

STATE OF INDIANA

BEFORE THE CLARK COUNTY DRAINAGE BOARD

RESOLUTION NO. 1-2016

**RECOMMENDING AMENDMENT TO  
ORDINANCE NO. 11-2010, THE "CLARK COUNTY DRAINAGE  
ORDINANCE," ADDING SPECIFIC DRAINAGE COMPLAINT PROCEDURES**

**WHEREAS**, the Board of Commissioners of Clark County (the "Commissioners"), is the executive body of Clark County government pursuant to the provisions of Ind. Code Sect. 36-2-2-2; and,

**WHEREAS**, the Commissioners are also the legislative body of Clark County government pursuant to the provisions of Ind. Code Sect. 36-1-2-9; and,

**WHEREAS**, pursuant to the Home Rule provisions of Ind. Code Sect. 36-1-3 *et seq.*, the Commissioners have authority to exercise all the powers needed for the effective operation of government as to local affairs, subject only to the limitations contained within such statutes; and,

**WHEREAS**, each non-consolidated County (such as Clark County) in the State of Indiana has a drainage board, which consists of either the executive of the county or a separate board established by ordinance of the executive and appointed by the executive of the county, pursuant to Ind. Code Sect. 36-9-27-5; and,

**WHEREAS**, the Commissioners established the Clark County Drainage Board (the "Drainage Board") as a separate, appointed board pursuant to the authority set forth under Ind. Code Sect. 36-9-27-5 and Ordinance No. 5-2000, which ordinance provides that the Drainage Board "shall have the rights and responsibilities as set out in the Indiana Code"; and,

**WHEREAS**, the Commissioners dissolved the Drainage Board as a separate entity, pursuant to Ordinance No. 4-2011, and replaced the separate entity as the enforcement authority over storm water drainage issues within the County's jurisdictional territory; and,

**WHEREAS**, the Commissioners reestablished the Drainage Board as a separate entity with enforcement authority over storm water drainage issues within the County's jurisdictional territory, pursuant to Ordinance No. 1-2013; and,

**WHEREAS**, pursuant to Ordinance No. 7-2002 (as amended by Ordinance No. 11-2010) the Commissioners enacted the Clark County Drainage Code (hereinafter the "Drainage Code"), which provides, in pertinent part at Section 4, page 5, that the Drainage Board "shall administer, implement, and enforce the provisions of this ordinance [i.e., the Drainage Code]," and that "[a]ny powers granted or duties imposed upon the CCDB [i.e., the Drainage Board] may be delegated in writing by the Drainage Board to the enforcement personnel;" and,

**WHEREAS**, the enforcement provisions of the Drainage Code, Section 4, page 5-6, state, in pertinent part, as follows:

**RESPONSIBILITY FOR ADMINISTRATION**

The Clark County Drainage Board (CCDB) shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the CCDB may be delegated in writing by the Drainage Board to the enforcement personnel.

**SEVERABILITY**

The provisions of this ordinance are hereby declared severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

**ULTIMATE RESPONSIBILITY**

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards.

**NOTICE OF VIOLATION**

Whenever the Clark County Drainage Board finds that a person or entity developer [*sic*] has violated or failed to meet a requirement of this Ordinance, a written notice of such violation(s) shall be issued with [*sic*] 20 days to the responsible person or entity.

**APPEAL OF NOTICE OF VIOLATION**

Any person receiving a Notice of Violation may appeal the determination of the CCDB. The notice of appeal must be received within 10 calendar days from the date of the Notice of Violation. Hearing on the appeal before the CCDB shall take place within 30 calendar days from the date of receipt of the notice of appeal.

**ENFORCEMENT MEASURES AFTER APPEAL**

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within five days of the decision of the CCDB, the CCDB may pursue all remedies provided for in this ordinance or by law.

**INJUNCTIVE RELIEF**

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this ordinance. If a person has violated or continues to violate the provisions of this ordinance, the CCDB may seek any remedies available under any applicable law, including, but not limited to the following:

1. Preliminary or permanent injunction

2. Stop work order.

#### **CIVIL PENALTIES**

Any person, firm, or corporation who shall violate or fail to comply with any of the provisions of this ordinance shall be liable for civil penalties to the CCDB up to \$2,500.00. Each day that the violation exists or continues shall be deemed a separate offense. Any such person, firm or corporation shall also reimburse the CCDB for all attorneys' fee [*sic*] incurred in any enforcement action. Nothing herein contained shall prevent the CCDB from taking such other lawful action as may be necessary to prevent or remedy any violation. All costs connected therewith shall accrue to the person or persons responsible.

#### **VIOLATIONS DEEMED A PUBLIC NUISANCE**

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this ordinance may be summarily abated or restored at the violator's expense, or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

#### **REMEDIES NOT EXCLUSIVE**

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law. It is within the discretion of other authorized enforcement agencies to seek cumulative remedies.

**WHEREAS**, the Drainage Board is seeking to set forth clear procedures to allow citizens and other property owners to easily and expeditiously seek redress of drainage issues, to have due process in place for alleged violators of drainage law(s), and to provide a separation of responsibilities with respect to the enforcement of drainage law(s) in Clark County; and,

**NOW, THEREFORE, BE IT RESOLVED**, by this Clark County Drainage Board, to recommend to the Clark County Board of Commissioners the following amendment/additions be made to the Clark County Drainage Ordinance, Ordinance No. 7-2002 (as amended by Ordinance No. 11-2010), *to wit*:

1. The Drainage Ordinance be amended by addition of the "Complaint Procedures" subsection, to be inserted in to the Drainage Ordinance, Section 4, beginning on page 5, just after the paragraph entitled, "ULTIMATE RESPONSIBILITY," and just before the paragraph entitled, "NOTICE OF VIOLATION," and shall state as follows:

#### **"COMPLAINT PROCEDURES**

- A. **Initiating Drainage Complaint**: Any person(s), and/or entity(ies) owning and/or having possessory interest in real property located in the unincorporated area of the

geographical boundaries of Clark County, in the State of Indiana, may petition the Clark County Drainage Board for relief upon information and belief that violation(s) of the Clark County Drainage Ordinance exist. Complaints shall be made, in writing, on forms designated (amended at the Surveyor's discretion) and maintained by the Clark County Surveyor's Office. In order to be brought before the Drainage Board during a regularly scheduled meeting, the completed complaint form must be received by no later than (10) business days prior to the next regularly scheduled meeting of the Drainage Board.

- B. **Field Inspection:** Within three (3) business days of receipt of a completed drainage complaint form by the Clark County Surveyor's office, the Surveyor (and/or the Surveyor's designated staff person), shall provide a copy of said complaint to the Clark County Highway Engineer. Within a reasonable time after receipt of the complaint, the Clark County Highway Engineer, shall make a field inspection of the area that is the subject of the drainage complaint. Based upon this field inspection, and review of any necessary public documents, the Clark County Highway Engineer shall do the following:
1. **DETERMINATIONS BASED UPON FIELD INSPECTION:** Determine (a) the responsible cause of the drainage issue(s) that form the basis of the complaint; (b) to the extent possible, the responsible person(s), and/or entity(ies); (c) the specific provision(s) of Indiana drainage law, including but not limited to the Drainage Ordinance, that are at issue; and (d) to the extent possible, the solution(s) to the drainage issue(s).
- C. **Written Notice/How Made/Contents/Opportunity to Cure:** If a responsible person(s) and/or entity(ies) is identified, the Clark County Engineer shall provide written notice to said person(s)/entity(ies).
1. **HOW MADE:** The notice shall be made in writing by regular United States mail, postage prepaid, to the person(s), and/or entity(ies), at the last known address of the person(s)/entity(ies).
  2. **CONTENTS OF NOTICE:** The notice shall state the issue(s) raised by the complaint, the identified cause(s) (based upon the field inspection), the specific drainage law violation(s) at issue, and provide the responsible party ten (10) calendar days

from the date of the notice to contact the Clark County Engineer, in order to attempt informal resolution of the identified issue(s). The notice shall provide to the alleged responsible party(ies) the Drainage Board's next regular meeting date/time, and shall provide that the Drainage board shall hear evidence on the drainage issue(s) at said hearing.

D. **Information Received by the Drainage Board:** The Drainage Board shall receive information from the Clark County Highway Engineer, and any person(s) consulted by the Clark County Highway Engineer, as to the information obtained from the field inspection, and the attempts (if any) at informal resolution of the issue(s) at the next regularly scheduled meeting of the Drainage Board after the expiration of ten (10) calendar days from the date of the Written Notice described hereinabove. At its discretion, the Drainage Board may do any of the following:

1. Order additional information be obtained;
2. Table the matter to allow the party(ies) additional time to informally resolve the issues;
3. Make findings as to the complaint.

E. **Effect of Finding of Violation:** If the Drainage Board makes findings that a party(ies) is responsible for violation(s) of Indiana drainage law, then the Drainage Board shall provide notice as to its finding, the possible penalties for such finding (as set forth in the Drainage Ordinance), the date upon which the Drainage Board shall determine what penalty (if any) shall apply, and provide the responsible party notice as to its right to appeal such finding."

SO RESOLVED THIS 15<sup>th</sup> DAY OF November, 2016.

Member Voting "NO":

\_\_\_\_\_  
MICHAEL KILLEN, President

\_\_\_\_\_  
JACK COFFMAN, Vice-president

\_\_\_\_\_  
LES KAVANAUGH, Member

Members Voting "YES":

  
\_\_\_\_\_  
MICHAEL KILLEN, President

Absent  
\_\_\_\_\_  
JACK COFFMAN, Vice-president

  
\_\_\_\_\_  
LES KAVANAUGH, Member