 36-1-6-4(a), the Commissioners may bring a civil action against a person who violates an ordinance regulating or prohibiting a condition or use of property or who engages in conduct without a permit if an ordinance requires a permit;

WHEREAS, pursuant to Ordinance 2020-10-19-F, the Commissioners have delegated to the Board certain powers to administer a drainage right-of-way permitting process and to regulate any activity that exposes the waters that channel through the regulated drains under the Board's jurisdiction to harmful contamination;

WHEREAS, the Commissioners have adopted Ordinance 2021-05-03-B creating a drainage permitting administration process and desire that it be enforceable;

WHEREAS, the Commissioners desire to have the Board revoke or suspend any permit issued by the County if the permittee has violated the terms or conditions of the permit or of the law under which the permit was issued;

WHEREAS, pursuant to IC § 36-9-27-15, each regulated drain in the County is under the jurisdiction of the Board; *and*

WHEREAS, pursuant to IC § 36-9-27-8, the Board may bring civil actions in its own name to enforce any of the provisions of IC 36-9-27.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF LAGRANGE, INDIANA THAT:

SECTION I – NAME

The name of this ordinance shall be the "Drainage Board Permit Enforcement Ordinance," or the "Enforcement Ordinance" when the context is obvious.

SECTION II – DEFINITIONS; SCOPE; PURPOSE

- A. "Administration Ordinance" refers to the Drainage Board Permit Administration Ordinance, or Ordinance 2021-05-03-B, adopted May 3, 2021.
- B. A reference herein to "this ordinance" includes the Administration Ordinance.
- C. The definitions, scope, and purpose sections of the Administration Ordinance are hereby incorporated by reference as if fully set out herein.

SECTION III – VIOLATIONS

- A. Permit.
 - 1. No person shall fail to properly apply for, nor abide by the terms of, a permit that the person is obligated to acquire or maintain pursuant to this ordinance.
 - 2. No person shall work on or maintain a project pursuant to an expired or revoked permit.

MAY 3, 2021

REGULAR SESSION

- B. Endangerment. No person shall endanger the welfare of a drain, right-of-way, project, or officer with respect to this ordinance.
- C. Entry. No person shall, except in case of emergency, enter on or perform work on a right-of-way without a permit.
- D. Permanent Structures.
 - 1. No person shall allow a permanent structure to encroach on a right-of-way without having first obtained a permit to do so.
 - 2. No person shall reconstruct a permanent structure already permitted on a right-of-way without having first obtained a new or modified permit to do so.
- E. Shrubbery. No person shall allow shrubbery to encroach on a right-of-way without having first obtained a permit to do so.
- F. Livestock. No person shall graze livestock on a right-of-way without having first obtained a permit to do so.
- G. Land Alterations. No person shall alter land so as to affect a right-of-way or drain under the jurisdiction of the Board without having first obtained a permit to do so.
- H. Applications.
 - 1. No applicant shall submit an incomplete permit application or an application with false or misleading information.
 - 2. No applicant shall fail to update any contact information provided on a pending application form or while such person maintains a permit bond.
- I. Permit Transfers. No person shall transfer a permit to another person; provided, however, that permits shall run with the land.
- J. Inspections. No person shall interfere with an officer with respect to an inspection of a project, drain, or right-of-way.
- K. Cooperation. Each person shall cooperate with the reasonable instructions of an officer with respect to a permit or a failure to acquire a permit.
- L. Supplying Information. Each person shall, upon request, supply an officer with any pertinent information concerning which the person possesses or can easily access regarding a permit, project, or right-of-way.
- M. Catchall. No person shall otherwise fail to comply with a provision or requirement of this ordinance, either directly or within a variance provided on a permit.

SECTION IV – ENFORCEMENT

- A. Authorization. Any officer may enforce the terms of this ordinance within his or her respective scope of authority.
- B. Non-hierarchical; Non-exclusive. Enforcement procedures and remedies in this ordinance are neither hierarchical nor exclusive and may be omitted or used in any order and in conjunction with other enforcement procedures and remedies at the discretion of the County or the enforcing officer(s).
- C. Verbal Warning. An officer who has reasonable suspicion that a minor or easily corrected violation of this ordinance has occurred may issue a verbal warning.
- D. Written Warning. An officer who has reasonable suspicion that a material violation of this ordinance has occurred may provide the suspected violator with written notice, stop-work order, and/or cease-and-desist letter stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The suspected violator shall, within the period of time stated in such notice, permanently cease all violations.

MAY 3, 2021

REGULAR SESSION

- E. Satisfaction. The Board may require that an owner who has damaged another owner's facilities provide satisfaction to the other as a condition for not revoking the permit.
- F. Permit Revocation. An officer may alter, suspend, or revoke a permit, without fee refund, for failure to adhere to the terms of this ordinance. Nevertheless, an owner whose permit is revoked in this manner may still act per the express direction of the officer.
- G. Removal. If a person has not complied with this ordinance, the Board may order the removal of that person's presence, structure, livestock, shrubbery, or other project from the right-of-way.
- H. Citations. An officer may issue a citation for an ordinance or state law violation or take other appropriate enforcement action.
- I. Regulatory Notification. An officer may notify another applicable state or federal regulatory agency of a suspected violation of applicable law.
- J. Injunctions. The Commissioners or Board may petition a court of competent jurisdiction to enjoin further violation of this ordinance.
- K. Correction. The Board may, subject to permission of the landowner when required, correct a violation of this ordinance to bring it into compliance.
- L. Civil Action. The Commissioners or Board may bring a civil action against any person who violates this ordinance to recover the cost to bring a violation into compliance.
- M. Administrative Hearing. A person who has been subject to enforcement action pursuant to this ordinance without prior hearing may request an administrative hearing with the Board at a future public meeting, as scheduled by the Board through the Surveyor or Secretary of the Board, to show cause as to why the enforcement action should not be taken.
- N. Administrative Proceeding. The Commissioners and/or Board may, on their own motion, convene an administrative proceeding of their own body to enforce this ordinance after providing proper notice of the time and date of the hearing to the alleged violator at least ten (10) days before the hearing and providing an opportunity for such person to be heard.

SECTION V – PENALTIES AND COSTS

- A. Fines.
 - 1. A person shall be liable to a fine of up to Two Hundred Fifty Dollars (\$250.00) for a first violation of this ordinance.
 - 2. A person shall be liable to a fine of up to Five Hundred Dollars (\$500.00) for a second violation of this ordinance.
 - 3. A person shall be liable to a fine of up to One Thousand Dollars (\$1,000.00) for a third or subsequent violation of this ordinance.
 - 4. A person shall be liable to a fine of up to Two Thousand Five Hundred Dollars (\$2,500.00) for a violation of this ordinance if the violation is reckless or intentional and that causes injury to persons or damage to the property of the County.
- B. Permit Fee Doubled. Except in the case of an emergency, any person who enters, encroaches, or performs work on a right-of-way without a permit, and/or the Owner of that person if that person should be acting in the capacity of an agent, must subsequently obtain a permit and pay double the permit application fee and any other fees required before resuming a project.

MAY 3, 2021

REGULAR SESSION

- C. Costs. Any person found to have violated this ordinance shall be responsible for any costs, including reasonable attorney's fees, paralegal fees, and collection costs, to the extent allowed by law, borne by the County to prosecute or correct such violation and/or to return property to its pre-violation state.
- D. Rules.
1. Each day in which a violation should continue shall constitute a separate violation.
 2. For the purpose of determining whether a violation is a second, third, or subsequent violation under this section, a look-back period of three years from the date of the violation shall be used.
 3. When imposing any fine, the enforcement authority shall seek to impose the maximum amount, and then mitigate it by taking into account the motivation and sophistication of the violator, the quantity and length of the violation, the degree of danger involved, the extent of harm caused, the willingness to admit to and proactively correct the violation, and such other factors as the authority finds relevant.
 4. If two or more persons shall be found to have caused a respective violation, they shall be jointly and severally liable for all costs.
 5. An owner who is liable for a fine, fee, or costs relating to a violation of this ordinance is jointly and severally responsible for the fine, fee, or costs with each other owner of the property.
- E. Time to Pay. Any fine or cost imposed pursuant to this ordinance shall be paid within sixty (60) days.

SECTION VI – MONEY DEPOSITS

All fines and costs of prosecution collected pursuant to this ordinance shall be deposited within a reasonable time in the County's general fund.

SECTION VII – MISCELLANEOUS

Sec. XI of the Administration Ordinance, which contains the Miscellaneous section of that ordinance, is hereby incorporated by reference as if fully set out herein; provided, however, that this ordinance shall instead be in effect upon adoption and promulgation according to law.

Mr. Peter Cook made a motion to approve the Ordinance. Mr. Kevin Myers seconded the motion and it carried unanimously. Mr. Kevin Myers made a motion to waive the requirement for second reading. Mr. Peter Cook seconded the motion and it carried unanimously.

AN ORDINANCE CREATING AN ARP CORONAVIRUS LOCAL FISCAL RECOVERY FUND

Mr. Kurt Bachman, County Attorney, presented the following Ordinance for consideration:

COUNTY OF LAGRANGE
ORDINANCE NO. 2021-05-03 D

AN ORDINANCE CREATING AN ARP CORONAVIRUS LOCAL FISCAL RECOVERY FUND.

WHEREAS, the U.S. Congress passed the American Rescue Plan Act of 2021, also known as the COVID-19 Stimulus Package ("Act"), which was signed into law on March 11, 2021;

WHEREAS, the Act provides money to state and local governments, including the County, to help with, *inter alia*, recovery from the COVID-19 public health emergency;

WHEREAS, the Indiana State Board of Accounts ("SBOA") published a Directive and Memorandum on March 18, 2021, which constitute effective law and which contain detailed instructions for adopting a Fund ordinance and for accounting for the money received;

MAY 3, 2021

REGULAR SESSION

WHEREAS, according to the SBOA website, LaGrange County is scheduled to receive \$7.68 Million Dollars in direct payment pursuant to the Act; *and*

WHEREAS, pursuant to Indiana Code Section 36-1-4-10, the County may accept donations of money or other property from the state or federal government or any other source.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF LAGRANGE THAT:

SECTION I – NAME

The name of this ordinance shall be the “American Rescue Plan (ARP) Coronavirus Local Fiscal Recovery Fund Establishment Ordinance,” or “Fund Ordinance” when context is obvious.

SECTION II – FUND ESTABLISHED

G. Definitions. Whenever the following terms are used in this ordinance, they shall have such meanings ascribed to them unless context clearly indicates or requires a different meaning.

- “Act” refers to the American Rescue Plan Act of 2021.
- “County” refers to the LaGrange County, Indiana government, as governed by its Board of Commissioners (“Commissioners”).
- “COVID-19” refers to the Coronavirus Disease 2019 public health emergency.
- “Eligible worker” has the meaning in Section 603, and, as hereby designated by the President of the Commissioners in the capacity of chief executive officer of the County, to be construed broadly, and includes those workers identified at https://www.cisa.gov/sites/default/files/publications/ECIW_4.0_Guidance_on_Essential_Critical_Infrastructure_Workers_Final3_508_0.pdf.
- “Fund” refers to the fund directly established by this ordinance.
- “Private nonprofit organization” has the meaning in 42 USC 11360(19).
- “Plan” refers to the management plan to be developed by the County that will provide further details on the disbursement and investment of the money in the Fund.
- “Premium pay” has the meaning in Section 603.
- “SBOA” refers to the Indiana State Board of Accounts.
- “Section 603” refers to Section 603(c) of the Social Security Act, as added by the Act.

H. Establishment. The Commissioners hereby establish the “ARP Coronavirus Local Fiscal Recovery Fund,” to exist in perpetuity until repealed by a subsequent ordinance.

I. Purpose. The Fund shall be used solely for the purpose of holding the money received from the federal government pursuant to Section 603 to the extent permitted by the SBOA.

J. Restrictions.

1. No money may be disbursed from the Fund except when used in accord with Section 603 or as otherwise permitted by the Act. Uses permitted thereby include:
 - a. to respond to COVID-19 or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
 - b. to respond to workers performing essential work during COVID-19 by providing premium pay to eligible workers of the County that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;
 - c. for the provision of government services to the extent of the reduction in County revenue due to COVID-19; provided, however, that any such reduction shall be evidenced by detailed calculations relative to revenues collected in 2019; *or*

MAY 3, 2021

REGULAR SESSION

- d. to make necessary investments in water, sewer, or broadband infrastructure.
 2. No money may be disbursed from the Fund except in accord with the Plan.
 3. No money may be disbursed from the Fund except as part of the normal claims process in accord with IC § 5-11-10-1.6.
 4. No money may be disbursed from the Fund for deposit into any pension fund.
 5. No money may be disbursed from the Fund after December 31, 2024.
- K. Appropriations. No money may be disbursed from the Fund without a prior appropriation from the County Council.
- L. Transfers. Money in the Fund may be transferred to the State of Indiana or to a private nonprofit organization. If money is transferred pursuant to this subsection, a private nonprofit organization must provide documentation to show that it is an eligible recipient.
- M. Accounting. The Auditor shall make a detailed accounting for the Fund. All related expenditure records (accounts payable vouchers, minutes, correspondence, contracts, etc.) shall be maintained in a separate file for audit purposes. The Auditor shall tie each expense to a use permitted by the Act, but if unable, shall seek advice from the County Council.
- N. Non-Reverting, Non-Transferable. All money in the Fund, including any interest earned on the Fund, shall remain in the Fund and shall neither revert to the General Fund at the end of the fiscal year nor be transferred to any other County fund.

SECTION III – AUTHORIZATION

The Commissioners authorize (but do not require) its President, the President of the County Council, the Auditor, and the Treasurer to sign all documents and to take all action necessary or helpful to create and manage all funds established pursuant to this ordinance and for the disbursement of money therefrom, subject to the provisions of this ordinance.

SECTION IV – EFFECTIVE DATE

- A. References.
1. Reference to another section of this ordinance or another law, document, fund, program, or public office, shall extend and apply to the same, as may be subsequently amended, revised, recodified, renamed, replaced, or renumbered from time to time.
 2. Reference in this ordinance to a public servant, department, committee, board, or fund, without reference to another jurisdiction, shall be construed as if preceded or followed, as appropriate, by the words “(of) LaGrange County (Indiana).”
 3. Should this ordinance require an act which, by law, an agent or deputy as well may do as the principal, performance by an authorized agent or deputy shall be satisfactory.
- B. Conflicts. No part of this ordinance shall be interpreted to conflict with any local, state, or federal laws, and all reasonable efforts should be made to harmonize same.
- C. Severability. Should any section or part thereof of this ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the ordinance as a whole, or any other portion thereof, and for this purpose the provisions of this ordinance are hereby declared to be severable.
- D. This ordinance shall be deemed effective immediately upon adoption.

Mr. Kevin Myers made a motion to approve the Ordinance. Mr. Peter Cook seconded the motion and it carried unanimously. Mr. Peter Cook made a motion to waive the requirement for second reading. Mr. Kevin Myers seconded the motion and it carried unanimously.

MAY 3, 2021

REGULAR SESSION

COUNCIL ON AGING – TRANSPORTATION GRANT APPLICATION

Mrs. Cheri Perkins, Council on Aging Executive Director, presented a resolution authorizing the filing of the 2022 application for a grant under Section 5311/5339 of the Federal Transit Act. Mr. Peter Cook made a motion to approve the Resolution and authorize the president to sign. Mr. Kevin Myers seconded the motion and it carried unanimously.

Mr. Peter Cook made a motion to approve the authorize the President and the Auditor to sign the necessary papers for the application, outside of a public meeting. Mr. Kevin Myers seconded the motion and it carried unanimously.

COURTHOUSE - REMODEL

Mr. Gary Mast, Maintenance Director, presented three quotes for carpeting for the north side of the first floor of the Courthouse. The lowest quote is from Quality Floor in the amount of \$5,102.52. Mr. Peter Cook made a motion to approve the carpet and pay it out of the Cumulative Capital Development fund. Mr. Kevin Myers seconded the motion and it carried unanimously.

AWARD OF PROPOSALS FOR TWO TANDEM AXLE TRUCK CHASSIS

Mr. Ben Parish, Highway Superintendent, explained that on March 15, 2021 the following sealed proposals for two tandem axle truck chassis and two truck bodies, blades, and hydraulic components were opened:

<u>Bidder</u>	<u>Location</u>	<u>Chassis Amount</u>	<u>Hydraulics Amount</u>
Stoops Freightliner	Fort Wayne, Indiana	\$126,857.00	
Selking International	LaGrange, Indiana	117,331.00	
W. A. Jones	Columbia City, Indiana		\$96,764.00

He is requesting to award the quotes to Stoops Freightliner in the amount of \$126,857 each, due to the past performance of the Western Star, with the extended warranty for \$5,985 each, and the hydraulics for \$96,764 each. Mr. Kevin Myers made a motion to purchase the vehicles from Stoops Freightliner and the hydraulics from W. A. Jones. Mr. Peter Cook seconded the motion and it carried unanimously.

HIGHWAY DEPARTMENT – 2020 ANNUAL OPERATIONAL REPORT

Mr. Ben Parish, Highway Supervisor, presented the 2020 Annual Operational report for consideration and approval. Mr. Kevin Myers made a motion to approve the report. Mr. Peter Cook seconded the motion and it carried unanimously.

ACCOUNTS PAYABLE VOUCHERS

Mrs. Kathryn Hopper, County Auditor, presented the Accounts Payable Vouchers. Mr. Peter Cook made a motion to approve the vouchers. Mr. Kevin Myers seconded the motion and it carried unanimously.

MINUTES

Mr. Peter Cook made a motion to approve the minutes of the April 19, 2021 regular session meeting. Mr. Kevin Myers seconded the motion and it carried unanimously.

MEMORANDUM

Mr. Peter Cook made a motion to approve the memorandum for the April 28, 2021 meeting. Mr. Kevin Myers seconded the motion and it carried unanimously.

CORRESPONDENCE

Notice of Public Hearing - Curry, Charles & Diedra, 6020 S 0850 W, Wolcottville, Indiana 46795, Application to operate a short term rental in an L-1 zoning district.

MAY 3, 2021

REGULAR SESSION

Indiana Department of Environmental Management – Notice of Approval, Custom Steel Design, LLC, 1660 South County 100 West, Shipshewana, Indiana 46565, Permit Number 087-43539-00076

Indiana Department of Environmental Management – Notice of Approval, Clearspring Manufacturing, LLC, 4225 West 350 South, Topeka, Indiana 46575, Permit Number 087-43914-00079

Indiana Department of Environmental Management – Notice of Approval, Sheshe Trailer. 9430 West US Highway 20, Shipshewana, Indiana 46565, Permit Number 087-43919-00677

ADJOURNMENT

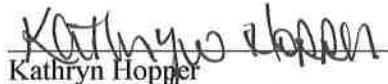
There being nothing further to come before the Board at this time, Mr. Kevin Myers made a motion to adjourn and meet on any subsequent day necessary to carry on the business of the Board. Mr. Peter Cook seconded the motion and it carried unanimously.


Terry A. Martin


Kevin R. Myers


Peter A. Cook

ATTEST:


Kathryn Hopper
LaGrange County Auditor