

TITLE XV: LAND USAGE

Chapter 150

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CHAPTER 150: BUILDING REGULATIONS CONSTRUCTION

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§150.01 TITLE

This chapter, and all ordinances supplemental or amendatory hereto, shall be known as the “County Building Code,” may be cited as such and will be referred to herein as “this code.”
(Ord. 87-3, passed 8-4-87; Am Ord. passed 9-21-87)

§150.03 AUTHORITY

(A) (1) The Building Commissioner is hereby authorized and directed to administer and enforce all of the provisions of the code.

(2) Whenever in the building regulations it is provided that anything must be done to the approval of or subject to the direction of the Building Commissioner or any other officer of the Board of Commissioners, this shall be construed to give the officer only the discretion of determining whether the rules and standards established by ordinance have been complied with. The provision shall be construed as giving any officer discretionary powers as to what regulations, codes or standards shall be, or power to require conditions not prescribed by ordinances or to enforce ordinance provisions in an arbitrary or discriminatory manner.

(B) The Building Commissioner, after having been designated as the office3r of a single agency to administer and enforce building regulation by mutual agreement by and between the towns and cities of Alamo, Crawfordsville, Darlington, Ladoga, Linden, New Market, New Richmond, New Ross, Waveland, Waynetown and Wingate of the county, shall be authorized to issue building permits, collect permit fees, perform inspections, order correction of violations of building regulations and authorize occupancy of buildings and structures situated within the corporate limits of the above mentioned towns and cities of the county. (Ord. 87-3, passed 8-4-87; Am. Ord. passed 9-21-87)

§150.04 SCOPE

The provisions of this chapter apply to the construction, alteration, repair, use, occupancy, maintenance and additions to all buildings and structures, other than fences, including but not limited to residences, commercial, agricultural and industrial buildings, signs, towers, pole structures, and tanks in the unincorporated areas of the county and those incorporated towns which have entered into an agreement with the county for services prescribed by this chapter. Provided however, the provisions of this section shall not apply to the City of Crawfordsville and its contiguous two-mile jurisdictional limit surrounding the city.

(Ord. 87-3, passed 8-4-87; Am. Ord. passed 9-21-87; Am. Ord. passed 9-25-01; Am. Ord. 87-3, passed 9-14-04)

§150.05 REGULATIONS ADOPTED BY REFERENCE

(A) Building rules of the Indiana Fire Prevention and Building Safety Commission as set out in the following articles of 675 I.A.C. are hereby incorporated by reference in this chapter and shall include later amendments to those articles as the same are published in the Indiana Register or the Indiana Administrative Code with effective dates as fixed therein:

- (1)** Article 13, Building Codes:
 - (a)** Fire and Building Safety Standards;
 - (b)** Indiana Building Code;
- (2)** Article 14, Indiana Residential Code.
- (3)** Article 16, Indiana Plumbing Code.
- (4)** Article 17, Indiana Electrical Code.
- (5)** Article 18, Indiana Mechanical Code.
- (6)** Article 19, Indiana Energy Conservation Code.

- (7) Article 20, Indiana Swimming Pool Code.
- (8) Article 22, Indiana Fire Code.
- (9) Article 24, Migrant Daycare Nursery Fire Code.
- (10) Article 25, Indiana Fuel Gas Code.
- (11) Lifting Devices Within Private Residence:
 - (a) Parts 5.3 and 5.4, ANSI/ASME A 17 1-2000, safety code for elevators and escalators.
 - (b) Sections 5, 6, 7, ASME A18.1a-2001, safety standard for platform and stairway chair lifts.

(B) Copies of adopted building rules, codes and standards are on file in the office of the Building Commissioner.
(Ord. 87-3, passed 8-4-87; Am. Ord. passed 9-21-87; Am. Ord. 87-3, passed 9-14-04)

§150.06 PERMIT APPLICATION

- (A)** (1) No permits shall be issued for the forgoing purposes, unless the application for the permit is accompanied by plans and specifications showing the work to be done. All plans for building construction under the authority of the State Fire Prevention and Building Safety Commission must also be filed with the State Building Commission must also be filed with the State Building Commissioners if the state permit is required.
- (2) No permits shall be issued hereunder until a copy of a release for construction from the State Building Commissioner is received by the County Building Commissioner if the state permit is required.
- (2) No permits shall be issued for structures with sanitary facilities or required to have sanitary facilities unless a septic permit or waiver is issued by the Montgomery County Health Department, pursuant to Chapter 157 of this Code.
- (3) No permits shall be issued if the planned construction will violate any other ordinances administered by the Montgomery County Building Administration.
- (4) Prior to issuing any new or renewal permit, the applicant or owner of the real estate on which the building or structure will be located, shall be required to obtain from the Montgomery County Treasurer a certificate of clearance verifying that the applicant or owner is not delinquent in the payment of any personal property, and delinquent real

estate taxes, drainage assessments or other special assessments taxes. If applicant or owner does not obtain such certificate of compliance, the Montgomery County Building Administrator or Montgomery County Health Department shall withhold issuance of a new or renewal permit until any delinquent personal property, any delinquent personal property, any delinquent real estate taxes, drainage assessments or other special assessments taxes owed by the applicant or owner are paid in full, including penalties. This section shall not apply to permits relating to emergency septic repairs.

(B) (1) A permit shall be obtained before beginning construction, alteration or repair of any building or structure using forms furnished by the Building Commissioner.

(2) All permits shall be issued by the Building Commissioner and all fees provided for herein shall be paid to the county.

(3) *Advanced Structural Components.*

(a) Applications for a building permit for a Class 1 or Class 2 structure, as defined in Indiana Code 22-12-1-4 and 22-12-1-5, respectively, must provide the following information:

- (i) The street address of qualifying property containing advanced structural components. Advanced structural components mean lightweight I-joists or lightweight roof trusses that have less mass cross-sectional area than sawn lumber of equivalent proportions used in an equivalent application and are assembled from combustible or noncombustible materials, or both. Advanced structural components does not mean a structural assembly, joist, or truss that provides at least one hour of fire resistance when tested in accordance with the American Society for Testing and Materials Standard E119;
- (ii) The name of the township and the county in which the qualifying property is located;
- (iii) The types of advanced structural components used in the qualifying property; and
- (iv) The location of the advanced structural components used in the floor, or roof, or both, of the qualifying property.

(b) Within 90 days after the issuance of any building permit, the Building Commissioner will send electronic notification, read receipt requested, of the structure's use of advanced structural components as defined in section 150.06(B)(3), to the local fire department and 911 telephone call center responsible for the area where the structure is located.

(c) Upon receiving a notification from the Building Commissioner that a property contains advanced structural components, the E911 Call Center shall:

- (i) maintain the information contained in the notification; and
- (ii) relay the information to all responding public safety units whenever dispatching such units to the property.”

(C) All work done under any permit issued hereunder shall be in full compliance with all other ordinances pertaining thereto, and in addition to the fees for permits hereinafter provided for, there shall be paid the fees prescribed in the ordinances and/or appendixes.

(D) Prior to the issuance of any building permit hereunder, the Building Commissioners shall review all building permit applications to determine full compliance with the provisions of this chapter and any other applicable ordinances.

(E) Conflicts of Interest

(1) Definitions: The following definitions apply to this subsection:

- a. Conflict of Interest: A “conflict of interest” means a direct or indirect financial interest in the issuance or denial of issuance of a permit; and
- b. Permit: A permit means any of the following:
 - i. An improvement location permit;
 - ii. A building permit;
 - iii. A certificate of occupancy;
 - iv. Approval of a site-specific development plan;
 - v. Approval of a primary or secondary plat;
 - vi. Approval of a contingent use, conditional use, special exception or special use; or
 - vii. Approval of a planned unit development.

(2) Conflict of Interest Prohibited: The Building Commissioner, Building Code Official, or Building Inspector is prohibited from issuing a building permit or oversee the issuance of a permit if the Building Commissioner, Building Code Official, or Building Inspector possesses a conflict of interest.

(3) Notice to Department Head: If the Building Commissioner, Building Code Official, or Building Inspector has a conflict of interest in the issuance of a permit, he or she must report the conflict, in writing, to his or her Department Head immediately upon learning of the conflict. The Department Head must place this notice in the permit applicant’s file.

(4) Disqualification: If the Building Commissioner or a building code official or building inspector has a conflict of interest with regard to a permit, he or she is disqualified from reviewing, participating in review discussions, making decisions, or otherwise being involved in the permit process for that particular permit.

(5) Appointment of a Qualified Temporary Replacement: The Department Head must then appoint a qualified temporary replacement Building Commissioner, Building Code Official, or Building Inspector. This appointment may be any qualified individual of the Building Department. If no County employee is qualified to be the temporary replacement, the Department Head may contract a qualified independent contractor to oversee the issuance or denial of a permit. Any appointment made or contract entered into under this policy must be with an individual who does not possess a conflict of interest in the issuance of the permit in question. The Department Head shall follow all County policies when contracting a qualified temporary replacement.

(6) Exclusion of Disqualified Official: The Department Head must ensure that all documents, records, and communications regarding the issuance of the permit are removed from the possession of the Building Commissioner, Building Code Official, or

Building Inspector who possesses a conflict of interest. The Department Head shall also ensure that the employee is excluded from any internal meetings, deliberation, or communication regarding the issuance of the permit.

(7) Document Retention: The Department Head must retain all documents regarding the conflict of interest in the permit file and the official's personnel file for a period of ten years.

(8) Penalties: Failure of a Building Commissioner, Building Code Official, or Building Inspector to notify the Department Head of a conflict of interest will subject the employee to discipline. This discipline may include suspension without pay and/or termination.

(Ord. 87-3, passed 8-4-87; Am. Ord. passed 9-21-87; Am. Ord. 87-03, passed 9-14-04; Am. Commissioners Ord. 2008-08, passed 6-23-08; Am. Ord. 2018-33, passed 11-19-18). (Ord. 2019-17, passed 6-24-19).

§150.07 INSPECTIONS

(A) Inspections Generally. Prior to or after the issuance of any building permit hereunder, the Building Commissioner shall make, or cause to be made, inspections of the work being done under the permit as are necessary to ensure full compliance with the provisions of this chapter and the terms of the permit.

(B) Re-Inspections. Re-inspections of work found to be incomplete or not ready for inspection are subject to assessment of reinspection fees as prescribed in this chapter.

(C) Utility Inspections. Any inspections required by electrical or other utilities providing services to the site must be completed prior to the issuance of the building permit or other permissions contemplated by this Chapter. The permittee will provide to the Building Commissioner a completion of the required utility inspections,

(Ord. 87-3, passed 8-4-87; Am. Ord. passed 9-21-87, Am. Ord. 2019-23, passed 8-12-19).

§150.08 ENTRY

Upon presentation of proper credentials, the Building Commissioner or his or her duly authorized representative s may enter at reasonable times any building, structure or premises in the county to perform any duty imposed upon him or her by this chapter. (Ord. 87-3, passed 8-4-87; Am. Ord. passed 9-21-87)

§150.09 STOP ORDER

Whenever any work is being done contrary to the provisions of this chapter, the Building Commissioner may order the work stopped by notice in writing served on any persons engaged in the doing or causing the work to be done, and any persons shall forthwith stop the work until authorized by the Building Commissioner to proceed with the work.

(Ord. 87-3, passed 8-4-87; Am. Ord. passed 9-21-87)

§150.10 CERTIFICATE OF OCCUPANCY

No final approval of construction for any building or structure erected, altered or repaired after the adoption of this chapter shall be issued unless the building or structure was erected, altered or repaired in compliance with the provisions of this chapter.

(Ord. 87-3, passed 8-4-87; Am. Ord. passed 9-21-87)

§150.11 STANDARDS

All work on the construction, alteration and repair of buildings and other structures shall be performed in a good and workmanlike manner according to accepted standards and practices in the trade.

(Ord. 87-3, passed 8-4-87; Am. Ord. passed 9-21-87)

§150.12 VIOLATIONS

It shall be unlawful for any person, firm or corporation, whether as owner, lessee, sublessee or occupant, to erect, construct, enlarge, alter, repair, improve, remove, convert, demolish, equip, use, occupy or maintain any building or structure, other than fences, in the county or cause or permit the same to be done, contrary to or in violation of the provisions of this chapter. (Ord. 87-3, passed 8-4-87; Am. Ord. passed 9-21-87) Penalty, see § 150.99

§150.13 RIGHT OF APPEAL

All persons shall have the right to appeal the Building Commissioner's decision first through the County Commissioners and then to the State Fire Prevention and Building Safety Commission in accordance with the provisions of I.C. 22-13-2-7 or I.C. 4-21.5-3-7, as applicable.

(Ord. 87-3, passed 8-4-87; Am. Ord. passed 9-21-87)

§150.14 REMEDIES

The Building Commissioner shall, in the name of the County Commissioners, bring actions in the County Circuit Court for mandatory and injunctive relief in the enforcement of and to secure compliance with any order or orders, made by the Building Commissioner and any action for mandatory or injunctive relief may be joined with an action to recover the penalties provided for in this chapter.

(Ord. 87-3, passed 8-4-87; Am. Ord. passed 9-21-87)

§150.99 PENALTY

If any person, firm or corporation shall violate any of the provisions of this chapter, or shall do any act prohibited herein, or shall fail to perform any duty lawfully enjoined, within the

time prescribed by the Building Commissioner, or shall fail to perform any duty lawfully enjoined, within the time prescribed by the Building Commissioner, or shall fail, neglect or refuse to obey any lawful order given by the Building Commissioner in connection with the provisions of this chapter, for each violation, failure or refusal, such person, firm or corporation shall be fined in the sum of \$50. Each day of such unlawful activity as is prohibited shall constitute a separate offense.

(Ord. 87-3, passed 8-4-87; Am. Ord. passed 9-21-87)

APPENDIX: PERMIT FEES

(A) The fee for all permits (other than WECS Towers or Substations) shall be as follows:

(1) 1&2 Family Dwelling	\$150.00 base rate Plus \$.10/sq ft living space
(2) Multiple Unit (3 or more)	\$200.00 base rate Plus \$.10/sq ft living space Each additional unit \$100.00
(3) Commercial	\$300.00 base rate Plus \$.10/ sq ft (includes Comm Pole Buildings)
(a) Commercial Addition or Remodel	\$200.00 base rate Plus \$.10/sq ft
(4) Manufactured Housing	\$100.00 base rate
(5) Additions (residential)	\$100.00 base rate Plus \$.05/sq ft living space
(6) Garages	\$100 base rate Plus \$.05/sqft
(7) Pole Bldgs	\$100.00 base rate Plus \$.05/sqft
(8) Remodel with structural	\$50.00 base rate Plus \$.05/sqft
Structural changes	\$40.00
Stormwater Inspection	\$80.00/hr
Stormwater Review	\$100.00
Floodplain Permit	\$40.00
Floodplain Inspection	\$50.00
Electrical Inspection	\$30.00
Demolition Permit	\$30.00
Additional Inspections	

(B) Notwithstanding the provisions of paragraph (A) above, the maximum fee for any building permit shall be \$30,000.00. This limit shall not apply to permits for WECS Towers or Substations under paragraph (C) below.

(C) The building permit applicable to “WECS Towers” and “Substations” (as those terms are defined by Chapter 155 of this Code of Ordinances) shall be as follows:

- (1)** WECS Tower: \$1,750.00 per megawatt of generating capacity
- (2)** Substation: \$300.00

Building Permit Expiration (Permit valid for one year) A re-issue fee of \$20.00 is required after one year from issue date.

Building Permit Exemptions

The following projects are exempt from building permits:

- 1) Portable buildings without electricity**
- 2) Roofing projects with no structural changes**
- 3) Siding and window replacement projects with no structural changes**
- 4) Redecorating projects**
- 5) Portable agricultural buildings with no electricity**
- 6) Any non-electrical building project under \$2,000.00 in value**

(Ord. 87-3, passed 9-14-04; Am. Commissioners Ord. 2007-02, passed 6-29-07; Am. Commissioners Ord. 2008-10, passed 6-9-08; Am. Commissioners Ord. 2009-6, passed 7-27-09)

CHAPTER 151: FLOOD HAZARD AREAS

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FLOOD DAMAGE PREVENTION

Statutory Authorization, Findings of Fact, Purpose, and Methods

§151.01 Statutory Authorization

The Indiana Legislature has in IC 36-1-4-11 granted the power to local government units to control land use within their jurisdictions. Therefore, the Board of Commissioners of Montgomery County does hereby adopt the following floodplain management regulations.

§151.02 Findings of Fact

The flood hazard areas of Montgomery County are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare. Additionally, structures that are inadequately elevated, floodproofed, or otherwise protected from flood damage also contribute to the flood loss. In order to minimize the threat of such damages and to achieve the purposes hereinafter set forth, these regulations are adopted.

§151.03 Statement of Purpose

It is the purpose of this ordinance to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, streets, and bridges located in floodplains;
- (6) Help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight area;
- (7) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions;

- (8) Minimize the impact of development on adjacent properties within and near flood prone areas;
- (9) Ensure that the flood storage and conveyance functions of the floodplain are maintained;
- (10) Minimize the impact of development on the natural, beneficial values of the floodplain;
- (11) Prevent floodplain uses that are either hazardous or environmentally incompatible; and
- (12) Meet community participation requirements of the National Flood Insurance Program.

§151.04 Methods of Reducing Flood Loss

In order to accomplish its purposes, these regulations include methods and provisions for:

- (1) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water hazards, or which result in damaging increases in flood heights or velocities;
- (2) Requiring that uses vulnerable to floods, including facilities, which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- (4) Controlling filling, grading, dredging, excavating, and other development which may increase flood damage; and,
- (5) Preventing or regulating the construction of flood barriers, which will unnaturally divert flood, waters or which may increase flood hazards in other areas.

§151.05 Definitions

Unless specifically defined below, words or phrases used in these regulations shall be interpreted so as to give them meaning they have in common usage and to give these regulations the most reasonable application.

Alteration of a watercourse means a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other modification which may alter, impede, retard or change the direction and/or velocity of the flow of water during conditions of the base flood.

Accessory Structure means a structure with a floor area of 400 square feet or less that is on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure; an accessory structure specifically excludes structures used for human habitation.

- (1) Accessory structures are considered walled and roofed where the structure includes at least two outside rigid walls and a fully secured roof.

- (2) Examples of accessory structures include but are not necessarily limited to two-car detached garages (or smaller), carports, storage and tool sheds, and small boathouses.
- (3) The following may have uses that are incidental or accessory to the principal structure on a parcel but are generally not considered to be accessory structures by the NFIP:
 - a. Structures in which any portion is used for human habitation, whether as a permanent residence or as temporary or seasonal living quarters, such as a detached garage or carriage house that includes an apartment or guest quarters, or a detached guest house on the same parcel as a principal residence;
 - b. Structures used by the public, such as a place of employment or entertainment; and,
 - c. Development that does not meet the NFIP definition of a structure for floodplain management purposes. Examples includes, but are not necessarily limited to, a gazebo, pavilion, picnic shelter, or carport that is open on all sides (roofed but not walled).

Addition (to an existing structure) means any walled and roofed expansion to the perimeter of a structure in which the addition is connected by a common load-bearing wall other than a firewall. Any walled and roofed addition, which is connected by a firewall or is separated by independent perimeter load-bearing walls, is new construction.

Appeal means a request for a review of the floodplain administrator's interpretation of any provision of this ordinance, a request for a variance, or a challenge of a board decision.

Area of special flood hazard is the land within a community subject to a one (1) percent or greater chance of being flooded in any given year.

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year. The base flood may also be referred to as the 1% annual chance flood or one hundred (100) year flood.

Base Flood Elevation (BFE) means the water surface elevation of the base flood in relation to a specified datum, usually the North American Vertical Datum of 1988.

Basement means that portion of a structure having its floor sub-grade (below ground level) on all sides.

Best Available Flood Layer (BAFL) means floodplain studies and any corresponding floodplain maps prepared and/or approved by the Indiana Department of Natural Resources which provide base flood elevation information, floodplain limits, and/or floodway delineations for flood hazards identified by approximate studies on the currently effective FIRM (Zone A) and/or for waterways where the flood hazard is not identified on available floodplain mapping.

Building – See "Structure."

Community means a political entity that has the authority to adopt and enforce floodplain ordinances for the areas within its jurisdiction.

Critical facility means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire, and emergency

response installations, and installations which produce, use or store hazardous materials or hazardous waste.

Development means, for floodplain management purposes, any man-made change to improved or unimproved real estate including but not limited to:

- (1) construction, reconstruction, or placement of a structure or any addition to a structure;
- (2) installing a manufactured home on a site, preparing a site for a manufactured home, or installing a recreational vehicle on a site for more than 180 days;
- (3) installing utilities, erection of walls and fences, construction of roads, or similar projects;
- (4) construction of flood control structures such as levees, dikes, dams, channel improvements, etc.;
- (5) mining, dredging, filling, grading, excavation, or drilling operations;
- (6) construction and/or reconstruction of boat lifts, docks, piers, and seawalls;
- (7) construction and/or reconstruction of, bridges or culverts;
- (8) storage of materials; or
- (9) any other activity that might change the direction, height, or velocity of flood or surface waters.

"Development" does not include activities such as the maintenance of existing structures and facilities such as painting; re-roofing; resurfacing roads; or, gardening, plowing, and similar agricultural practices that do not involve filling, grading, excavation, or the construction of permanent structures.

Elevation Certificate means a FEMA form that is routinely reviewed and approved by the White House Office of Management and Budget under the Paperwork Reduction Act, that is encouraged to be used to collect certified elevation information.

Enclosed area (enclosure) is an area of a structure enclosed by walls on all sides.

Enclosure below the lowest floor. See "Lowest Floor" and "Enclosed Area."

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the community's first floodplain ordinance.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FEMA means the Federal Emergency Management Agency.

Fill for floodplain management purposes, means any material deposited or placed which has the effect of raising the level of the ground surface above the natural grade elevation. Fill material includes but is not limited to consolidated material such as concrete and brick and unconsolidated material such as soil, sand, gravel, and stone.

Flood or Flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters.
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.
- (3) Mudslides (i.e., mudflows) which are proximately caused by flooding and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

Flood or flooding also includes the collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or current of water exceeding anticipated cyclical levels that result in a flood as defined above.

Flood hazard area means areas subject to the one percent annual chance flood. (See “Special Flood Hazard Area”)

Flood Insurance Rate Map (FIRM) means an official map of a community, on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

Flood Insurance Study (FIS) means the official hydraulic and hydrologic report provided by FEMA. The report contains flood profiles, as well as the FIRM and the water surface elevation of the base flood.

Flood prone area means any land area acknowledged by a community as being susceptible to inundation by water from any source. (See “Floodplain”)

Flood Protection Grade (FPG) is the BFE plus two (2) feet at any given location in the SFHA. (See “Freeboard”)

Floodplain or flood prone area means any land area susceptible to being inundated by water from any source. (See “Flood”)

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

Floodplain management regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance), and other applications of police power which control development in flood-prone areas. The term describes such state or local regulations in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing (dry floodproofing) is a method of protecting a structure that ensures that the structure, together with attendant utilities and sanitary facilities, is watertight to the floodproofed design elevation with walls that are substantially impermeable to the passage of water. All structural components of these walls are capable of resisting hydrostatic and hydrodynamic flood forces, including the effects of buoyancy, and anticipated debris impact forces.

Floodproofing certificate is a form used to certify compliance for non-residential structures as an alternative to elevating structures to or above the FPG.

Floodway is the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulative increasing the water surface elevation more than a designated height.

Freeboard means a factor of safety, usually expressed in feet above the BFE, which is applied for the purposes of floodplain management. It is used to compensate for the many unknown factors that could contribute to flood heights greater than those calculated for the base flood.

Fringe or Flood Fringe is the portion of the floodplain lying outside the floodway.

Functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Hardship (as related to variances of this ordinance) means the exceptional hardship that would result from a failure to grant the requested variance. The Montgomery County Board of Zoning Appeals requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is NOT exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

Highest adjacent grade means the highest natural elevation of the ground surface, prior to the start of construction, next to the proposed walls of a structure.

Historic structure means any structure that is:

- (1) listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

(4) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by (a) an approved state program as determined by the Secretary of Interior, or (b) directly by the Secretary of Interior in states without approved programs.

Hydrologic and hydraulic engineering analysis means analyses performed by a professional engineer licensed by the State of Indiana, in accordance with standard engineering practices that are accepted by the Indiana Department of Natural Resources and FEMA, used to determine the base flood, other frequency floods, flood elevations, floodway information and boundaries, and flood profiles.

International Code Council-Evaluation Service (ICC-ES) Report means a document that presents the findings, conclusions, and recommendations from a particular evaluation. ICC-ES reports provide information about what code requirements or acceptance criteria were used to evaluate a product, and how the product should be identified, installed.

Letter of Final Determination (LFD) means a letter issued by FEMA during the mapping update process which establishes final elevations and provides the new flood map and flood study to the community. The LFD initiates the six-month adoption period. The community must adopt or amend its floodplain management regulations during this six-month period unless the community has previously incorporated an automatic adoption clause.

Letter of Map Change (LOMC) is a general term used to refer to the several types of revisions and amendments to FEMA maps that can be accomplished by letter. They are broken down into the following categories:

- (1) **Conditional Letter of Map Revision (CLOMR)** means FEMA's comment on a proposed project that would, upon construction, result in modification of the SFHA through the placement of fill outside the existing regulatory floodway.
- (2) **Conditional Letter of Map Revision Based on Fill (CLOMR-F)** means a letter from FEMA stating that a proposed structure that will be elevated by fill would not be inundated by the base flood.
- (3) **Letter of Map Amendment (LOMA)** means an amendment by letter to the currently effective FEMA map that establishes that a building or of land is not located in a SFHA through the submittal of property specific elevation data. A LOMA is only issued by FEMA.
- (4) **Letter of Map Amendment Out as Shown (LOMA-OAS)** means an official determination by FEMA that states the property or building is correctly shown outside the SFHA as shown on an effective NFIP map. Therefore, the mandatory flood insurance requirement does not apply. An out-as-shown determination does not require elevations.
- (5) **Letter of Map Revision (LOMR)** means an official revision to the currently effective FEMA map. It is issued by FEMA and changes flood zones, delineations, and elevations.
- (6) **Letter of Map Revision Based on Fill (LOMR-F) Letter of Map Revision Based on Fill (LOMR-F)** means FEMA's modification of the SFHA shown on the FIRM based on the placement of fill outside the existing regulatory floodway.

Lowest adjacent grade means the lowest elevation, after completion of construction, of the ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.

Lowest floor means, for floodplain management purposes, the lowest elevation described among the following:

- (1) The lowest floor of a building.
- (2) The basement floor.
- (3) The garage floor if the garage is connected to the building.
- (4) The first floor of a structure elevated on pilings or pillars.
- (5) The floor level of any enclosure, other than a basement, below an elevated structure where the walls of the enclosure provide any resistance to the flow of floodwaters. Designs for meeting the flood opening requirement must either be certified by a registered professional engineer or architect or meet or exceed the following criteria:
 - a. The walls are designed to automatically equalize the hydrostatic flood forces on the walls by allowing for the entry and exit of floodwaters.
 - b. At least two (2) openings are designed and maintained for the entry and exit of floodwater; and these openings provide a total net area of at least one (1) square inch for every one (1) square foot of enclosed area. The bottom of all such openings shall be no higher than one (1) foot above the exterior grade or the interior grade immediately beneath each opening, whichever is higher. Doorways and windows do not qualify as openings.
- (6) The first floor of a building elevated on pilings or columns in a coastal high hazard area (as that term is defined in 44 CFR 59.1), as long as it meets the requirements of 44 CFR 60.3.

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mitigation means sustained actions taken to reduce or eliminate long-term risk to people and property from hazards and their effects. The purpose of mitigation is twofold: to protect people and structures, and to minimize the cost of disaster response and recovery.

Natural grade for floodplain management purposes means the elevation of the undisturbed natural surface of the ground. Fill placed prior to the date of the initial identification of the flood hazard on a FEMA map is also considered natural grade.

New construction for floodplain management purposes means any structure for which the "start of construction" commenced on or after the effective date of a floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the community's first floodplain ordinance.

North American Vertical Datum of 1988 (NAVD 88) as adopted in 1993 is a vertical control datum used as a reference for establishing varying elevations within the floodplain.

Obstruction includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, canalization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation, or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water; or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

One-percent annual chance flood is the flood that has a one percent (1%) chance of being equaled or exceeded in any given year. See "Regulatory Flood".

Physical Map Revision (PMR) is an official republication of a community's FEMA map to effect changes to base (1-percent annual chance) flood elevations, floodplain boundary delineations, regulatory floodways, and planimetric features. These changes typically occur as a result of structural works or improvements, annexations resulting in additional flood hazard areas, or correction to base flood elevations or SFHAs.

Prefabricated Building is a building that is manufactured and constructed using prefabrication. It consists of factory-made components or units that are transported and assembled on-site to form the complete building.

Principally above ground means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

Recreational vehicle means a vehicle which is:

- (1) built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projections;
- (3) designed to be self-propelled or permanently towable by a light duty truck;
- (4) designed primarily not for use as a permanent dwelling, but as quarters for recreational camping, travel, or seasonal use.

Regulatory flood means the flood having a one percent (1%) chance of being equaled or exceeded in any given year, as calculated by a method and procedure that is acceptable to and approved by the Indiana Department of Natural Resources and the Federal Emergency Management Agency. The regulatory flood elevation at any location is as defined in Article 3, B of this ordinance. The "Regulatory Flood" is also known by the term "Base Flood", "One-Percent Annual Chance Flood", and "100-Year Flood".

Repetitive loss means flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equaled or exceeded 25% of the market value of the structure before the damage occurred.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Special Flood Hazard Area (SFHA), synonymous with “areas of special flood hazard” and floodplain, means those lands within the jurisdiction of the county subject to a one percent or greater chance of flooding in any given year. Special flood hazard areas are designated by the Federal Emergency Management Agency on Flood Insurance Rate Maps, Flood Insurance Studies, as Zones A, AE, A99, or VE. The SFHA includes areas that are flood prone and designated from other federal, state or local sources of data including but not limited to best available flood layer maps provided by or approved by the Indiana Department of Natural Resources, historical flood information reflecting high water marks, previous flood inundation areas, and flood prone soils associated with a watercourse.

Solid waste disposal facility means any facility involved in the storage or disposal of non-liquid, non-soluble materials ranging from municipal garbage to industrial wastes that contain complex and sometimes hazardous substances. Solid waste also includes sewage sludge, agricultural refuse, demolition wastes, mining wastes, and liquids and gases stored in containers.

Start of construction includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means a walled and roofed building, including a gas or liquid storage tank, which is principally above ground. The term includes a manufactured home, as well as a prefabricated building. It also includes recreational vehicles installed on a site for more than 180 consecutive days.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred "repetitive loss" or "substantial damage" regardless of the actual repair work performed. The term does not include improvements of structures to correct existing violations of state or local health, sanitary, or safety code requirements.

Variance is a grant of relief from the requirements of this ordinance consistent with the variance conditions herein.

Violation means the failure of a structure or other development to be fully compliant with this ordinance.

Walled and roofed means a building that has two or more exterior rigid walls and a fully secured roof and is affixed to a permanent site.

Watercourse means a lake, river, creek, stream, wash, channel, or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

General Provisions

§151.06 Lands to Which This Ordinance Applies

This ordinance shall apply to all areas of special flood hazard (SFHAs) within the jurisdiction of Montgomery County, Indiana as identified in 151.07, Section B including any additional areas of special flood hazard annexed by Montgomery County, Indiana.

§151.07 Basis for Establishing the Areas of Special Flood Hazard

- (1) The regulatory flood elevation, floodway, and fringe limits for the studied SFHAs within the jurisdiction of Montgomery County, delineated as an "AE Zone" on the Montgomery County, Indiana and Incorporated Areas Flood Insurance Rate Map dated February 2, 2012 shall be determined from the one-percent annual chance flood profiles in the Flood Insurance Study of Montgomery County, Indiana and Incorporated Areas and the corresponding Flood Insurance Rate Maps (FIRM) dated February 2, 2012 as well as any subsequent updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date. Should the floodway limits not be delineated on the Flood Insurance Rate Map for a studied SFHA designated as an "AE Zone", the limits of the floodway will be according to the best available flood layer as provided by the Indiana Department of Natural Resources.
- (2) The regulatory flood elevation, floodway, and fringe limits for each of the SFHAs within the jurisdiction of Montgomery County, delineated as an "A Zone" on the Montgomery County, Indiana and Incorporated Areas Flood Insurance Rate Map, dated February 2, 2012, as well as any subsequent updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date, shall be according to the best available flood layer provided by the Indiana Department of Natural Resources, provided the upstream drainage area from the subject site is greater than one square mile. Whenever a party disagrees with the best available flood layer data, the party needs to replace existing data with better data that meets current engineering standards. To be considered, this data must be submitted to the Indiana Department of Natural Resources for review and subsequently approved.
- (3) In the absence of a published FEMA map, or absence of identification on a FEMA map, the regulatory flood elevation, floodway, and fringe limits of any watercourse in the community's known flood prone areas shall be according to the best available flood layer

as provided by the Indiana Department of Natural Resources, provided the upstream drainage area from the subject site is greater than one square mile.

- (4) Upon issuance of a Letter of Final Determination (LFD), any more restrictive data in the new (not yet effective) mapping/study shall be utilized for permitting and construction (development) purposes, replacing all previously effective less restrictive flood hazard data provided by FEMA.

§151.08 Establishment of Floodplain Development Permit

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities in areas of special flood hazard.

§151.09 Compliance

- (1) No structure shall hereafter be located, extended, converted, or structurally altered within the SFHA without full compliance with the terms of this ordinance and other applicable regulations.
- (2) Where an existing or proposed structure or other development is affected by multiple flood zones, by multiple base flood elevations, or both, the development activity must comply with the provisions of this ordinance applicable to the most restrictive flood zone and the most conservative (highest) base flood elevation affecting any part of the existing or proposed structure; or for other developments, affecting any part of the area of the development.
- (3) No land or stream within the SFHA shall hereafter be altered without full compliance with the terms of this ordinance and other applicable regulations.

§151.10 Abrogation and Greater Restrictions

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

§151.11 Discrepancy between Mapped Floodplain and Actual Ground Elevations

- (1) In cases where there is a discrepancy between the mapped floodplain (SFHA) with base flood elevations provided (riverine or lacustrine Zone AE) on the FIRM and the actual ground elevations, the elevation provided on the profiles or table of still water elevations shall govern.

- (2) If the elevation of the site in question is below the base flood elevation, that site shall be included in the SFHA and regulated accordingly.
- (3) If the natural grade elevation of the site in question is at or above the base flood elevation and a LOMA or LOMR-FW is obtained, the floodplain regulations will not be applied provided the LOMA or LOMR-FW is not subsequently superseded or invalidated.

§151.12 Interpretation

In the interpretation and application of this ordinance all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

§151.13 Warning and Disclaimer of Liability

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on available information derived from engineering and scientific methods of study. Larger floods can and will occur on rare occasions. Therefore, this ordinance does not create any liability on the part of Montgomery County, the Indiana Department of Natural Resources, or the State of Indiana, for any flood damage that results from reliance on this ordinance, or any administrative decision made lawfully thereunder.

§151.14 Penalties for Violation

Failure to obtain a Floodplain Development Permit in the SFHA or failure to comply with the requirements of a Floodplain Development Permit or conditions of a variance shall be deemed to be a violation of this ordinance. All violations shall be considered a common nuisance and be treated as such in accordance with the provisions of the Zoning Code for Montgomery County. All violations shall be punishable by a fine not exceeding \$500.00.

- (1) A separate offense shall be deemed to occur for each day the violation continues to exist.
- (2) The Montgomery County Building Administration shall inform the owner that any such violation is considered a willful act to increase flood damages and therefore may cause coverage by a Standard Flood Insurance Policy to be suspended.
- (3) Nothing herein shall prevent the county from taking such other lawful action to prevent or remedy any violations. All costs connected therewith shall accrue to the person or persons responsible.

Administration.

§151.15 Designation of Administrator

The Board of County Commissioners of Montgomery County hereby appoints the Building Administrator to administer and implement the provisions of this ordinance and is herein referred to as the Floodplain Administrator.

§151.16 Floodplain Development Permit and Certification Requirements

An application for a floodplain development permit shall be made to the Floodplain Administrator for all development activities located wholly within, partially within, or in contact with an identified special flood hazard area. Such application shall be made by the owner of the property or his/her authorized agent, herein referred to as the applicant, prior to the actual commencement of such construction on a form furnished for that purpose. Such applications shall include, but not be limited to plans drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, earthen fill, storage of materials or equipment, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

- (1) Application Stage.
 - a. A description of the proposed development;
 - b. Location of the proposed development sufficient to accurately locate property and structure(s) in relation to existing roads and streams;
 - c. A legal description of the property site;
 - d. For the reconstruction, rehabilitation, or improvement of an existing structure, or an addition to an existing building, a detailed quote and description of the total work to be completed including but not limited to interior work, exterior work, and labor as well as a certified valuation of the existing (pre-improved or pre-damaged) structure;
 - e. A site development plan showing existing and proposed development locations and existing and proposed land grades;
 - f. *A letter from a licensed professional surveyor or engineering noting that an elevation reference benchmark has been established or confirmed for those projects requiring elevations to be met.*
 - g. Verification that connection to either a public sewer system or to an approved on-site septic system is available and approved by the respective regulatory agency for proposed structures to be equipped with a restroom, kitchen or other facilities requiring disposal of wastewater.
 - h. Plans showing elevation of the top of the planned lowest floor (including basement) of all proposed structures in Zones A, AE. Elevation should be in NAVD 88;

- i. Plans showing elevation (in NAVD 88) to which any non-residential structure will be floodproofed;
- j. Plans showing location and specifications for flood openings for any proposed structure with enclosed areas below the flood protection grade;
- k. Plans showing materials to be used below the flood protection grade for any proposed structure are flood resistant;
- l. Plans showing how any proposed structure will be anchored to resist flotation or collapse;
- m. Plans showing how any electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities are designed and/or located. Elevation should be in NAVD 88;
- n. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development. A hydrologic and hydraulic engineering analysis is required, and any watercourse changes submitted to DNR for approval. Once DNR approval is obtained, a FEMA Conditional Letter of Map Revision must be obtained prior to construction. (See Article 4, Section C (8) and Article 4, Section E for additional information.)
- o. Any additional information, as requested by the Floodplain Administrator, which may be necessary to determine the disposition of a proposed development or structure with respect to the requirements of this ordinance.

(2) Construction Stage

- a. *Upon establishment of the lowest floor of an elevated structure or structure constructed on fill, it shall be the duty of the applicant to submit to the Floodplain Administrator an elevation certificate for the building under construction. The Floodplain Administrator shall review the elevation certificate. Any deficiencies detected during the review shall be corrected by the applicant before work is allowed to continue. Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project.*

(3) Finished Construction.

- a. Upon completion of construction of any structure requiring certification of elevation, an elevation certificate which depicts the “as-built” lowest floor elevation and other applicable elevation data is required to be submitted by the applicant to the Floodplain Administrator. The elevation certificate shall be prepared by or under the direct supervision of a registered land surveyor and certified by the same.
- b. Upon completion of construction of an elevated structure constructed on fill, a fill report is required to be submitted to the Floodplain Administrator to verify the required standards were met, including compaction.
- c. Upon completion of construction of a floodproofing measure, a floodproofing certificate is required to be submitted by the applicant to the Floodplain Administrator. The floodproofing

certificate shall be prepared by or under the direct supervision of a registered professional engineer or architect and certified by same.

§151.17 Duties and Responsibilities of the Floodplain Administrator

The Floodplain Administrator and/or designated staff is hereby authorized and directed to enforce the provisions of this ordinance. The administrator is further authorized to render interpretations of this ordinance, which are consistent with its spirit and purpose.

Duties and Responsibilities of the Floodplain Administrator shall include, but are not limited to:

- (1) Enforce the provisions of this ordinance.
- (2) Evaluate application for permits to develop in special flood hazard areas to assure that the permit requirements of this ordinance have been satisfied.
- (3) Interpret floodplain boundaries and provide flood hazard and flood protection elevation information.
- (4) Issue permits to develop in special flood hazard areas when the provisions of these regulations have been met or refuse to issue the same in the event of noncompliance.
- (5) Advise permittee that additional Federal, State and/or local permits may be required. If specific Federal, State and/or local permits are known, require that copies of such permits be provided and maintained on file with the floodplain development permit.
- (6) Conduct substantial damage determinations to determine whether existing structures, damaged from any source and in special flood hazard areas identified by FEMA, must meet the development standards of these regulations.
- (7) For applications to improve structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator shall:
 - a. Verify and document the market value of the pre-damaged or pre-improved structure;
 - b. Compare the cost to perform the improvement; or the cost to repair a damaged building to its pre-damaged condition; or, the combined costs of improvements and repair, if applicable, to the market value of the pre-damaged or pre-improved structure. The cost of all work must be included in the project costs, including work that might otherwise be considered routine maintenance. Items/activities that must be included in the cost shall be in keeping with guidance published by FEMA to ensure compliance with the NFIP and to avoid any conflict with future flood insurance claims of policyholders within the community;
 - c. Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; the determination requires evaluation of previous permits issued for improvements and repairs as specified in the definition of "substantial improvement" for proposed work to repair damage caused by flood, the determination requires evaluation of

previous permits issued to repair flood-related damage as specified in the definition of substantial damage; and

- d. Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the applicable general and specific standards in Article 5 of this ordinance are required.

- (8) Notify adjacent communities and the State Floodplain Coordinator prior to any alteration or relocation of a watercourse and submit copies of such notifications to FEMA.
- (9) Ensure that construction authorization has been granted by the Indiana Department of Natural Resources for all development projects subject to Article 5, Section A (1), Section A (3) (a) and Section A (4) of this ordinance. Maintain a record of such authorization (either copy of actual permit/authorization or floodplain analysis/regulatory assessment).
- (10) Verify the upstream drainage area of any proposed development site near any watercourse not identified on a FEMA map to determine if Article 4, Section C (9) is applicable.
- (11) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- (12) Verify and record the actual elevation of the lowest floor (including basement) of all new or substantially improved structures, in accordance with Article 4, Section B.
- (13) Verify and record the actual elevation to which any new or substantially improved structures have been floodproofed in accordance with Article 4, Section B.
- (14) Make on-site inspections of projects in accordance with Article 4, Section D.
- (15) Coordinate with insurance adjusters prior to permitting any proposed work to bring any flood-damaged structure covered by a standard flood insurance policy into compliance (either a substantially damaged structure or a repetitive loss structure) to ensure eligibility for ICC funds.
- (16) Ensure that an approved connection to a public sewer system or an approved on-site septic system is planned for any structures (residential or non-residential) to be equipped with a restroom, kitchen or other facilities requiring disposal of wastewater.
- (17) Provide information, testimony, or other evidence as needed during variance hearings.
- (18) Serve notices of violations, issue stop-work orders, revoke permits and take corrective actions in accordance with Article 4, Section D.
- (19) Maintain for public inspection and furnish upon request local permit documents, damaged structure inventories, substantial damage determinations, regulatory flood data, SFHA maps, Letters of Map Change (LOMC), copies of DNR permits, letters of authorization, and floodplain analysis and regulatory assessments (letters of recommendation), federal permit documents, and “as-built” elevation and floodproofing data for all buildings constructed subject to this ordinance in accordance with Section Article 4, Section D.
- (20) Coordinate map maintenance activities and associated FEMA follow-up in accordance with Article 4, Section E.

- (21) Utilize and enforce all Letters of Map Change (LOMC) or Physical Map Revisions (PMR) issued by FEMA for the currently effective SFHA maps of the community.
- (22) Request any additional information which may be necessary to determine the disposition of a proposed development or structure with respect to the requirements of this ordinance.

§151.18 Administrative Procedures

- (1) Inspections of Work in Progress. As the work pursuant to a permit progresses, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and terms of the permit. In exercising this power, the administrator has a right, upon presentation of proper credential, to enter on any premises within the territorial jurisdiction at any reasonable hour for the purposes of inspection or other enforcement action.
- (2) Stop Work Orders.
 - a. Upon notice from the floodplain administrator, work on any building, structure or premises that is being done contrary to the provisions of this ordinance shall immediately cease.
 - b. Such notice shall be in writing and shall be given to the owner of the property, or to his agent, or to the person doing the work, and shall state the conditions under which work may be resumed.
- (3) Revocation of Permits.
 - a. The floodplain administrator may revoke a permit or approval, issued under the provisions of the ordinance, in cases where there has been any false statement or misrepresentation as to the material fact in the application or plans on which the permit or approval was based.
 - b. The floodplain administrator may revoke a permit upon determination by the floodplain administrator that the construction, erection, alteration, repair, moving, demolition, installation, or replacement of the structure for which the permit was issued is in violation of, or not in conformity with, the provisions of this ordinance.
- (4) Floodplain Management Records.
 - a. Regardless of any limitation on the period required for retention of public records, records of actions associated with the administration of this ordinance shall be kept on file and maintained under the direction of the Floodplain Administrator in perpetuity. These records include permit applications, plans, certifications, Flood Insurance Rate Maps; Letter of Map Change; records of issuance of permits and denial of permits; determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required design certifications and documentation of elevations required by this ordinance; notifications to adjacent communities, FEMA, and the state related to alterations of watercourses; assurances that the flood carrying capacity of altered watercourses will be maintained; documentation related to appeals and variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to this ordinance.

- b. These records shall be available for public inspection at the Montgomery County Building Department located at 1580 Constitution Row, Crawfordsville, IN 47933.

(5) Periodic Inspection. Once a project is completed, periodic inspections may be conducted by the Floodplain Administrator to ensure compliance. The Floodplain Administrator shall have a right, upon presentation of proper credential, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

§151.19 Map Maintenance Activities

To meet NFIP minimum requirements to have flood data reviewed and approved by FEMA, and to ensure that Montgomery County's flood maps, studies and other data identified in Article 3, Section B accurately represent flooding conditions so appropriate floodplain management criteria are based on current data, the following map maintenance activities are identified:

- (1) Requirement to Submit New Technical Data
 - a. For all development proposals that impact floodway delineations or base flood elevations, the community shall ensure that technical data reflecting such changes be submitted to FEMA within six months of the date such information becomes available. These development proposals include:
 - i. Floodway encroachments that increase or decrease base flood elevations or alter floodway boundaries;
 - ii. Fill sites to be used for the placement of proposed structures where the applicant desires to remove the site from the special flood hazard area;
 - iii. Alteration of watercourses that result in a relocation or elimination of the special flood hazard area, including the placement of culverts; and Subdivision or large-scale development proposals requiring the establishment of base flood elevations.
 - b. It is the responsibility of the applicant to have required technical data for a Conditional Letter of Map Revision or Letter of Map Revision and submitted to FEMA. The Indiana Department of Natural Resources will review the submittals as part of a partnership with FEMA. The submittal should be mailed to the Indiana Department of Natural Resources at the address provided on the FEMA form (MT-2) or submitted through the online Letter of Map Change website. Submittal and processing fees for these map revisions shall be the responsibility of the applicant.
 - c. The Floodplain Administrator shall require a Conditional Letter of Map Revision prior to the issuance of a floodplain development permit for proposed floodway encroachments that increase the base flood elevation.

d. Floodplain development permits issued by the Floodplain Administrator shall be conditioned upon the applicant obtaining a Letter of Map Revision from FEMA for any development proposal subject to this section.

(2) Right to Submit New Technical Data

The Floodplain Administrator may request changes to any of the information shown on an effective map that does not impact floodplain or floodway delineations or base flood elevations, such as labeling or planimetric details. Such a submission shall include appropriate supporting documentation made in writing by the County Commissioner President of Montgomery County and may be submitted to FEMA at any time.

(3) Annexation / Detachment

Upon occurrence, the Floodplain Administrator shall notify FEMA in writing whenever the boundaries of the Montgomery County have been modified by annexation or the community has assumed authority over an area, or no longer has authority to adopt and enforce floodplain management regulations for a particular area. In order that the Montgomery County, Indiana and Incorporated Areas flood Insurance Rate Map accurately represent the Montgomery County boundaries, include within such notification a copy of a map of the Montgomery County suitable for reproduction, clearly showing the new corporate limits or the new area for which the Montgomery County has assumed or relinquished floodplain management regulatory authority.

§151.20 Variance Procedures

- (1) The Montgomery County Floodplain Commission (the board) as established by the Board of County Commissioners shall hear and decide appeals and requests for variances from requirements of this ordinance.
- (2) The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Administrator in the enforcement or administration of this ordinance. Any person aggrieved by the decision of the board may appeal such decision to the Circuit Court of Montgomery County.
- (3) In passing upon such applications, the board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:
 - a. the danger to life and property due to flooding or erosion damage;
 - b. the danger that materials may be swept onto other lands to the injury of others;
 - c. the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - d. the importance of the services provided by the proposed facility to the community;
 - e. the necessity to the facility of a waterfront location, where applicable;
 - f. the compatibility of the proposed use with existing and anticipated development;

- g. the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- h. the safety of access to the property in times of flood for ordinary and emergency vehicles;
- i. the expected height, velocity, duration, rate of rise, and sediment of transport of the floodwaters at the site; and,
- j. the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(4) A written report addressing each of the above factors shall be submitted with the application for a variance.

(5) Variances from the provisions of this ordinance shall only be granted when the board can make positive findings of fact based on evidence submitted at the hearing for the following:

- a. A showing of good and sufficient cause.
- b. A determination that failure to grant the variance would result in exceptional hardship as defined in Article 2
- c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.

(6) No variance for a residential use within a floodway subject to Article 5, Section A (1), Section A (3) (a) or Section A (4) of this ordinance may be granted.

(7) Any variance granted in a floodway subject to Article 5, Section A (1), Section A (3) (a) or Section A (4) will require a permit from the Indiana Department of Natural Resources. Variances shall not be issued within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.

(8) Variances to the Provisions for Flood Hazard Reduction of Article 5 may be granted only when a new structure is to be located on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection grade.

(9) Variances may be issued for the repair or rehabilitation of “historic structures” upon a determination that the proposed repair or rehabilitation will not preclude the structure’s continued designation as an “historic structure” and the variance is the minimum to preserve the historic character and design of the structure.

(10) Variances may be issued for new construction, substantial improvements, and other development necessary for the conduct of a functionally dependent use.

(11) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

- (12) Upon consideration of the factors listed above and the purposes of this ordinance, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.
- (13) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Flood Protection Grade and the elevation to which the lowest floor is to be built and stating that the cost of the flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- (14) The Floodplain Administrator shall maintain the records of appeal actions and report any variances to the Federal Emergency Management Agency or the Indiana Department of Natural Resources upon request.

Provisions for Flood Hazard Reduction

§151.21 Floodplain Status Standards

(1) Floodways (Riverine)

Located within SFHAs, established in Article 3, Section B, are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of floodwaters, which carry debris, potential projectiles, and has erosion potential. Under the provisions of the Flood Control Act (IC 14-28-1) a permit for construction in a floodway from the Indiana Department of Natural Resources is required prior to the issuance of a local building permit for any excavation, deposit, construction, or obstruction activity located in the floodway. This includes land preparation activities such as filling, grading, clearing, and paving undertaken before the actual start of construction of the structure. General licenses and exemptions to the requirements of the Flood Control Act (IC 14-28-1 and 312 IAC 10) may apply to qualified additions/improvements to existing lawful residential structures, rural bridges, logjam removals, wetland restoration, utility line crossings, outfall projects, creek rock removal, and prospecting.

- a. If the site is in a regulatory floodway as established in Article 3, Section B, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources and apply for approval for construction in a floodway, provided the activity does not qualify for a general license or exemption (IC 14-28-1 or 312 IAC 10).
- b. No action shall be taken by the Floodplain Administrator until approval has been granted by the Indiana Department of Natural Resources for construction in the floodway, or evidence provided by an applicant that the development meets specified criteria to qualify for a general license or exemption to the requirement of the Flood Control Act. The Floodplain Development Permit shall meet the provisions contained in this article.
- c. The Floodplain Development Permit cannot be less restrictive than an approval issued for construction in a floodway issued by the Indiana Department of Natural Resources, or the specified criteria used to qualify for a general license or exemption to the Flood Control Act for a specific site/project. However, a community's more restrictive regulations (if any) shall take precedence.

- d. In floodway areas identified on the FIRM, development shall cause no increase in flood levels during the occurrence of the base flood discharge without first obtaining a Conditional Letter of Map Revision and meeting requirements of Article 4, Section E (1). A Conditional Letter of Map Revision cannot be issued for development that would cause an increase in flood levels affecting a structure and such development should not be permitted.
- e. In floodway areas identified by the Indiana Department of Natural Resources through detailed or approximate studies but not yet identified on the effective FIRM as floodway areas, the total cumulative effect of the proposed development, when combined with all other existing and anticipated development, shall not adversely affect the efficiency of, or unduly restrict the capacity of the floodway. This adverse effect is defined as an increase in the elevation of the regulatory flood of at least fifteen-hundredths (0.15) of a foot as determined by comparing the regulatory flood elevation under the project condition to that under the natural or pre-floodway condition as proven with hydraulic analyses.
- f. For all projects involving channel modifications or fill (including levees) the county shall submit the data and request that the Federal Emergency Management Agency revise the regulatory flood data per mapping standard regulations found at 44 CFR § 65.12.

(2) Fringe (Riverine)

If the site is in the fringe (either identified on the FIRM or identified by the Indiana Department of Natural Resources through detailed or approximate studies and not identified on a FIRM), the Floodplain Administrator may issue the local Floodplain Development Permit provided the provisions contained in this article have been met.

(3) SFHAs without Established Base Flood Elevation and/or Floodways/Fringes (Riverine)

- a. Drainage area upstream of the site is greater than one square mile:

If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined, and the drainage area upstream of the site is greater than one square mile, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources for review and comment.

No action shall be taken by the Floodplain Administrator until written approval from the Indiana Department of Natural Resources (approval for construction in a floodway, letter of authorization, or evidence of general license qualification) or a floodplain analysis/regulatory assessment citing the one-percent annual chance flood elevation and the recommended Flood Protection Grade has been received from the Indiana Department of Natural Resources.

Once the Floodplain Administrator has received the proper written approval, evidence of general license qualification, or floodplain analysis/regulatory assessment approving the proposed development from the Indiana Department of Natural Resources, a Floodplain Development Permit may be issued, provided the conditions of the Floodplain Development Permit are not less restrictive than the conditions received from the Indiana Department of Natural Resources and the provisions contained in this section have been met.

b. Drainage area upstream of the site is less than one square mile:

If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined and the drainage area upstream of the site is less than one square mile, the Floodplain Administrator shall require the applicant to provide an engineering analysis showing the limits of the floodplain and one-percent annual chance flood elevation for the site.

Upon receipt, the Floodplain Administrator may issue the local Floodplain Development Permit, provided the provisions contained in this article have been met.

(4) SFHAs not Identified on a Map

- a. If a proposed development site is near a waterway with no SFHA identified on a map, the Floodplain Administrator shall verify the drainage area upstream of the site. If the drainage area upstream of the site is verified as being greater than one square mile, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources for review and comment.
- b. No action shall be taken by the Floodplain Administrator until written approval from the Indiana Department of Natural Resources (approval for construction in a floodway, letter of authorization, or evidence of general license qualification) or a floodplain analysis/regulatory assessment citing the one-percent annual chance flood elevation and the recommended Flood Protection Grade has been received from the Indiana Department of Natural Resources.
- c. Once the Floodplain Administrator has received the proper written approval, evidence of general license qualification, or floodplain analysis/regulatory assessment approving the proposed development from the Indiana Department of Natural Resources, a Floodplain Development Permit may be issued, provided the conditions of the Floodplain Development Permit are not less restrictive than the conditions received from the Indiana Department of Natural Resources and the provisions contained in this article have been met.

§151.22 General Standards

In all areas of special flood hazard, the following provisions are required:

- (1) All new construction, ***reconstruction or repairs made to a repetitive loss structure***, and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure;
- (2) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage below the FPG;
- (3) New construction and substantial improvements must incorporate methods and practices that minimize flood damage;

- (4) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be located at/above the FPG for residential structures. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be located at/above the FPG or designed so as to prevent water from entering or accumulating within the components below the FPG for non-residential structures. Water and sewer pipes, electrical and telephone lines, submersible pumps, and other waterproofed service facilities may be located below the FPG;
- (5) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
- (7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding;
- (8) Any alteration, repair, reconstruction, or improvements to a structure that is in compliance with the provisions of this ordinance shall meet the requirements of “new construction” as contained in this ordinance;
- (9) Base flood elevation data shall be provided for subdivision proposals and other proposed development (including manufactured home parks and subdivisions), which is greater than the lesser of fifty (50) lots or five (5) acres;
- (10) Where an existing or proposed structure or other development is affected by multiple flood zones, by multiple base flood elevations, or both, the development activity must comply with the provisions of this ordinance applicable to the most restrictive flood zone and the highest base flood elevation affecting any part of the existing or proposed structure; or for other developments, affecting any part of the area of the development.
- (11) Fill projects that do not involve a structure must be protected against erosion and scour during flooding by vegetative cover, riprap, or bulk heading. If vegetative cover is used, the slopes shall be no steeper than 3' horizontal to 1' vertical.
- (12) *Non-conversion agreements shall be required for all new or substantially improved elevated structures with an enclosure beneath the elevated floor, accessory structures, and open-sided shelters.*
- (13) *Construction of new solid waste disposal facilities, hazard waste management facilities, salvage yards, and chemical storage facilities shall not be permitted in areas of special flood hazard; and*
- (14) *Whenever any portion of the SFHA is authorized for use, the volume of space which will be occupied by the authorized fill or structure below the BFE shall be compensated for and balanced by an equivalent volume of excavation taken below the BFE. The excavation volume shall be at least equal to the volume of storage lost (replacement ratio of 1 to 1) due to the fill or structure.*
 - a. *The excavation shall take place in the same floodplain on the same property on which the authorized fill or structure is located, provided sufficient space exists. If sufficient space does not exist on the same property, the excavation shall take place in the same floodplain no further*

than 1000' from the site of the authorized fill or structure, provided authorization/permission has been granted by the owners of any property where the excavation is proposed.

- b. Under certain circumstances, the excavation may be allowed to take place outside of but adjacent to the floodplain provided that the excavated volume will be below the regulatory flood elevation, will be in the same property in which the authorized fill or structure is located, will be accessible to the regulatory floodwater, will not be subject to ponding when not inundated by floodwater, and that it shall not be refilled.*
- c. The excavation shall provide for true storage of floodwater but shall not be subject to ponding when not inundated by floodwater.*
- d. The excavation shall be sufficiently stabilized and compacted to remain firm and resist erosion.*
- e. A restrictive covenant which states the approved compensatory cut area (excavation) shall not be altered without approval from the Floodplain Administrator shall be executed and recorded in the County Recorder's Office that runs with the property.*
- f. The fill or structure shall not obstruct a drainage way leading to the floodplain.*
- g. The grading around the excavation shall be such that the excavated area is accessible to the regulatory floodwater.*
- h. The fill or structure shall be of a material deemed stable enough to remain firm and in place during periods of flooding and shall include provisions to protect adjacent property owners against any increased runoff or drainage resulting from its placement. When a structure is placed on fill it shall follow additional requirements of Article 5, Section C (2)(d) and Article 5, Section C (3)(d).*
- i. Plans depicting the areas to be excavated and filled shall be submitted prior to the actual start of construction or any site work; once site work is complete, but before the actual start of construction, the applicant shall provide to the Floodplain Administrator a certified survey of the excavation and fill sites demonstrating the fill and excavation comply with this article.*

§151.23 Specific Standards

In all areas of special flood hazard where base flood elevation data or flood depths have been provided, as set forth in Article 3, Section B, the following provisions are required:

- (1) **Building Protection Requirement.** In addition to the general standards described in Article 5, Section B, structures to be located in the SFHA shall be protected from flood damage below the FPG. This building protection requirement applies to the following situations:
 - a. Construction or placement of a residential structure;
 - b. Construction or placement of a non-residential structure;
 - c. Addition or improvement made to an existing structure where the cost of the addition or improvement equals or exceeds 50% of the value of the existing structure (excluding the value

of the land). An addition and/or improvement project that is continuous in scope or time is considered as one project for permitting purposes;

- d. Reconstruction or repairs made to a damaged structure where the costs of restoring the structure to its before damaged condition equals or exceeds 50% of the market value of the structure (excluding the value of the land) before damage occurred (the costs of any proposed additions or improvements beyond restoring the damaged structure to its before damaged condition must be included in the cost);
- e. Installing a manufactured home on a new site or a new manufactured home on an existing site;
- f. Installing a travel trailer or recreational vehicle on a site for more than 180 days;
- g. ***Reconstruction or repairs made to a repetitive loss structure; and***
- h. ***Addition or improvement made to any existing structure with a previous repair, addition or improvement constructed since the community's first floodplain ordinance.***

(2) Residential Construction.

- a. New construction or substantial improvement of any residential structures shall meet provisions described in Article 5, Section A and applicable general standards described in Article 5, Section B.
- b. In **Zone A and Zone AE**, new construction or substantial improvement of any residential structure shall have the lowest floor; including basement, at or above the FPG. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of Article 5, Section C (2) (c). Should fill be used to elevate a structure, the standards of Article 5, Section C (2) (d) must be met.
- c. **Fully enclosed areas** formed by foundation and other exterior walls below the flood protection grade shall meet the following requirement:
 - i. Designed to preclude finished living space and designed to allow for the automatic entry and exit of floodwaters to equalize hydrostatic flood forces on exterior walls. Flood openings must be designed and installed in compliance with criteria set out in FEMA Technical Bulletin 1. Engineered flood openings must be designed and certified by a registered design professional (requires supporting engineering certification or make/model specific ICC-ES Report), or meet the following criteria for non-engineered flood openings:
 - A. Provide a minimum of two openings on different sides of an enclosure. If there are multiple enclosed areas, each is required to meet the requirements for enclosures, including the requirement for flood openings in exterior walls.
 - B. The bottom of all openings shall be no more than one foot above the higher of the final interior grade (or floor) and the finished exterior grade immediately under each opening;

- C. If the floor of the enclosure is below the BFE, the openings must be located wholly below the BFE.
- D. If the floor of the enclosure is at or above the BFE, but below the FPG, the openings must be located wholly below the FPG;
- E. Doors and windows do not qualify as openings;
- F. Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions;
- G. *Openings are to be not less than 3 inches in any direction in the plane of the wall. This requirement applies to the hole in the wall, excluding any device that may be inserted such as typical foundation air vent device.*

- ii. The floor of such enclosed area must be at or above grade on at least one side.

- d. A residential structure may be constructed on **fill** in accordance with the following
 - i. Fill shall be placed in layers no greater than 1 foot deep before compacting to 95% of the maximum density obtainable with either the Standard or Modified Proctor Test method. The results of the test showing compliance shall be retained in the permit file;
 - ii. Fill shall extend at least ten feet beyond the foundation of the structure before sloping below the BFE;
 - iii. Fill shall be protected against erosion and scour during flooding by vegetative cover, riprap, or bulk heading. If vegetative cover is used, the slopes shall be no steeper than 3' horizontal to 1' vertical;
 - iv. Fill shall not adversely affect the flow of surface drainage from or onto neighboring properties;
 - v. ***Fill shall be composed of clean granular or earthen material.***
- e. A residential structure may be constructed using a **stem wall foundation** (also called chain wall, raised-slab-on-grade, and slab-on-stem-wall-with-fill). Any backfilled stem wall foundation (also called chain wall, raised-slab-on-grade, and slab-on-stem-wall-with-fill) must be backfilled with compacted structural fill, concrete, or gravel that supports the floor slab. No flood openings are required for this type of construction.

(3) Non-Residential Construction.

- a. New construction or substantial improvement of any non-residential structures (excludes accessory structures) shall meet provisions described in Article 5, Section A and applicable general standards described in Article 5, Section B.

- b. In **Zone A and Zone AE**, new construction, or substantial improvement of any commercial, industrial, or non-residential structure (excludes accessory structures) shall either have the lowest floor, including basement and, elevated to or above the FPG or be floodproofed to or above the FPG. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of Article 5, Section C (3) (c). Should fill be used to elevate a structure, the standards of Article 5, Section C (3) (d) must be met.
- c. **Fully enclosed areas** formed by foundation and other exterior walls below the flood protection grade shall meet the following requirement:
 - i. Designed to preclude finished living space and designed to allow for the automatic entry and exit of floodwaters to equalize hydrostatic flood forces on exterior walls. Flood openings must be designed and installed in compliance with criteria set out in FEMA Technical Bulletin 1. Engineered flood openings must be designed and certified by a registered design professional (requires supporting engineering certification or make/model specific ICC-ES Report), or meet the following criteria for non-engineered flood openings:
 - A. Provide a minimum of two openings on different sides of an enclosure. If more than one enclosed area is present, each must have openings on exterior walls (having a total net area of not less than one square inch for every one square foot of enclosed area);
 - B. The bottom of all openings shall be no more than one foot above the higher of the final interior grade (or floor) and the finished exterior grade immediately under each opening;
 - C. Doors and windows do not qualify as openings;
 - D. Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions;
 - E. ***Openings are to be not less than 3 inches in any direction in the plane of the wall. This requirement applies to the hole in the wall, excluding any device that may be inserted such as typical foundation air vent device.***
 - ii. The floor of such enclosed area must be at or above grade on at least one side.
- d. A nonresidential structure may be **constructed on fill** in accordance with the following:
 - i. Shall be placed in layers no greater than 1 foot deep before compacting to 95% of the maximum density obtainable with either the Standard or Modified Proctor Test method. The results of the test showing compliance shall be retained in the permit file;
 - ii. Shall extend at least ten feet beyond the foundation of the structure before sloping below the BFE;
 - iii. Shall be protected against erosion and scour during flooding by vegetative cover, riprap, or bulk heading. If vegetative cover is used, the slopes shall be no steeper than 3' horizontal to 1' vertical;

- iv. Shall not adversely affect the flow of surface drainage from or onto neighboring properties;
- v. ***Shall be composed of clean granular or earthen material.***

- e. A nonresidential structure may be **floodproofed** in accordance with the following:
 - i. A Registered Professional Engineer or Architect shall certify that the structure has been designed so that below the FPG, the structure and attendant utility facilities are watertight and capable of resisting the effects of the regulatory flood. The structure design shall take into account flood velocities, duration, rate of rise, hydrostatic pressures, and impacts from debris or ice. Such certification shall be provided to the Floodplain Administrator.
 - ii. Floodproofing measures shall be operable without human intervention and without an outside source of electricity.
- f. A nonresidential structure may be constructed using a **stem wall foundation** (also called chain wall, raised-slab-on-grade, and slab-on-stem-wall-with-fill). Any backfilled stem wall foundation must be backfilled with compacted structural fill, concrete, or gravel that supports the floor slab. No flood openings are required for this type of construction.

(4) Manufactured Homes and Recreational Vehicles.

- a. These requirements apply to all manufactured homes to be placed on a site in the SFHA:
 - i. The manufactured home shall be elevated on a permanent foundation such that the lowest floor shall be at or above the FPG and securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
 - ii. Fully enclosed areas formed by foundation and other exterior walls below the FPG shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in Article 5, Section C (2) (c).
 - iii. ***Flexible skirting and rigid skirting not attached to the frame or foundation of a manufactured home are not required to have openings.***
- b. Recreational vehicles placed on a site in the SFHA shall either:
 - i. Be on site for less than 180 days and be fully licensed and ready for use on a public highway (defined as being on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions), or
 - ii. Meet the requirements for “manufactured homes” as stated earlier in this section.

(5) Accessory Structures

Within SFHAs, new construction or placement of an accessory structure must meet the following standards:

- a. Shall have a floor area of 400 square feet or less;
- b. Use shall be limited to parking of vehicles and limited storage;
- c. Shall not be used for human habitation;
- d. Shall be constructed of flood resistant materials;
- e. Shall be constructed and placed on the lot to offer the minimum resistance to the flow of floodwaters;
- f. Shall be firmly anchored to prevent flotation;
- g. Service facilities such as electrical and heating equipment shall be elevated or floodproofed to or above the FPG;
- h. Shall be designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in Article 5, Section C (3) (c) and,
- i. Shall not have subsequent additions or improvements that would preclude the structure from its continued designation as an accessory structure.

(6) Free-standing Pavilions, Gazebos, Decks, Carports, and Similar Development.

Within SFHAs, new construction or placement of free-standing pavilions, gazebos, decks, carports, and similar development must meet the following standards:

- a. Shall have open sides (having not more than one rigid wall);
- b. Shall be anchored to prevent flotation or lateral movement;
- c. Shall be constructed of flood resistant materials below the FPG;
- d. Any electrical, heating, plumbing and other service facilities shall be located at/above the FPG;
- e. Shall not have subsequent additions or improvements that would preclude the development from its continued designation as a free-standing pavilion, gazebo, carport, or similar open-sided development.

(7) Above Ground Gas or Liquid Storage Tanks.

Within SFHAs, all newly placed aboveground gas or liquid storage tanks shall meet the requirements for a non-residential structure as required in Article 5, Section C (3).

§151.24 Standards for Subdivision and Other New Developments

- (1) All subdivision proposals and all other proposed new development shall be consistent with the need to minimize flood damage.
- (2) All subdivision proposals and all other proposed new development shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (3) All subdivision proposals and all other proposed new development shall have adequate drainage provided to reduce exposure to flood hazards.
- (4) In all areas of special flood hazard where base flood elevation data area not available, the applicant shall provide a hydrologic and hydraulic engineering analysis that generates base flood elevations for all subdivision proposals and all other proposed new development (including manufactured home parks and subdivisions), which is greater than the lesser of fifty (50) lots or five (5) acres, whichever is less.
- (5) *All subdivision proposals shall minimize development in the SFHA and/or limit density of development permitted in the SFHA. (optional)*
- (6) *All subdivision proposals shall ensure safe access into/out of SFHA for pedestrians and vehicles (especially emergency responders). (optional)*
- (7) *Streets, blocks lots, parks and other public grounds shall be located and laid out in such a manner as to preserve and utilize natural streams and channels. Wherever possible the floodplains shall be included within parks or other public grounds. (optional)*

§151.25 Standards for Critical Facilities

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the SFHA. Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated to or above the FPG at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the FPG shall be provided to all critical facilities to the extent possible.

Legal Status Provisions

§151.26 Severability.

If any section, subsection, sentence, clause, or phrase of these regulations is, for any reason, declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof, other than the part so declared.

(Ord. 1997-4, passed 4-15-97; Am. Ord. 2022-16, passed 5-9-22; Am. Ord. 2023-20, passed 10-23-2023).

CHAPTER 152: SUBDIVISIONS

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§152.01 PURPOSE

This chapter is enacted to regulate the division of land within the county. The Plan Commission and the county shall have all the powers and duties with respect to preliminary and final plats of subdivisions and the procedures relating thereto which are specified by the laws of the state. In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements for the protection of the public health, safety and general welfare, by providing for the orderly and harmonious development of the county, for the coordination of subdivision streets with existing and planned streets or highways; for the coordination with the extension of community facilities and utilities; for the establishment of similar requirements for the area and dimensions of lots and blocks within subdivisions; and for the provision of adequate and suitably located open space for schools, parks and other recreation and for adequate drainage, and protection of the water table, water sources, and the environment. (Ord. passed 4-21-03)

§152.02 ADMINISTRATION

APPROVAL OF PLATS

(A) No plat or re-plat of a subdivision of land located within the jurisdiction of this chapter shall be recorded until it has been approved by the County Plan Commission and such approval has been entered in writing on the plat by the President of the Plan Commission OR Plan Commission Vice President, acting in absence of the President.

CRITERIA FOR APPROVAL

(B) In determining whether an application for approval of a subdivision plat shall be granted, the Plan Commission shall determine that the plat is in accordance with the principles and standards required in this chapter which shall be deemed as minimal; and whenever the applicable requirements of other adopted ordinances are higher or more restrictive, those requirements shall prevail.

(1) Compliance with Ordinances. Before granting approval of any subdivision, the Plan Commission shall be satisfied that the proposed subdivision meets the criteria set forth in all other applicable ordinance including, but not limited to the Subdivision Control Ordinance 154, Zoning Ordinance, Storm Water Ordinance, Storm Drainage erosion and Sediment Control Ordinance, the 911 Re-addressing Ordinance, Chapter 150 Building Code, Chapter 151 Flood Hazard Code, Chapter 153 Sugar Creek Zoning, Chapter 155 WECS, Chapter 157 Private Sewage Disposal, local and state building codes, local and state health codes, and county highway specifications, if applicable.

(2) Prevention of Air Pollution and Water Pollution. Due consideration shall be given to the prevention of air and stream pollution, proper treatment and disposal of refuse and other waste, pursuant to federal, state, and local guidelines.

(3) **Unsuitable Land.** Land may be considered by the Plan Commission to be unsuitable for such use by reason of flooding or improper drainage, objectionable earth and rock formations, topography, or any other feature harmful to the health and safety of potential residents and/or the community as a whole.

(4) **Road Access.** No land shall be subdivided for residential use unless adequate access to the land over approved streets or thoroughfares exists or will be provided by the subdivider.

(Ord. passed 4-21-03, Am. Ord. 2020-32, passed 9-26-2020).

§152.03 JURISDICTION

This chapter shall apply to all land in the county except land in incorporated areas of towns or cities in Montgomery County. (Ord. passed 4-2103, Am. Ord. 2020-32, passed 9-26-2020).

§152.04 DEFINITIONS

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

AREA LOT. The total square foot of a lot measured from lot line to lot line.

BENCH MARK. A monument for which an accurate elevation has been established and recorded on the plat.

BUILDING. An enclosed structure of a permanent foundation having a roof supported by a permanent foundation, columns or walls for the permanent shelter of persons, animals or property.

BUILDING ADMINISTRATOR. The County Building Administrator or designate.

BUILDING LINE. A line established parallel to a street right-of-way line which defines the area to be provided between the front wall of a building or structure and the street right-of-way line.

BUSINESS OR INDUSTRIAL PURPOSE. Subdivision to facilitate construction of one or more Class I structures as defined by 675 I.A.C. 12-6-2, State Building Code. Generally any building or structure that is intended to be or is occupied or otherwise used in any part by any of the following: the public, three or more tenants, and/or one or more persons who act as employees of another.

COUNTY. Montgomery County, Indiana, excluding the City of Crawfordsville, and any other incorporated towns or municipalities.

DRAINAGE BOARD. The County Drainage Board.

EASEMENT. A grant by a property owner to the public, a corporation or persons of the use of a strip or an area of land for specified uses and purposes. The easement includes areas set aside for access, drainage, recreational or seating purposes or for utilities.

EASEMENT OF ACCESS. An open, unoccupied space or private way other than a street, alley or place which is permanently reserved as the principal or secondary means of access to abutting property, the terms of which are of public record.

LOT. An undivided tract or area within a subdivision bounded by property lines and fronting on a public street or way designated by the subdivider as a tract to be offered as a unit of land for transfer of ownership, for occupancy or development.

LOT WIDTH. The dimension of a lot as measured between side lot lines at the building line.

MINOR PLAT. The division of land fronting on an existing dedicated street or road which (1) does not create more than five lots, with the balance of the original parcel counting as one of the five lots, (2) provides for minimum lot size of two or more acres, and (3) does not involve the creation of any new public or private streets or roads.

PLAT. A map or plan indicating graphically a proposed subdivision or re-subdivision of land.

RECORDER. The Montgomery County Recorder.

RESIDENTIAL. Subdivision to facilitate construction of Class II structures as defined by the State Residential Code, or manufactured and mobile units. Generally any structure not classified as a Class I structure as defined by 675.I.A.C. 12-6-2, State Building Code.

STREET. A public owned and/or maintained way intended to provide permanent primary and secondary means of access to lots fronting upon it.

SUBDIVIDER. Any individual, firm, association, syndicate, co-partnership, corporation, trust or any other legal entity commencing proceedings under the terms of this chapter to effect a subdivision of land.

SUBDIVISION. The division of a single lot, tract, or parcel of land or part thereof, into two or more lots, tracts, or parcels of land for the purpose, whether immediate or future, of transfer of ownership. Parcelization for agricultural purposes is exempt.

USE. The purpose for which land or structures are designed, arranged or intended to be occupied, used or for which they are occupied, maintained, rented or leased.

ZONING ADMINISTRATOR. The Montgomery County Zoning Administrator. (Ord. passed 4-21-03, Am. Ord. 2020-32, passed 9-26-2020).

APPLICATION PROCEDURES

§152.15 WAIVERS

Where the strict enforcement of the requirements, standards and specifications imposed by this chapter would result in extraordinary hardship or deny the reasonable use of the land involved therein due to unusual conditions of topography or other exceptional conditions peculiar to the site, the Plan Commission may, in its discretion, waive the requirements of this chapter as they would apply to individual lots or areas of the proposed subdivision. (Ord. passed 4-21-03, Am. Ord. 2020-32, passed 9-26-2020).

(A) Waivers. In considering waivers, the Plan Commission must find:

- (1)** The strict enforcement of the Subdivision Control Ordinance would result in extraordinary hardship or deny the reasonable use of the land due to unusual conditions of topography or other exceptional condition's peculiar to the site;
- (2)** The proposed alternate proposal complies with the Zoning Ordinance or the applicant has bee granted a variance by the Board of Zoning Appeals; and
- (3)** The proposed alterative will not
 - (A) be detrimental to the public health, safety, or general welfare;
 - (B) be injurious to adjacent property;
 - (C) contradict the general intent of the purposes of the Subdivision Control Ordinance, Comprehensive Plan, or Zoning Ordinance or the goals and objectives thereof.

(B) Application for Waivers. At the time of filing a request, the applicant must submit a written request for waivers and state the reason which support the request.

(C) Public Hearing. Waivers require a public hearing and will be heard at the same time as the underlying request.

(D) Limitation in Granting. The Plan Commission may grant waivers that it, in its discretion, meet the criteria articulated in § 152. 18(A), but the Plan Commission may not grant waivers that are not specifically requested at the time of filing by the applicant.

(E) Variances. The Plan Commission has no authority to grant variances from the Zoning Ordinance.

(F) Procedure. Prior to approving or denying any underlying request, the Plan Commission must either approve or deny the waiver request.

§152.16 PRE-APPLICATION

From the standpoint of economy of time and money, it is highly recommended that the subdivider consult early and informally with the Zoning Administrator for advice and assistance. This will enable the subdivider to become familiar with the requirements of these and other regulations as they affect the area and will prevent unnecessary and costly revisions. The subdivider should present a sketch in inexpensive and tentative form showing in a general way the proposed development and the existing conditions within the area proposed for subdivision of all surrounding lands, but this procedure is not mandatory. This shall not require formal application, fee or filing of a preliminary plat, nor shall it be deemed a preliminary plat. (Ord. passed 4-21-03, Am. Ord. 2020-32, passed 9-26-2020).

§152.17 APPLICATION

A subdivider desiring approval of a plat, plat amendment, re-plat or vacation of a plat of a subdivision of any land lying within the county jurisdiction shall submit a written application for a certificate of approval and 10 copies of a preliminary plat of the subdivision to the Zoning Administrator. The Zoning Administrator will review the application for completeness and notify the applicant of additional information required for submission. (Ord. passed 4-21-03, Am. Ord. 2020-32, passed 9-26-2020).

§152.18 FEE

At the time of filing an application for approval of the preliminary plat, plat amendment, re-plat or vacation of a plat, the application shall be accompanied by an application fee of \$150 for residential applications or \$300 for business or industrial purposes. Checks should be made payable to the County Subdivision Fund. No application fees will be refunded. (Ord. passed 4-21-03, Am. Ord. 2020-32, passed 9-26-2020).

§152.19 PUBLIC HEARING

If the Zoning Administrator is satisfied that the application is complete they shall, within 30 days or receipt, set a date for hearing for the Commission and provide written notice to the applicant and notify by general publications or otherwise, any person, governmental unit, or entity owning land within one-half mile from the subject site prior to the date set for the hearing. The notice to interested parties must be mailed at least 10 days prior to the hearing. The costs of publishing any notice of hearing shall be paid by the applicant prior to the approval. (Ord. passed 4-21-03, Am. Ord. 2020-32, passed 9-26-2020).

§152.20 IMPACT ASSESSMENTS

After reviewing an application, the Zoning Administrator may require that impact assessments be done for discussion at the time of the public hearing. Such assessments shall be performed by qualified professionals with training, experience, and expertise in the field relevant to the specific section of the study in which work shall be performed. After the public hearing has been opened, the Plan Commission may also require such studies at the expense of the applicant. Such assessment may include any of the following: traffic and transportation; tax base; water and sewer service; fire, police, and emergency services; schools; park; environmental health and natural resources. Any additional expense necessary to ensure adequate information, reports, or plans shall be paid by the applicant.

(Ord. passed 4-21-03, Am. Ord. 2020-32, passed 9-26-2020).

§152.21 STEPS FOR SUBDIVISION APPROVAL

Steps for subdivision approval:

- (A)** Application for subdivision submitted to the Zoning Administrator.
- (B)** General presentation of the proposed development to the Plan Commission.
- (C)** Concept approval by the Plan Commission.
- (D) Technical Approvals:**
 - (1)** *Storm approval:* Building Department and Drainage Board.
 - (2)** *Flood Ordinance approval:* Building Department
 - (3)** *Sugar Creek Ordinance approval:* Building Department.
 - (4)** *Sewer/well approval:* Health Department
 - (5)** *Road/street approval:* Highway Department
- (E)** Impact assessment reports, if required.
- (F)** Plan Commission hearing.
- (G)** Preliminary approval or disapproval of Plan Commission.
- (H)** Construction of infrastructure/posting of bonds.
- (I)** Site inspection.
- (J)** Engineer certificate.
- (K)** Final plat approval.
- (L)** Signing of certificates.
- (M)** Recording of final plat.

(N) Permits for improvements may be issued.

(Ord. passed 4-21-03, Am. Ord. 2020-32, passed 9-26-2020).

PLATTING PROCEDURES

§152.35 PLAT REQUIREMENTS

(A) Preliminary Plat Plans. The primary plat shall be required as part of any application for primary plat approval. If applicable, the applicant shall submit proof of secured public sewer and/or public water connection. The plat shall be drawn at a scale of 50 feet to 1 inch, except that when the drawing at the scale requires more than 1 sheet, the plat may be drawn at a scale of 100 feet to 1 inch. Sheets shall not exceed 24 inches by 36 inches in size. The Primary Plat shall be prepared and certified by a land surveyor and/or a professional engineer registered by the state. A primary subdivision plat shall be submitted showing the following, but not limited to:

- (1)** The proposed name of the subdivision.
- (2)** Names and addresses of the owner, subdivider, and consulting engineer, land surveyor, or planning firm that prepared the plan;
- (3)** Legend and notes including the scale, north point, and date;
- (4)** Tract boundary lines showing dimensions, bearings, angles, and references to section, township, and range lines or corners;
- (5)** Existing use of the tract and all contiguous tracts surrounding the proposed subdivision;
- (6)** All section and municipal corporate boundaries lying within or contiguous to the tract;
- (7)** Topographic contours at typical intervals of one foot if the general slope of the tract is less than 5% or intervals of two feet if the slope is in excess of 5%. Said contours shall be referenced to mean sea level elevations;
- (8)** Layout of lots, showing dimensions and numbers and square footage of each lot;
- (9)** Building lines showing setback dimensions throughout the subdivision;
- (10)** Parcels of land proposed to be dedicated or reserved for schools, open space (indicating its use as park, playground, natural area, or other) or other public, semi-public or community purposes;
- (11)** Streets, rights-of-way, and driveways within 500 feet of the site of the gradients,

types and widths of pavements, curbs, sidewalks, and horizontal curve radii;

(12) Existing and proposed easements including the location, width, and purpose of such easements;

(13) Location, size, and capacity of any public sewer and/or water utilities, if such facilities are available;

(14) Location of natural streams, regulated drains, floodplain, pipelines, power lines, and the like;

(15) A description of the surface drainage system to an approved outlet, including data showing that said outlet is adequate to accommodate the drainage requirements of the finished subdivision. Arrows designated the general drainage of all streets and lots shall be included;

(16) Location of any subsurface drainage required under the County Health Code and/or Chapter 154, or amendments hereto showing the location of all easements and all data pertaining to the size and capacity of such drainage.

(17) The boundaries and numbers of sections shall be shown if the primary plat is to be divided into sections or phases of development;

(18) Protective covenant and restrictions which are properly prepared and legally sound shall be subject to the approval of the Plan Commission; and

(19) Buffer yard, lighting and parking plans, if applicable.

(20) Names and addresses of all property owners within one-half mile of the subject site.

(21) One digital copy of the plat in shape file format (Indiana State Plane NAD 83) or GEO database format.

(B) Secondary Plat Plans. The plat shall be drawn at a scale of 50 feet to 1 inch, except that when the drawing at that scale requires more than 1 sheet, the plat may be drawn at a scale of 100 feet to 1 inch. Sheets shall not exceed 34 inches by 44 inches in size. The secondary plat shall be prepared and certified by a land surveyor and/or a professional engineer registered by the state. The secondary plat may include all or only a part of the primary plat which has received approval. The following information shall be shown on the secondary plat, but not limited to:

(1) The name of subdivision and section number followed by the words "secondary plat;

- (2) Accurate boundary lines, with dimension and angles, which provide a legal survey of the tract, closing with an error of not more than 1 foot in 5,000 feet;
- (3) Accurate distances and directions to the nearest official monument. Reference corners shall be accurately described on the plan;
- (4) Accurate locations of all existing and recorded streets intersecting the boundaries of the tract;
- (5) Accurate meters and bounds description of the tract boundary;
- (6) Source of title of the applicant to the land as shown by the last entry in the books of the County Recorder.
- (7) Street names;
- (8) Complete curve data for all curves included in the plan;
- (9) Street lines with accurate dimensions in feet and hundredths of feet with angels to street, alley, and lot lines;
- (10) Lot numbers and dimensions including the square footage of each lot;
- (11) Accurate locations of easements for utilities and any limitations on such semi-public or community use;
- (12) Accurate dimensions and plans for any property to be dedicated or reserved for open space or other public, semi-public, or common use;
- (13) Building lines and setback dimensions throughout the subdivision;
- (14) Location, type, material, and size of all monuments and markers;
- (15) Plans and specifications for the improvements required in this chapter;
- (16) Final protective covenants and restrictions which are properly prepared and legally sound which shall be incorporated into the plat and restrictions of all types which will run with the land and become covenants in the deed for lots;
- (17) Name and address of the owner and subdivider;
- (18) North point, scale, and date;
- (19) Certification of dedication of streets and other public property;

- (20) Final landscaping, lighting or parking plans shall be incorporated in secondary plat design plans when requested by the Plan Commission;
- (21) Names and addresses of all land owners within one-half mile of the subject site.
- (22) Certificate of approval by the Plan Commission;
(Ord. passed 4-21-03, Am. Ord. 2020-32, passed 9-26-2020).

§152.36 PRELIMINARY PLAT APPROVALS

- (A) *Decision by the Plan Commission.* Within 30 days of the public hearing concerning an application for approval of a subdivision plat, the Plan Commission shall notify the applicant in writing stating whether the primary plat is approved or disapproved.
- (B) *Approval.* If the Plan Commission determines that the primary plat complies with the standards set forth in this chapter, it shall make written findings of fact and a decision granting primary approval to the plat. The decision must specify any condition imposed, commitment made and waiver granted and must be signed by the President or Vice President acting in the absence of the President.
 - (1) The Plan Commission may impose conditions upon or accept commitments made that are, in its discretion, deemed necessary to the best interest and general welfare of the community.
 - (2) Approval of a primary plat shall be effective for a maximum period of two years unless, upon application of the applicant the Plan Commission grants an extension.
- (C) *Disapproval.* If the Plan Commission disapproves a primary plat application, the Plan Commission shall make written findings of fact and notify the applicant in writing, stating the specific reasons for disapproval. This written notice shall be signed by the President of the Plan Commission, or the Vice President acting in the absence of the President.
 - (1) The applicant shall be required to observe a one-year waiting period before refilling a primary plat which has been disapproved by the Plan Commission.
 - (2) The original applicant may submit a new application for primary plat approval in accordance with established rules of procedure.

(Ord. passed 4-21-03, Am. Ord. 2020-32, passed 9-26-2020).

§152.37 FINAL PLAT APPROVAL

(A) Decision by the Plan Commission. Within 60 days after application for approval of the secondary plat, the Plan Commission shall approve, approve with conditions, or disapprove it.

(B) Approval. If the Plan Commission determines that the plat complies with the standards of this chapter, it shall make written findings of fact and a decision granting secondary approval to the plat. After performance surety has been posted, if necessary, the plat shall be certified on behalf of the Plan Commission by the President or Vice President who shall sign the plat original and all other relevant documents which also may require such a signature. One copy of the certified plat shall be forwarded to each of the following persons:

- (1)** The County Building Administration;
- (2)** The County Surveyor;
- (3)** The County Auditor;
- (4)** The appropriate public utilities that may be affected;
- (5)** The subdivider or applicant;
- (6)** The Zoning Administrator; and
- (7)** The County Health Officer.

(C) Disapproval. If the Plan Commission disapproves the secondary plat, it shall make written findings of fact and notify the applicant in writing, stating the specific reasons for disapproval. This written notice shall be signed by the President of the Plan Commission. (Ord. passed 4-21-03, Am. Ord. 2020-32, passed 9-26-2020).

§152.38 RECORDING

A plat, plat amendment, re-plat or vacation of a plat of a subdivision may not be filed with the County Auditor and the County Recorder may not record it, unless it has been granted secondary approval by the Plan Commission and has been properly signed by the President of the Plan Commission or the Vice President, and if applicable the required performance bond as provided for in §152.39(B) has been provided to the Zoning Administrator. The filing and recording of the plat are without legal effect unless approved by the Plan Commission. (Ord. passed 4-21-03, Am. Ord. 2020-32, passed 9-26-2020).

§152.39 REQUIRED IMPROVEMENTS

(A) *Completed.* The final plat shall contain a certificate signed by a registered professional engineer stating that all the improvements have been installed in accordance with the requirements of this chapter and in accordance with the approved preliminary plat payable to county and in an amount as determined by the Plan Commission, sufficient to assure completion of all required improvements within two years from date of Plan Commission Approval.

(B) *Improvements Not Completed.* In the alternative, if the required improvements have not been installed, the applicant must provide to the Zoning Administrator a performance bond, letter or credit, or surety acceptable to the Zoning Administrator in an amount determined by the Zoning Administrator to be sufficient to ensure completion of the unfinished required improvements. This bond must be payable to Montgomery County. All required improvements must be completed within two (2) years of the approval of the final plat. The bond must be provided on the date the applicant intends to record the final plat. The provisions of the bond are a prerequisite to recording.

(C) *Release of Surety.* The surety shall not be released until the applicant has provided the Zoning Administrator with a certificate of completion, and the Zoning Administrator inspects the improvements and accepts certified compliance with the approval. If the Zoning Administrator and applicant agree to a partial release schedule, as provided for in Indiana Code 36-7-4-709(h), Zoning Administrator may, upon completion of some portion of the required improvements to the satisfaction of the Zoning Administration, authorize partial release of any surety annually or more frequently as provided for in the schedule.

(D) *Failure to Complete Improvements.* If the applicant fails to complete the required improvements, the Zoning Administrator is entitled to make a claim on the surety on behalf of the County, and receive the surety proceeds and cause the improvements to be constructed.

(E) *Certificate of Occupancy.* No certificate of occupancy may be granted for the subject site, or any part thereof, until the required improvements are completed and certified by the Zoning Administrator.

(F) *Maintenance Bonds.* The Plan Commission may require the applicant to post a maintenance bond, not to exceed an effective period of three years.

(G) *Surety Amounts.* The amount of any surety must be based upon a value provided for in an engineer's estimate of an actual contract amount, if applicable to complete the improvements.
(Ord. passed 4-21-03, Am. Ord. 2020-32, passed 9-26-2020).

§152.40 REQUIRED CERTIFICATES

(A) A certificate of approval shall be given by the Plan Commission upon completion of a preliminary plat.

(B) A certificate of dedication, certificate of acknowledgment, land surveyor's certificate, certificate of inspection and certificate of approval shall be given to the Plan Commission upon completion of a secondary plat.

(Ord. passed 4-21-03)

§152.41 VACATION OF PLATS

(A) Agreed Vacations. If all of the owners of land in a plat are in agreement regarding a proposed vacation, the owners may file a written instrument to vacate all or part of that plat. The instrument must be executed by all owners of land in the plat, acknowledged and recorded in the same manner as a deed to land.

- 1. Procedure.** Prior to offering the instrument for recording, an owner must obtain approval from the Plan Commission and file the instrument with the Montgomery County Auditor.
- 2. No Public Hearing.** The instrument for vacation may be approved by the Plan Commission without a public hearing.
- 3. Recording.** After approval by the Plan Commission and filing with the Auditor, the instrument may be recorded.

(B) Contested Vacations. If not all landowners in a plat agree to a vacation of the plat or any part thereof, one or more may file a petition to vacate all of the plat or only that part of the plat that pertains to the land owned by the petitioner or petitioners.

- 1. Petition.** The Petitioner must state in the petition the reasons for the circumstances prompting the request, specifically describe the property in the plat proposed to be vacated, and the name and address of every owner of the land in the plat.

Vacation of Covenants. Recorded covenants of a plat may only be vacated if the Plan Commission finds:

- a. the platted area is within an area needing redevelopment and the covenant vacation would promote recovery of property values in the area needing redevelopment by allowing or encouraging normal development and occupancy of the platted area;
- b. the covenant vacation is needed to secure for the public adequate light, air, convenience of access, or safety from flood or other danger; or
- c. the covenant vacation is needed to lessen or avoid congestion in the public ways.

3. Hearing. Not more than 30 days after receiving the petition, the Zoning Administrator will schedule a hearing on the petition and provide notice to all owners of land in the plat, with said notice to be mailed at least 10 days prior to the hearing. The

petitioner or petitioners will pay the expense of the mailing of this notice. At the public hearing, the petitioner or petitioners and all owners of land in the plat will have the opportunity to be heard on the proposed vacation.

4. Decision. After the public hearing, the Plan Commission will approve, approve with conditions, or disapprove the request. In order to approve the request, the Plan Commission must find:

- a. conditions in the platted area have changed so as to defeat the original purpose of the plat;
- b. it is in the public interest to vacate all or part of the plat; and
- c. the value of that part of the land in the plat not owned by the petitioner or petitioners will not be diminished by the vacation.

5. Conditions. The Plan Commission may impose reasonable conditions as part of any approval.

6. Judicial Review. The petitioner or other interested party may seek judicial review of the approval or disapproval of the vacation, as provided for in Indiana law.

7. Recording. The order vacating the plat or any portion thereof must be recorded by the Zoning Administrator.

8. Limitations. After a disapproval of a requested vacation, a subsequent vacation proceeding affecting the same property and asking for the same relief may not be initiated for two years of the date of the prior disapproval.

REGULATION AND DESIGN

§152.50 UNSUITED LAND

No land shall be subdivided for residential use if the land is considered by the Commission to be unsuitable for the use by reason of flooding or improper drainage for objectionable rock or earth formation, topography or other features harmful to the health, safety and welfare of possible residents and the community as a whole.

(Ord. passed 4-21-03)

§152.51 PERMANENT MONUMENTS

Permanent monuments should be placed at two adjacent corners of the subdivisions. The monuments are to be at least four inches in diameter and should extend in length to a depth of 36 inches in the ground with a cross or iron pin on top to indicate the corner point. The monuments shall be made to concrete or other weather resisting material.

(Ord. passed 4-21-03)

§152.52 LOTS

(A) Lot Area.

(1) Residential Subdivisions

- a. A lot in any subdivision as herein defined that is served by a community sanitary sewer system approved by the State Board of Health shall not have a minimum lot area of less than 7,000 square feet.
- b. A lot in any subdivision as herein defined that is served by private sewage disposal facilities shall not have a minimum lot area of less than one acre.

(2) Commercial. All Commercial lots served by a community sanitary sewer system approved by the State Board of Health shall not have a minimum lot area of less than 3,000 square feet. If the site is served by a private septic system, the Zoning Administrator will determine the minimum lot size after considering the area needed to allow proper function of the private sanitary system.

(3) Industrial. All Industrial lots shall have a minimum lot area of not less than 20,000 square feet.

(B) Iron Pins. Iron pins shall be placed at all corners of original tract and subdivision where monuments are not placed and also at all lot corners. The pins shall be of solid material at least 30 inches in length and one-half inch in diameter.

(C) Boundary Lines. No lot shall be divided by a city or county boundary line.

(D) Lot Numbers. Lot shall be numbered consecutively throughout the subdivision.

(E) Lot Side Lines. Sidelines of all lots, so far as possible, shall be at right angles to the street which the lots face, radial or approximately radial if the street is curved.

(F) Building Setback. Building setback lines from all streets shall be required by the Commission, but in no case shall be less than 60 feet. Those setbacks will be measured from the right-of-way of the street or road on which the lot has frontage.

(G) Side Yards. A side yard on interior lots from the side building line to the side property line shall be required and in no event shall be less than 20 feet for land zoned Agricultural, 10 feet for land zoned Commercial, 5 feet for land zoned Residential, and 20 feet for land zoned Industrial.

(H) Minimum Rear Yard. A rear yard on a lot is required and in no event shall be less than 20 feet for land zoned Agricultural, 10 feet for land zoned Commercial, 5 feet for land zoned Residential, and 20 feet for land zoned Industrial.

(I) Minimum Road Frontage. Each lot shall have a minimum road frontage as follows: 100 feet for land zoned Agricultural, 30 feet for land zoned Commercial, 40 feet for land zoned Residential, and 100 feet for land zoned Industrial.

(Ord. passed 8-6-02; Ord. passed 04-21-03, Am. Ord. 2020-32, passed 9-26-2020).

§152.53 ROADS AND STREETS

All constructed roads and streets included as part of a regulated subdivision shall meet the requirements of the Montgomery County Highway specifications.

(Ord. passed 4-21-03)

§152.54 INTERSECTIONS

(A) No fence, wall, hedge or shrub planting which obstructs sightlines at elevations between 2 and 8 feet above the street shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and line connecting points 25 feet from the intersection of the street lines extended. The same sight-line limitations shall apply to any lot within 10 feet from the intersection of a street line with the edge of a driveway pavement or ally line.

(B) No more than 2% grade within the intersection from 50 feet to 100 feet each way from intersection, it shall not be over 4% grade and 6% maximum between 100 and 150 feet of intersection.

(C) Ninety-degree intersections are preferred and less than sixty degrees prohibited. (Ord. passed 4-21-03)

§152.55 OFF-STREET PARKING

Ample off-street parking facilities shall be provided for each residential or commercial lot of not less than two vehicle spaces for each single-family dwelling unit.

(Ord. passed 4-21-03)

§152.56 EASEMENTS

Proper easements shall be provided for public utility facilities, sewers, water and drainage. (Ord. passed 4-21-03)

§152.57 DRAINAGE

Each subdivision storm water system must be designated its own legal drain, as provided for by Chapter 154. No plat may be approved until the applicant obtains the approval of the Drainage Board.

§152.58 JUDICIAL REVIEW

Pursuant to I.C. 36-7-4-715, final decisions of the Plan Commission regarding preliminary plats, final plats, imposition of conditions on a plat, vacation of all or part of a plat and the imposition of a condition on approval of the vacation of all or part of a plat (including the vacation of any recorded covenants filed with the plat) are subject to judicial review, as provided for in I.C. 36-7-4-1600 series.

§152.59 ENFORCEMENT

A violation of this ordinance is a common nuisance, and the owner or possessor of the structure, land, or premises is liable for maintaining a common nuisance if there is a violation on the land. In addition, any person or entity that violates this ordinance is subject to a fine in an amount not to exceed \$2,500 for each day that a violation of this ordinance exists. Each day of a continuing violation constitutes a separate violation. The County Attorney, on behalf of the Plan Commission, may file a complaint against the violator and prosecute the alleged violation. The Plan Commission and or Zoning Administrator may invoke any legal, equitable or special remedy, and the violator shall bear the cost of the enforcement.

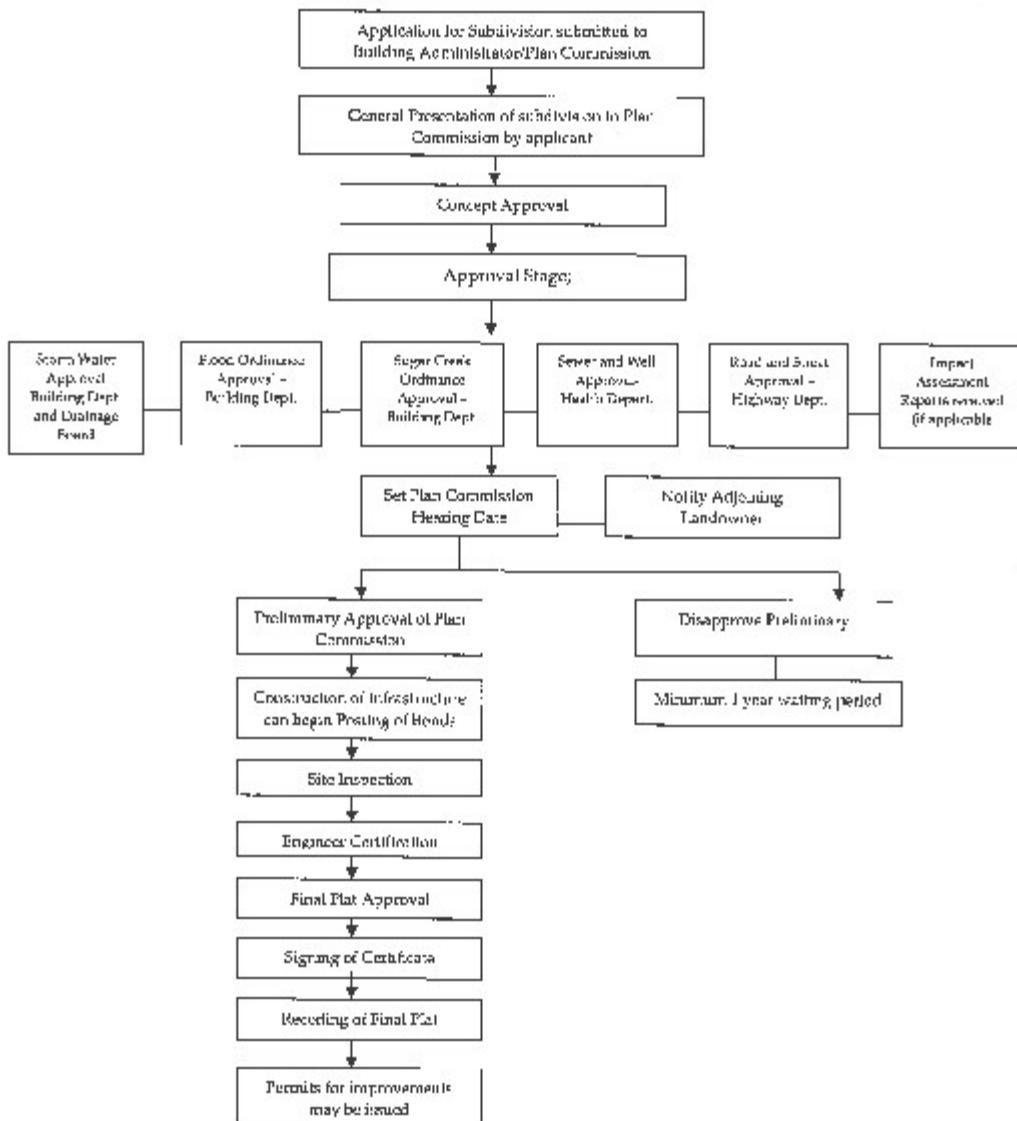
§152.60 MINOR PLATS

Applications for Minor Plats will be submitted to the Zoning Administrator. If the Zoning Administrator finds that the Minor Plat satisfies the requirements of this Ordinance and all other applicable ordinances, rules and regulations, the preliminary plat will be administratively approved. The Zoning Administrator will then schedule a public hearing on the final plat, and the Minor Plat will follow the same procedure and process of all other plats for the final plat approval. If the Zoning Administrator finds that the Minor Plat does not satisfy the requirements, the Zoning Administrator will deny the application.
(Ord. 2020-32, passed 9-26-2020).

Title XV: Land Usage
APPENDIX: STEPS FOR SUBDIVISION APPROVAL

(Ord. passed 4-21-03)

Steps For Subdivision Approval:



APPENDIX A

**MONTGOMERY COUNTY
ROAD AND STREET DESIGN STANDARDS**

Adopted November 23, 2020

Effective January 1, 2021

Street Design Standards and Street Improvements

Conformance with Regulations

The arrangement, character, extent, width, grade, and location of all streets shall conform to all of the elements of these regulations. Indiana Department of Transportation Standard Specification Montgomery County Standards dated 12/06/2000 shall be used for all improvements.

Street Classifications

Street classifications are as follows:

1. Minor Arterial
2. Major Collector
3. Minor Collector
4. Local Roads
5. Cul-de-sac

Design Standards

Street designs shall adhere to the following design standards:

1. AASHTO Standards -- Current AASHTO Standards shall be followed as minimum design requirements unless otherwise specified in this Ordinance.
2. Conformance with Plans -- All streets shall be planned to conform to the Comprehensive Plan and the Montgomery County Thoroughfare Plan.
3. Protection of Property -- Whenever a subdivision abuts or contains an existing or proposed major street, the Plan Commission may require frontage roads, screening of double frontage lots, a "non-access" easement along the property lines, deep lots, or such other treatment as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic. In those instances, where a non-access easement is proposed along a state or federal highway, this easement shall be granted specifically to Indiana Department of Transportation.
4. Connecting Street Pattern -- In order to provide a functional County street system, the Plan Commission may require an owner to construct a street pattern that provides connections to adjoining developed and vacant undeveloped properties. The coordination of streets from one (1) subdivision to another is essential to the county in order to provide a continuation of not only vehicular access, but also for transportation and distribution lines for most utilities, such as water, sewer, gas, electricity and telephone systems.
5. Access to Vacant Land -- The Plan Commission may waive the requirement of constructing an access street to vacant land. In these cases, the owner shall be required to dedicate the necessary right-of-way, but the person who develops the adjoining vacant property will be required to construct the street. The Plan Commission shall determine at the primary hearing, the need and location of these access streets.

6. Continuation of Streets -- All streets, including those proposed to provide the continuation of streets to adjacent property, shall be constructed to the boundary lines of the subdivision and in accordance with the standards of this ordinance. If a subdivision is approved contiguous to existing right-of-way dedicated for a continuing street, but the street has not been constructed, the owner of the new subdivision must construct the entire street including the portion that is not contained within the owner's project.

7. Street to Match Plan -- A proposed street, matching the Thoroughfare Plan standards, or at a minimum classified as a local road, shall provide for the continuation of existing, planned or platted streets on adjacent property.

8. Street Parallel to Railroad or Roads -- Where a subdivision borders on or contains a railroad right-of-way, limited access highway right-of-way, arterial or collector street, the Plan Commission may require a street approximately parallel to and on each side of such right-of-way at a distance suitable for the appropriate use of the intervening land. Such distances shall also be determined with due regard for the requirements of the approach grade of any future grade separation structure.

9. Dead End Streets -- A dead end street shall not be permitted except where a street is proposed to be and should logically be extended but is not yet constructed. A temporary cul-de-sac shall be constructed for any dead-end street that exceeds three hundred (300) feet in length from the nearest intersection. Drainage details for the temporary cul-de-sac shall be specified by the applicant and approved by the Plan Commission. A dead-end street that does not require a temporary cul-de-sac shall have adequate drainage provisions as approved by the Plan Commission.

10. Stub Streets -- Where, in the opinion of the Plan Commission, street connection to adjoining property is appropriate, proposed streets shall be extended to the boundary of the development for connection to existing streets on the boundary of adjoining property or for future connection. Stub streets shall be placed at intervals of one thousand (1000) feet.

11. Temporary Cul-de-Sacs -- A temporary cul-de-sac shall have an easement radius of not less than fifty (50) feet and shall have a driving surface radius of not less than forty (40) feet. The cross section of a temporary cul-de-sac shall be at least nine (9) inches of compacted #53 aggregate over a compacted sub-base. If it is anticipated that the temporary cul-de-sac will be required for longer than three (3) years, additional two- (2) inches of asphalt intermediate shall be required. Any temporary cul-de-sac still with a stone surface at the end of the maintenance period must be paved with two (2) inches of asphalt intermediate prior to release of the maintenance guarantee.

12. Permanent Cul-de-Sacs -- Permanent cul-de-sacs shall not provide access to more than 25% of all lots in the subdivision, and no cul-de-sac shall serve more than twenty (20) lots.

Cul-de-Sacs shall not be used to avoid connection with an existing street, to avoid extension of a collector or arterial street, or to avoid connection to adjoining property.

13. Access Easement -- An easement providing access to a street shall be prohibited except where it serves no more than three lots, and the Plan Commission finds that the plans for its control and maintenance is clearly defined.

14. Right-of-Way Width -- The street right-of-way width shall be in accordance with the Thoroughfare Plan right-of-way widths:

- a. Minor Arterial – 85'
- b. Major Collector – 70'
- c. Minor Collector – 60'
- d. Local Road – 50'
- e. Subdivision Road – 50'
- f. Cul-de-sac – 55' radius

15. Paving Width -- The paved width of all streets shall be adequate to serve the existing and future estimated traffic load for the development.

a. A new local road or subdivision road widths shall be in accordance with Table 5.2 Typical Roadway Standards of the Montgomery County Thoroughfare Plan. The Plan Commission has the shall have the authority to increase/decrease the right of way widths.

b. A cul-de-sac shall be paved to a diameter of ninety feet (90') measured at the asphalt pavement edge excluding concrete curb or stone shoulders.

c. A new local road or subdivision road shall be paved in accordance with the Montgomery County Standards dated 12/06/2000. Where a proposed street is an extension of an existing paved street that exceeds the minimum dimension set forth above, the Plan Commission shall require the owner to match the width of the existing paved street.

16. Minimize Through Traffic -- Proposed local, subdivision, or cul-de-sac streets shall be designed to minimize through traffic movement, which is to be limited to collector streets.

17. Acceptable Limits -- Acceptable limits for visibility, curvature, and maximum grade depend on topography, functional classification, anticipated traffic volumes, number and nature of access points, etc. Road design specifications shall be based on AASHTO guidelines and sound engineering judgment. The County Engineer must approve the design speeds selected for each project.

18. Street Grade -- A proposed street shall be adjusted to the contour of the land so as to provide usable lots grades & driveway slopes and a reasonable street grade. The maximum

allowable street grade shall not exceed five (5) percent. The minimum allowable street grade shall not be less than five-tenths (0.5) percent.

19. Intersection Sight Distance -- The values for intersection sight distance shall be used at all intersections, both for new and existing intersections. No new features such as signs, embankments, walls, or landscaping, shall be constructed which reduces the sight distance below the intersection sight distance.

20. Decision Sight Distance -- Where unusual or complex situations exist, decision sight distance (per AASHTO Standards) may be required by the County Engineer to provide an added margin of safety.

21. Reverse Curves -- A reverse curve on a major street shall have a straight tangent between elements of said reverse curve of not less than one hundred (100) feet.

22. Additional Requirements -- The sections above deal with minimum requirements. Individual projects, particularly commercial and industrial subdivisions, may warrant additional requirements dictated by sound engineering design. Such additional requirements must be specified by the Plan Commission as a condition of approval.

23. Safety Concerns -- The Plan Commission may deny the proposed location of an access road from a proposed development onto an existing or proposed county road, due to safety concerns.

24. Improvements Required -- If, in the sole opinion of the Plan Commission, the proposed access road presents a potential hazard to the motoring public, the applicant may be required to make improvements to an existing or proposed county road as a condition of allowing access. These improvements may include, but are not limited to deceleration or acceleration lanes, passing blisters or other improvements.

a. Criteria -- Improvements shall be required based on the following criteria:

- I. Sight distance;
- II. Number of lots;
- III. Proposed use;
- IV. Street classification;
- V. Traffic generation;
- VI. Existing or proposed conditions; and
- VII. Sound engineering design.

b. Intersections -- As a minimum requirement, at an intersection of a subdivision street, commercial or industrial drive with an existing street or road, the developer shall install deceleration, acceleration, and passing lanes along the existing roadway in accordance with

the geometry delineated in the Indiana Department of Transportation Driveway Permit Manual Version 1.1 dated August 2018.

c. Construction -- All roadwork involving the construction of passing blisters and/or accel/decal lanes shall require a one-inch (1") overlay of bituminous surface which shall extend across the full width of the existing roadway as well as the new features. Limits of this work shall be the extreme ends of the tapers and/or blister. Butt joints shall be milled at the ends of the work to ensure a smooth transition. The pavement section shall be installed in accordance with the Montgomery County Standards.

25. Number of Access Roads -- The minimum number of access roads required into a subdivision will be based upon the number of lots. For residential subdivision access with 50 or less lots one public entrance shall be required. For residential subdivision access with 51 or greater lots two public entrance shall be required. These are minimum recommendations, and the Plan Commission may require additional access. All access points required by the number of lots in that phase must be provided for in that phase, or in a previous phase, and not delayed to a future phase.

26. Cul-de-Sac Length -- A cul-de-sac street shall not exceed six hundred feet in length measured from the centerline of the nearest intersection to the center of the cul-de-sac.

27. Half Streets -- Dedication of new half streets shall be prohibited. Where a dedicated or platted half street is adjacent to a tract being subdivided, the other half of said half-street shall be platted and constructed.

28. Additional Right-of-Way for Existing Streets -- The applicant shall dedicate additional right-of-way width as required to meet these regulations when the subdivision adjoins or includes an existing street that does not conform to the minimum right-of-way dimension as established by the Comprehensive Plan and the Montgomery County Thoroughfare Plan.

29. Blocks -- Block lengths in residential areas shall be two lots deep and shall not exceed eight hundred (800) feet in length, nor be less than three hundred (300) feet in length, with length measured centerline of street to centerline of street. Pedestrian ways shall be required through the middle of blocks that are more than eight hundred (800) feet long, or at other appropriate locations, as deemed necessary by the Plan Commission. In determining whether pedestrian ways are required, the Plan Commission shall consider methods of maintaining such ways, and the usefulness in providing access to any common open space, water areas, recreational areas, schools, churches, and other surrounding uses.

30. Cul-de-Sac Islands -- No fence, wall, sign, hedge, tree or shrub planting, or other similar item which obstructs sight lines and elevations between two (2) and eight (8) feet above the street shall be placed within any cul-de-sac island.

31. Traffic Calming – It is a goal of Montgomery County to create residential streets that are safe and contribute to the quality of life within the neighborhoods. This Ordinance encourages street design that accomplishes this goal by the use of street hierarchy, geometric standards, and good engineering practices. When utilized appropriately, responsible street design does not need extraneous or additional “traffic calming” features. However, if deemed necessary, such traffic calming features will be designed and located according to standard recommended practices and must be approved by the County Engineer.

32. Maximum Ponding Depth – Maximum ponding depth shall be six (6) inches at the crown of the roadway for a 100-year storm event.

33. Horizontal centerline curve radius shall meet or exceed 1990 AASHTO Standards and shall correspond to the following design speeds:

- a. Subdivision Roads shall have a design speed of 30 mph and require a 150-foot minimum centerline radius.
- b. Local Roads, Minor and Major Collectors shall have a design speed of 40 mph and require a 300-foot minimum centerline radius.
- c. Primary Arterials and Secondary Arterials shall have a design speed of 50 mph and require a 675-foot minimum centerline radius.
- d. Tangent distance between reverse curves shall be 100 feet.

34. Subdivision – the curb/gutter and sidewalk requirements are based upon total number of lots in a subdivision and not based upon each section (phased development). The overall size of the development is required to be shown on the preliminary plat.

Intersections

1. Curb Radii -- Street curbs shall be rounded by radii of sufficient length to permit the smooth flow of traffic, but in no case shall the curb radii be less than twenty-five (25) feet for Local Roads, or forty (40) feet for a Minor Arterial, and Major/Minor Collectors or roads in a commercial or industrial development or roads which intersect with State Roads or State Highways.

1. Street with No Curbs -- Where a proposed street with curbs intersects an existing street without curbs, the curb radius shall be designed so there is a minimum of twelve (12) feet separation between the curb and edge of the existing street pavement. Termination of curb shall be a smooth taper terminating to meet a proposed grade.
2. Separation Between Right-of-Way and Curb -- Street right-of-way at intersections shall be designed to provide a minimum of ten (10) feet separation between the street right-of-way and curb.
3. Angle -- Intersections shall be as nearly at right angles as is possible, and no intersection shall be at an angle of less than seventy-five (75) degrees.

5. Multiple Street Intersections -- Intersection of more than two (2) streets at one point shall not be permitted.
6. Roundabouts -- Roundabout or traffic circles and appropriate signage shall be approved by the County Engineer. Design of roundabouts shall follow guidelines set forth by the Federal Highway Administration.
7. Radii Follow Greater Functional Classification -- When a street of lesser functional classification intersects with a street of greater functional classification the radii arcs at the intersection will comply with the standards for the street of greater functional classification.
8. Straight Street -- There shall be at least one hundred (100) feet of straight street before entering an intersection, unless otherwise approved by the County Engineer.
9. Driveway Separations -- Driveway locations shall conform to the following minimum requirements for separation:
 - a. Minor Arterial – 300’ Residential Driveway, 600’ Non-Residential Driveway
 - b. Major Collector – 200’ Residential Driveway, 200’ Non-Residential Driveway
 - c. Minor Collector – 200’ Residential Driveway, 200’ Non-Residential Driveway
 - d. Local Road – 100’ Residential Driveway, 100’ Non-Residential Driveway
 - e. Subdivision Road – 75’, with maximum of one per lot
10. Street Separations -- Street intersections shall not be closer than three hundred (300) feet center line to center line for residential and local streets and six hundred (600) feet center line to center line for collector and arterial streets and must be denoted on the construction plans. This provision does not apply to a frontage road.
11. Pavement Thickness -- When a street of lesser functional classification intersects with a street of greater functional classification, whether new or existing, the pavement thickness of all improvements within the right-of-way of the intersection shall comply with the street requiring the greatest thickness.

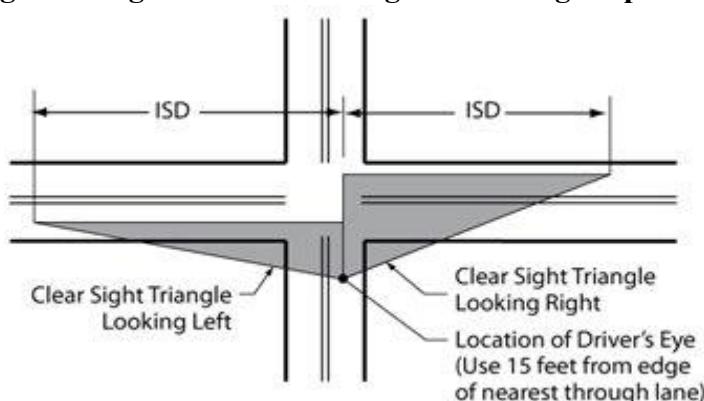
Sight Distance at Intersections

1. Insufficient sight distance can be a contributing factor in intersection traffic crashes. Intersection sight distance is typically defined as the distance a motorist can see approaching vehicles before their line of sight is blocked by an obstruction near the intersection. The driver of a vehicle approaching or departing from a stopped position at an intersection should have an unobstructed view of the intersection, including any traffic control devices, and sufficient lengths along the intersecting roadway to permit the driver to anticipate and avoid potential collisions. Examples of obstructions include crops, hedges, trees, parked vehicles, utility poles, or buildings. In addition, the horizontal and vertical alignment of the roadway

approaching the intersection can reduce the sight triangle of vehicles navigating the intersection.

2. It is important for approaching motorists on the major road to see side street vehicles approaching the Stop sign, and for minor road motorists to see approaching major road vehicles before entering the intersection. Poor sight distance can lead to rear-end crashes on the approaches and to angle crashes within the intersection because motorists may be unable to see and react to traffic control devices or approaching vehicles.
3. The area needed for provision of this unobstructed view is called the Clear Sight Triangle (see Figure 3).

Figure 3. Sight Distance Triangles for 4-Leg Stop-controlled Intersections⁹



4. The Intersection Sight Distance (ISD) is measured along the major road beginning at a point that coincides with the location of the minor road vehicle. Table 3 provides the recommended values for ISD, based on the following assumptions:
 - Stop control of the minor road approaches;
 - Using driver eye and object heights associated with passenger cars;
 - Both minor and major roads are considered at level grade;
 - Considers a left-turn from the minor road as the worst-case scenario (i.e., requiring the most sight distance); and
 - The major road is an undivided, two-way, two-lane roadway with no turn lanes.
5. If conditions at the intersection being evaluated differ from these assumptions, an experienced traffic engineer or highway designer should be consulted to determine whether different ISD values should be used.

Table 3. Sight Distance at Intersections

Speed (mph) *	Stopping Sight Distance (ft.)	Design Intersection Sight Distance (ft.)
25	155	280

30	200	335
35	250	390
40	305	445
45	360	500
50	425	555
55	495	610
60	570	665
65	645	720

Source: *A Policy on Geometric Design of Highway and Streets*, 5th Edition, American Association of State Highway and Transportation Officials (AASHTO), 2004.

6. Stopping Sight Distance (SSD) provides sufficient distance for drivers to anticipate and avoid collisions. However, in some cases this may require a major road vehicle to stop or slow to accommodate the maneuver by a minor road vehicle. To enhance traffic operations, sight distances that exceed the recommended SSD (as shown in Table 3) are desirable.
 - a. Intersection Visibility -- No fence, wall, sign, hedge, tree or shrub planting or other similar item which obstructs sight lines at an elevation between two (2) and eight (8) feet above the street, shall be placed or permitted to remain on any corner lot within the triangular area formed by the street right-of-way lines and a line connecting points twenty-five (25) feet from the intersection of residential or local road lines, and fifty (50) feet from the intersection of arterial or collector road lines, or in the case of a rounded property corner, from the intersection of the street right-of-way lines extended.
 - b. Median Visibility -- No fence, wall, sign, hedge, tree or shrub planting, or other similar item which obstructs sight lines and elevations between two (2) and eight (8) feet above the street shall be placed within any median area within one hundred (100) feet of an intersection. No walls, rocks, or boulders larger than two (2) feet in any dimension shall be placed in the median.
 - c. Stop Sign Visibility -- No trees shall be planted in any portion of a public street right-of-way within one hundred fifty (150) feet of a stop sign.

Street Improvements

1. Plan and Profile -- In general, a street shall be completed to the grade shown on the plan and profile sheet. A plan and profile sheet for each street shall be provided by the owner and prepared by a registered professional engineer or registered land surveyor.
2. Street Construction Standards -- The minimum requirements for street construction shall be in accordance with the latest edition of "Standard Specifications" of the Indiana Department of Transportation, in effect at the time of approval. (Hereinafter referred to as the Standard Specifications).
 - a. Subgrade -- The subgrade shall be prepared in compliance with the Standard Specifications.
 - b. Subbase -- The subbase, where required, shall be #53 crushed aggregate (or equal), as determined by the County Engineer, and shall be prepared in compliance with the Standard Specifications. If the subgrade is modified in accordance with the Standard Specifications, there shall be no reduction of the required aggregate thickness.
 - b. Street Surface -- The street surface shall be of Portland cement concrete or hot asphaltic concrete. Portland cement concrete materials and construction shall be in compliance with Section 500 of the Standard Specifications and these regulations. The Montgomery County Engineer has determined that any part of the subgrade or subbase is frozen when its temperature reaches 32° Fahrenheit. Hot asphaltic concrete materials and construction shall be in compliance with Section 400 of the Standard Specifications and these regulations.
3. Backfill -- All utility excavations under the pavement or within five (5) feet of the edge of the pavement be backfilled with Structure Backfill or Flowable Mortar as specified in the Standard Specifications. Installation shall conform to the Standard Specifications. Any deviation from these provisions must be approved by the County Engineer's Office prior to construction.
4. Subsurface Drains -- Subsurface drains shall be installed at a depth of two (2) feet below and behind the back of curb in line with and parallel to the inside face of the curb or along the junction where the face of the concrete curb meets material for the travel surface. The subsurface drains shall be a minimum of six- (6) inch diameter perforated polyethylene pipe. Four (4) inch laterals shall be provided for each lot, extended to the right-of-way line and capped. The ends shall be marked by permanently marking (stamping) the lateral in the curb and extending a board or other suitable material to the surface and dimensioned on the record drawings. No direct surface water, or garage floor drains will be allowed to connect to the subsurface drain.

4. Aggregate Base -- Stone aggregate base shall be placed under the curb and extended to the aggregate placed for the subsurface drain. This aggregate base shall be continuous and shall match the bottom of pavement (top of subgrade) or be four (4) inches thick whichever is more.
5. Soil Conditions in Streets -- Wet spots or other unusual soil conditions may develop in streets. These streets must comply with any or all of the following requirements:
 - a. Underdrains -- Four (4) inch Polyethylene lateral underdrains which extend under the subbase and connect directly to the subsurface drains shall be placed at regular intervals through the wet areas;
 - b. Additional Aggregate -- Compacted aggregate (#53 stone) shall be added to the street cross section to a thickness as determined by the County Engineer. This shall be in addition to the minimum base requirement;
 - c. Excavation and Backfill -- Soft spots may be over excavated and backfilled with compacted aggregate as approved by the County Engineer;
 - d. Soil Modification -- Soil Modification (such as Lime Stabilization) in accordance with the Standard Specifications may be used.

I. Preconstruction Notification -- If soil modification is planned to be used, this must be stated in the preconstruction conference.

II. Subbase Depth -- No reduction in subbase depth will be permitted.

III. Application rates -- Application rates shall be determined according to the Standard Specifications and industry standards, based on testing of the in-place subgrade. Test results and proposed application rates must be provided to and approved by the County Engineer prior to use.

Joints for Rigid Pavement

Rigid pavement shall be jointed in order to control cracking. Joints for rigid pavement shall be constructed in accordance with the type and dimensions and at the locations required by Standard Specifications, these regulations, or as directed by the County Engineer's Office.

1. Spacing -- Spacing of weakened plane, transverse, or contraction joints shall not exceed twenty (20) feet. Closer spacing to average fifteen (15) feet is encouraged. A transverse contraction joint may either be formed or sawed dummy groove, ribbon or pre-molded strip type, and shall be one fourth (1/4) the thickness of the pavement.

2. Sawing -- When a transverse joint is to be formed by sawing, care must be taken to saw the grooves soon after placing the concrete to prevent the formation of cracks due to contraction of the slab.
3. Catch Basins and Manholes -- One of the above-named joints shall be placed at every catch basin and manhole in the line of pavement. The location of manholes in the pavement shall determine the exact location of the joints.
4. Full Pavement Width -- All joints shall extend throughout the curb to the full width of pavement.
5. Transverse Expansion Joint -- a transverse expansion joint shall be placed at the intersections, tangent points of sharp curves, and wherever else shown on the plans.
6. Longitudinal Joint -- Whenever the width between forms of the pavement under construction is greater than ten (10) feet, a longitudinal joint shall be constructed so as to divide the pavement into strips not to exceed ten (10) feet each. This may be accomplished by sawing or by installing a slot or groove as herein described for a contraction joint.
7. Curing Compound -- White membrane curing compound AASHTO Number 2-M-14B must be properly applied to give complete coverage immediately after finishing, around all inlets and manholes and every fifty (50) lineal feet of pavement, as well as where concrete adjoins asphalt.

Curb and Gutters

1. Curbs -- A two (2) foot concrete curb and gutter shall be required for subdivisions consisting of twenty-six (26) lots or more for, single family, two family and multifamily residential subdivision streets. Streets in commercial or industrial (non-residential) subdivisions shall have the option of using two (2) foot concrete curb and gutter or concrete chair back curbs.
2. Construction -- Materials, concrete specifications and construction procedure shall comply with the Montgomery County Standard Details. Cold weather construction shall be in accordance with the Indiana Department of Transportation Standard Specifications.
3. Valley Gutters -- Valley gutters, which connect gutter drains across street intersections, are strictly prohibited.
4. Frozen Material – The Montgomery County Engineer has determined that a material is considered frozen when any part of its temperature reaches 32° Fahrenheit.

5. Height of Asphalt -- The maximum height of the asphalt shall meet or exceed the gutter line of the curb.

6. Details -- It is the intent and purpose of this section to encourage streets and rights-of-way to be dedicated to the county for ownership and maintenance whenever possible. It is a long-range benefit to the entire county for streets and rights-of-way to be maintained publicly rather than privately. There may be, however, a situation in which a privately owned and maintained street is a more reasonable alternative.

1. Standards -- In any development in which a private street is allowed, the street shall conform to County standards.
2. Required Covenants -- The covenants of the secondary plat shall contain the following statement: "The streets and ingress/egress easements shown hereon are to be privately owned and maintained by the home-owner's or commercial association pursuant to the articles of incorporation of said association.

Sidewalks, Pathways and Pedestrian Ways

1. Location

- a. Major Plats: Sidewalks are not required in subdivisions of one to twenty-five (1-25) lots. Subdivisions that consist of twenty-six to forty (26-40) lots shall require sidewalks on one side of road or street. Subdivisions consisting of forty-one (41) lots or more require sidewalks along both sides of all streets and along the development side of all existing county roads.
- b. Minor Plats: Sidewalks are not required along the development side of all existing county roads, for minor subdivisions, sidewalks must be installed when sidewalks become contiguous or adjacent on surrounding property.

2. Sidewalk Plan -- A plan for a sidewalk system shall be prepared that will provide every lot within a subdivision, or portion thereof, with reasonable access to a sidewalk connecting with all of the community facilities, commercial enterprises and other residential subdivisions located near or adjacent to the subdivision, and in a manner that will provide safe and convenient pedestrian circulation throughout the neighborhood or area in which the subdivision is located and which will avoid pedestrian and vehicular traffic conflict.

3. Sidewalk Construction -- Sidewalk materials and construction requirements shall conform to the Standard Specifications, and shall meet the following requirements:

- a. Material -- Be constructed only of 4,000 psi concrete unless otherwise expressly approved by the Plan Commission;
- b. Depth -- Have a minimum depth of four (4) inches, or have a minimum depth of six (6) inches when built in an area of proposed vehicular crossing;

- c. Slope -- Have a cross slope of no steeper than one-quarter (1/4) inch per foot toward the street;
- d. In Right-of-Way -- Be located at least one (1) foot inside the right-of-way line, unless located within an easement outside of the right-of-way.
- e. Consistency, Slump, and Mixture -- Have consistency, slump, and mixture specifications as established by the Standard Specifications;
- f. Joints -- Be jointed every four (4) feet, with expansion joints every forty (40) feet to prevent cracking and heaving;
- g. Compliance with ADA -- Have curb ramps installed at all intersections and at all other locations where required for compliance with the Americans with Disabilities Act (ADA).

4. Minimum Width -- Sidewalks, pathways and pedestrian ways shall have a minimum width as follows:

- a. One or Two Family -- In One- or Two-Family Developments, along collector, local, or residential interior streets, minimum width shall be five (5) feet;
- b. Multifamily -- In Multifamily Developments, minimum width shall be five (5) feet;
- c. Perimeter -- For a perimeter subdivision sidewalk located along a County road, minimum width shall be six (6) feet;
- d. Commercial or Industrial -- For Commercial or Industrial, minimum width shall be as approved by the Plan Commission;
- e. Pedestrian ways -- For Pedestrian ways that connect two streets or connect directly to a park, school or other public or semi-public use, minimum width shall be six (6) feet.

5. Easement Required -- In order to facilitate pedestrian access from the street to schools, parks, playgrounds, or other nearby streets, the Plan Commission may require a perpetual unobstructed easement at least fifteen (15) feet in width. This easement shall be indicated on both the primary and secondary plats. The construction details shall be shown on the construction plans and must be specifically approved by the Plan Commission.

6. Vertical Drop -- There shall be no vertical drop in excess of twelve (12) inches within five (5) feet of the outside edge of the sidewalk, or an approved barrier must be installed in accordance with the Standard Specifications.

7. Installation -- Sidewalks shall be installed by the lot owners:

- a. Prior to the issuance of the Certificate of Occupancy by the Planning and Building Department; or
- b. Prior to the end of the designated maintenance period. The lot owner must complete the installation of all remaining sidewalks and pedestrian ways located interior to the subdivision, even if the lots are not yet developed.
- c. The lot owner is responsible for maintenance of the sidewalk including clearing during winter events. If the County Engineer or Building Administrator determine the condition of

the sidewalk warrants replacement the lot owner will be responsible for the cost of the replacement.

Easements

No permanent encroachments shall be allowed within any of the following easements:

1. Access Easements -- Access easements providing legal access to land shall be at least fifty (50) feet in width and shall have the capability of providing suitable locations for future public streets meeting the standards set forth in this ordinance. No more than three lots shall receive access from a private access easement.
2. Drainage and Utility Easements -- Drainage and utility easements shall be at least fifteen (15) feet in width on each side of any public street that has a right-of-way width of less than fifty (50) feet.
3. Utility Easements -- Utility easements shall be allocated in areas of suitable size and location. Such easements shall provide reasonable continuity from block to block and shall be at least fifteen (15) feet in width. The Plan Commission may require larger easements when it deems such additional width necessary for carrying out the purposes of this section.
4. Drainage Easements -- Drainage easements shall be provided where the Plan Commission deems them necessary to provide proper drainage for the subdivision. Such easements shall be at least fifteen (15) feet in width and may be coincident with utility easements. Where a regulated drain traverses a subdivision, the easement for the drain shall be in accordance with the Montgomery County Surveyor and the Montgomery County Drainage Board.
5. Maintenance Easements -- Maintenance easements for dams or adjoining property may be required where the Plan Commission deems them appropriate.
6. Farm Tile Easements -- Farm tile easements for protection and maintenance shall be at least thirty (30) feet in width, and shall be provided where there are farm tiles that are to remain on property proposed for subdivision. The Plan Commission may require larger easements when it deems such additional width necessary for carrying out the purposes of this section.

Street Identification Signs and Regulatory Signs

1. Installation -- The owner shall install street identification signs at each street intersection within and on the perimeter of the subdivision. The developer shall install all appropriate regulatory signs as required by the County Engineer's office.
2. Street Identification Signs -- Street identification signs shall comply with the current issue of Indiana Manual of Uniform Traffic Control Devices regarding size, material, reflectivity and location. Street identification signs for public roads shall be white letters on a green background. Street identification signs for private roads shall be white letters on a blue

background. Size of letters and sign dimensions shall comply with Montgomery County Highway Department requirements.

3. Regulatory Signs -- Regulatory signs shall comply with the current issue of Indiana Manual of Uniform Traffic Control Devices regarding size, material, reflectivity and location. The developer shall place regulatory signs in accordance with the current issue of the Indiana Manual of Uniform Traffic Control Devices and as directed by the Montgomery County Highway Department.

4. Locations -- Sign locations must be shown on the construction plans.

Roadside Ditches

1. When Required -- Roadside ditches are required for all existing or proposed roads that will not have curbs and gutters.

2. Shoulder Width and Slopes -- Roadside ditches shall be located so as to provide a shoulder width as shown in the Montgomery County Standards and sound engineering design.

Drainage side slopes shall be 3:1. In no case shall the shoulder width be less than four (4) feet. The Plan Commissioner may require a wider shoulder and drainage ditch.

3. Culvert Cover -- Roadside ditches are to be constructed to provide a minimum of twelve inches (12") of cover over the driveway culvert pipe, or as recommended by the manufacturer, whichever is greater.

4. Driveway Pipe Size -- The minimum size of a driveway pipe shall be twenty-four feet (24') of twelve-inch (12") culvert pipe. The Montgomery County Highway Department may require a larger pipe diameter and/or length.

Bridges and Similar Drainage Structures

1. Design and Construction Standards -- All bridges and similar drainage structures shall be designed and constructed in accordance with AASHTO Standard Specifications for Highway Bridges, Current Edition and the Standard Specifications.

2. Rails -- All bridges shall be designed to incorporate a crash-tested barrier rail per Indiana Department of Transportation (INDOT) specifications and adequate lengths of a crash-tested approach rail. The length of approach rail shall meet INDOT Rehabilitation, Restoration, and/or Resurfacing (3R or RRR) requirements or better, and be approved by the County Engineer.

3. Approval -- Structure size and type and final design plans must be approved by the Montgomery County Engineer. The County Engineer may require additional right of way for future maintenance of the structure.

4. Testing and Inspection -- Material certifications and testing must be done during construction in accordance with INDOT Specifications, and copies provided to the County Engineer. On-site construction inspection shall be provided by the owner in accordance with County procedures for locally funded bridges, with the County Engineer copied on all

inspectors' reports and correspondence. Also, the County Engineer must participate in the final inspection. A separate Maintenance Bond for three (3) year must be provided to the County Engineer. All construction within an existing county road right-of-way and any crossings of the travel surface will require a permit from the County Engineer prior to construction. Whenever any construction activities occur within a public road right-of-way, traffic control devices shall be placed in accordance with INDOT standards and the Manual on Uniform Traffic Control Devices, Part VI. The devices shall be installed prior to any construction and shall be maintained during the entire time that the special conditions exist. They shall be removed immediately thereafter.

Construction Within Road Right-of-Way

All right-of-way repairs on the pavement or within five (5) feet of the edge of the pavement shall be backfilled with Structure Backfill or Flowable Mortar as specified in the Standard Specifications. Installation shall conform to Section 715 of the Standard Specifications. Any deviation from these provisions must be approved by the County Engineer's Office prior to repair.

Right-of-Way Repairs

All right-of-way repairs on the pavement or within five (5) feet of the edge of the pavement shall be

backfilled with Structure Backfill or Flowable Mortar as specified in the Standard Specifications.

Installation shall conform to Section 715 of the Standard Specifications. Any deviation from these provisions must be approved by the County Engineer's Office prior to repair.

CHAPTER 153: SUGAR CREEK ZONING

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GENERAL PROVISIONS

§153.01 TITLE

The official title of this chapter is “Sugar Creek Ordinance of Montgomery County, Indiana.”
(Ord. passed 5-14-02)

§153.02 COMPLIANCE

No use shall be made, no structure shall be located, constructed, reconstructed, converted, altered, expanded, enlarged and/or moved on land adjoining Sugar Creek in the county, and no creek crossings established, as set for in §153.03, except in full compliance with all of the provisions of this chapter.

(Ord. passed 5-14-02)

§153.03 JURISDICTIONAL AREA

The following area in the county is under the jurisdiction of this chapter: Sugar Creek from creek mile 56.2 to creek mile 22.3 including all of Sugar Creek in the county and the strip of land along each side of the creek which is defined by the ordinary high water mark and a line paralleling the ordinary high water mark; the line paralleling the top of the ordinary high water mark is determined by measuring horizontally (parallel to the creek’s surface) 75 feet from the Ordinary High Water Mark as defined by state law under 312 I.A.C. 1-1-26 and away from the creek. Provided however, any town or city may adopt a more restrictive ordinance within their respective ordinance within their respective jurisdictions. If the jurisdictional area is held invalid then the jurisdictional area shall be the area defined in I.C. 14-28-4.

(Ord. passed 5-14-02)

§153.04 APPLICATION AND INTERPRETATION

(A) In applying and interpreting and provisions of this chapter, they shall be construed as the minimum requirement for the promotion of the public health, safety, comfort, convenience and general welfare, as well as natural qualities of the creek, esthetic, scenic and to promote flood erosion control.

(B) It is not intended that this chapter shall interfere with or abrogate or annul any ordinances, rules, regulations or permits previously adopted or issued, not in conflict with the provisions of this chapter, except that where this chapter imposes a greater restriction upon land use or structure than is required by such easements, covenants or agreements between parties, or by such ordinances, rules, regulations or permits, the provisions of this chapter shall control. (Ord. passed 5-14-02)

§153.05 **DEFINITIONS**

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

ADVISORY BOARD. A Board of six members appointed by the County Commissioners and one member appointed by the Director of the Department of Natural Resources to advise the County Commissioners as to the means of protecting and preserving the stream in a scenic and natural state. A majority of the members shall be owners of land abutting Sugar Creek in the county. Also, included on the Board serving in advisory (non-voting) roles are the following: the County Sheriff, the County Building Administrator, a State Department of Natural Resources Conservation Officer and the County Health Officer. The term of the six (6) Board members shall be for three (3) years, with each term beginning on January 1 and expiring on December 31. Because the Board reorganized in 2015 and Board members have staggered terms, two (2) members' terms expire in 2017, two (2) members' terms expire in 2018, and two (2) members' terms expire in 2019. If a vacancy occurs before the expiration of a term, the new member will complete the unexpired term of the prior member. At its first meeting each year the Board shall elect from its members a President, Vice President and Secretary who shall serve for one year or until the next election of officers. The Board shall meet at least quarterly and at such other times as may be necessary to conduct its business.

BUILDING ADMINISTRATOR. That person designated by the Board of County Commissioners as the County Building Administrator.

BUILDING OR STRUCTURE. Includes any building of all types and descriptions including but not limited to dwellings, trailers, campers, garages, barns, sheds, pole buildings, outbuildings, any roofed structure whether enclosed or open, bridges, culverts, decks, steps, or docks, or any other permanent improvement or structure but does not include tents (pitched for temporary recreational use)

CERTIFICATE OF OCCUPANCY. A certificate stating that the occupancy improvement and use of land for building or structure referred to therein complies with the provisions of this chapter.

IMPROVEMENT LOCATION PERMIT. A permit stating that the proposed timber cutting, logging, erection, construction, alteration, enlargement and/or moving of a building or structure referred to therein, including but not limited to dams, levies, wells, septic systems and water systems, complies with the provisions of the chapter.

NONCONFORMING USE. An existing use of land or structure which fails to comply with the requirements set forth in this chapter applicable to the district in which such use is located

PERSON OR INDIVIDUAL. Any private individual, corporation, partnership, or limited liability company.

VARIANCE. A modification of the specific requirements of this chapter granted by the Appeals Board in accordance with the terms of this chapter for the purpose of assuring that no property, because of special circumstances applicable to it, shall be deprived of privileges commonly enjoyed by other riparian properties in the same vicinity and district.

(Ord. passed 5-14-02. Am. Ord. 2017-5, adopted 4-10-17).

§153.06 GOVERNMENTAL UNITS

All governmental units are subject to the provisions of this chapter, provided, however, this chapter shall not be construed to impose any restrictions or additional requirements for the construction or reconstruction or repair of any public road or bridge, and all public roads and bridges are hereby exempted from the provisions of this chapter.

(Ord. passed 5-14-02)

NATURAL SCENIC DISTRICT

§153.20 DISTRICTS

The entire geographic area covered by this chapter shall be designated as a natural scenic district and is limited to agricultural and recreational use. It is the purpose of this district to limit and eliminate further development in the Sugar Creek corridor which would tend to reduce or destroy the natural scenic value of this unique area without great economic or environmental benefit to the public as a whole as well as to protect the citizens of the county from the adverse effects of flooding. (Ord. passed 5-14-02)

§153.21 CONSTRUCTION

- (A)** All construction, enlargement, or moving of structures into the district will require a location improvement permits, which will only be issued after approval by the Building Administrator and a formal recommendation of the Advisory Board. If the Building Administrator does not approve the location improvement permit, then no permit shall be issued and the Advisory Board will not be contacted.
- (B)** No construction is permitted within 50 feet of the ordinary high water mark as defined by 3121 I.A.C. 1-1-26. It is possible to obtain a building permit for that regulated area landward of the 50-foot line up to the 75-foot line by maintaining or establishing a forested cover to that area from the ordinary high water mark to the 50-foot line. By definition, FORESTED COVER means the following: for trees greater than 2-inches in basal diameter, 40 square feet of basal area per acre; for trees less than 2-inches in basal diameter, forested would mean a minimum of 300 stems per acre (allowing for credit for young planted seedling trees). Provided, however, that nothing in this chapter shall be construed to authorize the Building Administrator or the Appeals Board to order the removal of any existing structure which existed on the effective date of this chapter.

(Ord. passed 5-14-02)

§153.22 CLEARING

A permit is required prior to any logging activity within the zoned area. Logging and clearing activities must leave no less than 40 square feet of basal area per acre of trees over 2 inches in diameter. There shall be no clear-cutting of timber or substantial removal of vegetation in the district. Timber may be cut in accordance with best forest management practices after written approval by the Building Administrator. The Building Administrator is encouraged to consult with the State Forester before issuing his or her written approval. Vegetation in the district may be thinned and trimmed but not completely removed. Unique species of vegetation, designated as such by the Advisory Board, shall not be thinned or trimmed in such a manner as to limit or jeopardize a proliferation. (Ord. passed 5-14-02)

NONCONFORMING USES

§153.35 NONCONFORMING USES

The following provisions shall apply to all nonconforming uses:

- (A)** A nonconforming use may be continued but may not be extended, expanded, moved or changed unless to a conforming use, except as permitted by the Appeals Board in accordance with the provisions of this chapter.
- (B)** Any nonconforming structure damaged by fire, flood, explosion or other casualty may be reconstructed and used as before if such reconstruction is performed within 12 months of such casualty, and if the restored area has no greater coverage and contains no greater cubic content than before such casualty.
- (C)** In the event that any non-conforming use, conducted in a structure or otherwise, ceases, or is abandoned, for whatever reason, for any period of one year, such nonconforming use shall not be resumed, except with the approval of the Appeals Board.

(Ord. passed 5-14-02)

ADMINISTRATION AND ENFORCEMENT

§153.45 ADMINISTRATOR

The duly appointed and acting County Building Administrator is hereby designated and authorized to enforce this chapter under the authority of the County Surveyor's Office.
(Ord. passed 5-14-02)

§153.46 PERMITS

(A) Any person, persons, firms or corporations which shall make application of any improvement location permit shall furnish the Building Administrator with the documents required to obtain that permit and a site plan of the real estate upon which said application for an improvement location permit is made.

(B) The site plan shall include the following items:

- (1)** Legal or site description of the real estate involved;
- (2)** Location and size of all buildings and structures;
- (3)** Width and length of all entrances and exits to and from said real estate;
- (4)** All adjacent and adjoining roads or highways;
- (5)** Building information sheets to obtain location improvement permits;
- (6)** Erosion control plan; and
- (7)** Any other information required by the Building Administrator.

(C) The Building Administrator shall establish a permit and fee schedule necessary to administer this chapter. The schedule of fees shall be approved by the Advisory Board. The fees shall be paid and collected in the same manner as County Building Code fees are paid and collected.

(D) Prior to issuing any improvement location permit for a structure within the Sugar Creek Natural Scenic District the applicant or owner of the real estate on which the structure will be located, shall be required to obtain from the Montgomery County Treasurer a certificate of clearance verifying that the applicant or owner is not delinquent in the payment of any personal property any delinquent real estate taxes, drainage assessments or other special assessments taxes. If applicant or owner does not obtain such certificate of compliance, the Montgomery County Building Administrator shall withhold issuance of an improvement

location permit until any delinquent personal property, any delinquent real estate taxes, drainage assessments or other special assessments taxed owed by the applicant or owner are paid in full, including penalties. (Ord. passed 5-14-02; Am. Commissioners Ord. 2008-8, passed 6-23-08)

§153.47 RECORDS

Information so furnished to the Building Administrator shall be filed by the Building Administrator and maintained as other records are kept in his or her office. (Ord. passed 5-14-02)

§153.48 CHANGES

The Building Administrator may require the relocation of any proposed building or structure or property exit or entrance shown on said site plan and/or the location of new exits or entrances not shown on said site plan before issuing an improvement location permit, when such action is necessary to carry out the purpose and intent of this chapter.

(Ord. passed 5-14-02)

§153.49 COMMENCEMENT AND COMPLETION.

(A) Any permit holder must accomplish the following:

(1) Commence construction within 90 days of the permit being issued or as stated in the permit; and

(2) Complete all work required by the permit within 12 months of the permit being issued or as stated in the permit.

(B) Failure to perform either (A)(1) or (2) above shall cause the permit to lapse and a new permit must be obtained.

(Ord. passed 5-14-02)

§153.50 COMPLIANCE

No reconstruction, construction or change in use shall be made in any improvement or building, or part thereof, now or hereafter erected, reconstructed or structurally altered, without an improvement location permit having been issued by the Building Administrator and no such permit shall be issued to make such change unless it is conformity with the provisions of this chapter.

(Ord. passed 5-14-02)

§153.51 OCCUPANCY

(A) No improvement shall be occupied or used after being erected, reconstructed or structurally altered, in whole or in part, for any purpose whatsoever, until a certificate of occupancy shall have been issued by the Building Administrator stating that the improvement and its use comply with all of the provisions of this chapter applicable to the building or premises or the use complies with all of the provisions of this chapter applicable to the building or premises (or the use complies with all the provisions of this chapter applicable to the building or premises) or the use in the area in which it is located.

(B) A record of all certificates of occupancy shall be kept on file in the office of the Building Administrator and copies shall be furnished upon request to any person having a proprietary or tenancy interest in the building or land affected.

(Ord. passed 5-14-02)

§153.52 ANNUAL REPORT

An annual report will be prepared by the Sugar Creek Advisory Committee to be submitted to the County Commissioners each year. This report will include but not be limited to the following:

(A) Number of permits;

(B) Number of violations;

(C) Changes in land use along the riparian corridor (i.e. building, tree planting, tree harvest, bank stabilization, signage and the like); and

(D) Any other matter that the Advisory Board deems significant.

(Ord. passed 5-14-02)

§153.53 VIOLATIONS

(A) If the Building Administrator finds that real or personal property is in violation of this chapter, he or she may require the owners of the property to take appropriate actions in order to bring the property into compliance with this chapter. Noncompliance with the order is a separate violation of this chapter in addition to the violation complained of.

(B) The Building Administrator, the Advisory Board, the County Floodplain Commission or County Commissioners may bring enforcement proceedings to enforce this chapter, and should there be a court finding to uphold the charges, then costs and fees will be charged to the offending party and property in question.

(C) Any party, contractor, engineer, or architect who is instrumental in providing services to a property owner in the county, the use of which services by the owner results in a violation of this chapter, will be personally chargeable as a violation of the chapter along with the

owner. For any changes in use or improvements, calling for an improvement location permit, the party constructing is jointly liable for any violations of this chapter along with the owner requesting the service construction of change. Contractors as well as owners are responsible for complying with permit and paperwork requirements for improvements they are accomplishing in the county. (Ord. passed 5-14-02)

§153.54 REMEDIES

- (A)** The Building Administrator, the County Floodplain Commission or the Board of Commissioners may institute a suit for injunction in the County Circuit or Superior Court of the county to restrain an individual from violating the provisions of this chapter or may institute suit to enforce any provisions of this chapter.
- (B)** The Building Administrator, the County Floodplain Commission or Board of Commissioners may also institute a suit for mandatory injunction directing an individual, a corporation, or governmental unit to remove a structure erected in violation of the provisions of this chapter.
- (C)** Any building erected, raised or converted, or land or premises used in violation of any provisions of this chapter or the requirements thereof, is hereby declared to be common nuisance and as such may be abated in such manner as nuisances are now or may hereafter be abated under applicable statutes.
- (D)** Actions under this chapter may be brought by the County Prosecutor or County Attorney. Any injured party or governmental unit may also bring an action under this chapter in the County Circuit or Superior Court.

(Ord. passed 5-14-02)

BOARD OF APPEALS

§153.65 MEMBERSHIP

The County Floodplain Commission shall comprise the Appeals Board. No member may serve on both the Appeals Board and the Advisory Board concurrently.

(Ord. passed 5-14-02)

§153.66 RULES

The Board shall adopt rules and regulations as it may deem necessary to effectuate the provisions of this chapter.

(Ord. passed 5-14-02)

§153.67 MEETINGS

All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, keep records of its examinations and other official actions, prepare findings, and record the vote of each member voting upon each question. All minutes and records shall be filed in the office of the Board and shall be public record.

(Ord. passed 5-14-02)

§153.68 APPEALS FROM BUILDING ADMINISTRATOR DECISIONS

(A) Any decision of the Building Administrator in the enforcement of this chapter shall be appealed to the Board by any person claiming to be adversely affected by such decision by filing an appeal in writing and specifying the reasons the appellant believes the action of the Building Administrator does not comply with this chapter.

(B) An appeal must be commenced within 30 days of the Building Administrator's decision or the right to appeal is forfeited.

(Ord. passed 5-14-02)

§153.69 DUTIES

The Board shall have the following powers and it shall be its duty to:

(A) Hear and determine appeals from and review any order, requirement, decision or determination made by the Building Administrator in the enforcement of this chapter.

(B) Hear and decide on permits for special exceptions, or other uses upon which the Board is required to act under this chapter.

(C) Authorize upon appeal in specific cases such variances from the terms of this chapter as will not contrary to the public interest. Such variances shall be issued only where owing to special conditions, fully demonstrated on the basis of the facts presented, a literal enforcement of the provisions of this chapter shall result in unnecessary hardship and where such issuance shall not violate the spirit of this chapter. The findings of facts relative to the issuance of a variance will be based upon evidence presented and on personal knowledge of the members of the Board relative to the areas and requirements in question.

(Ord. passed 5-14-02)

§153.70 AUTHORITY

In exercising its appeal powers, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from as in its opinion ought to be done for the situation at hand, and to that end shall have all the powers of the

parties from whom the appeal is taken. A simple majority of the entire Board may uphold the decision or act appealed from, or modify or reverse the act appealed from.

(Ord. passed 5-14-02)

§153.71 APPEALS FROM APPEALS BOARD DECISIONS

Only the decision of the Appeals Board is subject to review by the County Circuit Court.
(Ord. passed 5-14-02)

§153.72 VARIANCES

No variance in the application of the provisions of this chapter shall be made by the Appeals Board relating to buildings, land or premises now existing or to be constructed, unless after a public hearing, the Appeals Board shall find:

- (A)** That there are exceptional or extraordinary circumstances or conditions applicable to the property or the need of the use intended that do not apply generally to the other riparian property or class or use in the same vicinity and are, or are necessary for the general public good of the area.
- (B)** That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other riparian property in the same vicinity and area but which is denied to the property in question.
- (C)** That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and area in which the property is located.
- (D)** That the granting of such variance will not materially alter the land use characteristics of the vicinity and area, diminish the marketable value of adjacent land and improvements or increase the congestion in the public streets to a detrimental degree to the neighborhood.

(Ord. passed 5-14-02)

§153.73 HEARINGS

Prior to the determination of an appeal, the Board shall fix a reasonable time for the hearing which will be at a regular Board meeting. Public notice shall be given at least ten days prior to the date set for the hearing by publishing a notice thereof in a newspaper of general circulation in the county setting forth the time and place of the hearing and by giving due notice to the interest persons in accordance with the rules of the Board.

(Ord. passed 5-14-02)

§153.74 COSTS

The party taking the appeal or requesting the special exception or variance, shall assume the cost of public notice and due notice to interested persons. Interested persons are those property owners within 400 feet of the property involved in the appeal or in the special exception, or any other county property owner who files a written statement with the Building Administrator of their claim of interest.

(Ord. passed 5-14-02)

§153.75 FINDINGS OF FACT

Prior to the determination of a special exception or variance, the Board shall fix a reasonable time for hearing and public notice given as indicated in §153.74. At the hearing the Board will establish findings of fact after which the Board may at the public hearing act on the special exception, or, if lacking a quorum, or for any other reason, fails to act, may make their decision at a later public meeting of the Board without further notice being issued prior to their decision. After the decision, the interested parties will be notified by ordinary mail. (Ord. passed 5-14-02)

§153.76 CERTIORARI

A petition for certiorari must specify the grounds upon which the petition alleges the illegality of the Building Administrator's action. The petition must be filed in the Circuit Court within 30 days after the Appeals Board's decision or judicial review is forfeited.

(Ord. passed 5-14-02)

§153.99 PENALTY

Any individual or corporation or any other entity who affirmatively or passively allows violation of any of the provisions of this chapter shall be fined an amount of \$100. Each day that violation of this chapter occurs, or continues to occur, shall constitute a separate violation thereof. In addition to the personal liability involved for violations, the amounts shall be treated as though a mechanic's lien against the property involved and may be collected by foreclosure as a mechanic's lien. (Ord. passed 5-14-02)

CHAPTER 154: STORMWATER DRAINAGE

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GENERAL PROVISIONS

§154.01 AUTHORITY AND JURISDICTION

This chapter is adopted pursuant to the authority of I.C. §36-9-28.5 and I.C. §36-1-3. The rules and regulations contained in this Chapter apply to all unincorporated areas in Montgomery County, Indiana and in Towns in Montgomery County that elect to allow this policy to apply inside its corporate boundaries.

(Ord. 90.5, passed 8-30-90; Am. Ord. passed 2-16-99; Am. Ord 2016-17, passed 6-27-16, Am. Ord. 2020-29, passed 8-10-2020).

§154.02 PURPOSE

(A) (1) It is recognized that smaller streams and drainage channels serving the county may not have sufficient capacity to receive any convey stormwater runoff, resulting when land-use changes from open or agricultural use to a more urbanized use.

(2) It is further recognized that deposits of sediment from developments during and after construction can reduce capacities of storm sewers and drainage systems and result in damages.

(B) Therefore, it shall be the policy of the Plan Commission that the storage and controlled release of stormwater runoff shall be required of all new development, any redevelopment and other new construction in the county. The release rates are defined in Section 154.60, Determination of Storage Volume, Methods (B)(8) and (9).

(C) Because topography and the availability and adequacy of outlets for storm runoff vary with almost every site, the requirements for storm drainage tend to be an individual matter for any project. It is recommended that each proposed project be discussed with the County Surveyor's Office and County Engineer at the earliest practical time in the planning stage. (Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99, Am. Ord. 2020-29, passed 8-10-2020).

§154.05 DEFINITIONS

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

BOARD. The Drainage Board of the county and any subordinate employee to whom they shall specifically delegate a responsibility authorized by this chapter.

CAPACITY OF A STORM DRAINAGE FACILITY. The maximum flow that can be conveyed or stored by a storm drainage facility without causing damage to public or private property.

CHANNEL. A natural or artificial watercourse which periodically or continuously contains moving water or which forms a connecting link between two bodies of water. It has a defined bed and banks which serve to confine the water.

COMMISSION. The Montgomery County Plan Commission.

COMPENSATORY STORAGE. An artificial volume of storage within a floodplain used to balance the loss of natural flood storage capacity when artificial fill or structures are placed within the floodplain.

CONTIGUOUS. Adjoining or in actual contact with.

CULVERT. A closed conduit used for the passage of surface drainage water under a roadway, railroad, canal, or other impediment.

DETENTION BASIN.

- (1) A facility constructed or modified to restrict the flow of stormwater to a prescribed maximum rate, and to detain concurrently the excess waters that accumulate behind the outlet.
- (2) A basin designed to be completely dewatered after having provided its planned detention of runoff during a storm event.

DETENTION STORAGE. The temporary detaining or storage of stormwater in parking lots, schoolyards, parks, open spaces or other areas under predetermined and controlled conditions, with the rate of drainage therefrom regulated by appropriately installed devices.

DRAINAGE AREA. The area from which water is carried off by a drainage system, a watershed or catchment area.

DROP MANHOLE. A manhole having a vertical drop pipe connecting the inlet pipe to the outlet pipe. The vertical drop pipe shall be located immediately outside the manhole.

DURATION. The time period of a rainfall event.

EROSION. Wearing away of the land by running water, waves, temperature changes, ice or wind.

FLOOD ELEVATION. The elevation at all locations delineating the maximum level of high waters for a flood of given return period and rainfall duration.

FLOOD or FLOOD WATERS. The water of any watercourse which is above the banks of the watercourse. It also means the water of any lake which is above and outside the banks thereof.

FLOOD HAZARD AREA. Any floodplain, floodway, floodway fringe or any compilation thereof which is subject to inundation by the regulatory flood or any floodplain as delineated by Zone A on a flood hazard boundary map.

FLOODPLAIN. The area adjoining the river or stream which has been or may hereafter be covered by floodwaters.

FLOOD PROTECTION GRADE. The elevation of the lowest floor of a building. If a basement is included, the basement floor is considered the lowest floor.

FLOODWAY. See **REGULATORY FLOODWAY**.

FLOODWAY FRINGE. The portion of the floodplain lying outside the floodway, which is inundated by the regulatory flood.

FOOTING DRAIN. A drain pipe installed around the exterior of a basement wall foundation to relieve water pressure caused by high groundwater elevation.

GRADE. The inclination or slope of a channel, canal, conduit and the like or natural ground surface usually expressed in terms of the percentage the vertical rise or fall bears to the corresponding horizontal distance.

IMPACT AREAS. Areas defined and mapped by the Plan Commission which are unlikely to be easily drained because of one or more factors including but not limited to any of the following: soil type, topography, land where there is not adequate outlet, a floodway or floodplain, land within 75 feet of each bank of any regulated drain or within 75 feet from the centerline of any regulated ditch.

IMPERVIOUS. A term applied to material through which water cannot pass or through which water passes with difficulty, including but not limited to roofs, paved driveways, gravel driveways, and storage areas, and water surface.

INLET. An opening into a storm sewer system for the entrance of surface stormwater runoff, more completely described as a storm sewer inlet.

JUNCTION CHAMBER. A converging section of conduit, usually large enough for a person to enter, used to facilitate the flow from one or more conduits into a main conduit.

LATERAL STORM SEWER. A sewer that has inlets connected to it but has no other storm sewer connected.

MANHOLE. Storm sewer structure through which a person may enter to gain access to an underground storm sewer or enclosed structure.

MAJOR DRAINAGE SYSTEM. Drainage system carrying runoff from an area of one or more square miles. Areas more than one square mile will require permits from the Indiana Department of Natural Resources, Indiana Department of Environmental Management, Army Corp of Engineers, and any other governing agencies having jurisdiction.

MINOR DRAINAGE SYSTEMS. Drainage systems having an area of less than one or more square miles.

OFF-SITE. Everything not on site.

ON-SITE. Located within the controlled area where runoff originates.

OUTFALL. The point or location where storm runoff discharges from a sewer or drain. Also applies to the outfall sewer or channel which carries the storm runoff to the point of outfall.

PEAK FLOW. The maximum rate of flow of water at a given point in a channel or conduit resulting from a particular storm or flood.

RADIUS OR CURVATURE. Length of radius of a circle used to define a curve.

RAINFALL INTENSITY. The cumulative depth of rainfall occurring over a given duration, normally expressed in inches per hour.

REACH. Any length of river, channel or storm sewer.

REGULATED DRAINS. All of the land under the jurisdiction of the Montgomery County Drainage Board. Provided however the provisions of this chapter shall not apply to the City of Crawfordsville.

REGULATORY DRAIN EASEMENTS. An easement for the purpose of maintaining existing infrastructure by the Montgomery County Drainage Board. Said easement must be assessable to the public right-of-way.

REGULATORY FLOOD. That flood having a peak discharge which can be equaled or exceeded on the average of once in a 100-year period, as calculated by a method and procedure which is acceptable to the Board. If a permit from the National Resource Commission for construction in the floodway is required, then the regulatory flood peak discharge should be calculated by a method acceptable to the Board and the Natural

Resources Commission. The REGULATORY FLOOD is equivalent to a flood having a probability of occurrence of 1% in any given year.

REGULATORY FLOODWAY. The channel of a river or stream and those portions of the floodplains adjoining the channel which are reasonably required to carry and discharge the peak flow of the regulatory flood of any river or stream.

RELEASE RATE. The amount of stormwater released from a stormwater control facility per unit of time.

RETENTION BASIN. A basin designed to retain a permanent pool of water after having provided its planned determination of runoff during a storm event.

RETURN PERIOD. The average interval of time within which a given rainfall event will be equaled or exceeded once. A flood having a RETURN PERIOD of 100 years has a 1% probability of being equaled or exceeded in any one year.

RUNOFF COEFFICIENT. A decimal fraction relating the amount of rain which appears as runoff and reaches the storm drainage system to the total amount of rain falling. A coefficient of 0.5 implies that 50% of the rain falling on a given surface appears as stormwater runoff.

SEDIMENT. Material of soil and rock origin, transported, carried or deposited by water.

SIPHON. A closed conduit or portion of which lies above the hydraulic grade line, resulting in a pressure less than atmospheric and requiring a vacuum within the conduit to start flow. A **SIPHON** utilizes atmospheric pressure to effect or increase the flow of water through a conduit. An **INVERTED SIPHON** is used to carry stormwater flow under an obstruction such as a sanitary sewer.

SPILLWAY. A waterway in or about a hydraulic structure within a detention/retention pond used to convey stormwater with a volume in excess of a 100-year storm event.

STILLING BASIN. A basin used to slow water down or dissipate its energy.

STORAGE DURATION. The length of time that water may be stored in any stormwater control facility, computed from the time water first begins to be stored.

STORM SEWER. A closed conduit for conveying collected stormwater.

STORMWATER DRAINAGE SYSTEM. All means, natural or manmade, used for conducting stormwater to, through or from a drainage area to any of the following: conduits and appurtenant features, canals, channels, ditches, stream, culverts, streets and pumping stations.

STORMWATER RUNOFF. The water derived from rains falling within a tributary basin, flowing over the surface of the ground or collected in channels or conduits.

TRIBUTARY. Contributing stormwater from upstream land areas.

URBANIZATION. The development, change or improvement of any parcel, of land consisting of one or more lots for residential, commercial, industrial, institutional, recreational or public utility purposes.

WATERCOURSE. Any river, stream, creek, brook, branch, natural or manmade drainageway in or into which stormwater runoff or floodwaters flow either regularly or intermittently.

WATERSHED. See **DRAINAGE AREA**.

(Ord. 90-5, passed 8-30-90; Am. Ord. passed 9-25-01, Am. Ord. 2020-29, passed 8-10-2020).

§154.06 DISCLAIMER OF LIABILITY

(A) The degree of protection required by this chapter is considered reasonable for regulatory purposes and is based on historical records, engineering and scientific methods of study.

(B) Larger storms may occur or stormwater runoff depths may be increased by manmade or natural causes. This chapter does not imply that land used permitted will be free from stormwater damage. This chapter shall not create liability on the part of the county or any officer or employee thereof for any damage which may result from reliance on this chapter or on any administrative decisions lawfully made thereunder. (Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99)

§154.07 VIOLATIONS

(A) Continuing Violations: A separate offense shall be deemed to occur for each day a violation of this chapter continues to exist.

(B) Notice of Violation. The County Engineer on behalf of the Plan Commission shall inform the owner in writing when a violation has been found. The notice to correct will include a description of the violation, the action necessary to be taken by the violator in order to correct the violation, the reasonable time to be allowed for the correction of the violation, the amount of fines per day which will accrue and be owed by the violator if the violation is not corrected, and the procedure available to the violator to appeal the determination of the County Engineer that a violation exists.

(C) Appeal of Notice of Violation. The person or entity receiving a notice of violation has the right to appeal the County Engineer's determination to the Plan Commission. In order to

appeal the determination, the person must file a written appeal with the Secretary of the Commission a statement which states all facts which supports the appeal. This statement must be mailed or delivered to the Secretary within ten (10) days of the receipt of the notice of violation. If the person or entity receiving the notice of violation fails to file a timely appeal, the person or entity is deemed to have waived the right to appeal and to have admitted the violation.

(D) Hearing on Appeal. Upon receipt of a timely filed appeal, the Secretary of the Commission will notify the Commission President of such receipt, and the President will schedule a public hearing on the appeal and conduct the appeal hearing within 30 days of the receipt of the timely filed appeal. The Secretary will provide written notice of the hearing to the party filing the appeal and to the County Engineer. At the hearing, the party appealing the notice of violation may be represented by an attorney, may present evidence which supports the appeal, and may present any legal authority in support of the appeal. After the party filing the appeal concludes this presentation, the County Engineer will be afforded the opportunity to respond to the appeal and present evidence and authority supporting the County Engineer's determination that a violation exists or existed at the time of the issuance of the notice. The Commission will make findings and conclusions supporting its decision on the appeal within 10 days of the hearing, and the Secretary of the Commission will mail copies of its decision to the party appealing the determination and to the County Engineer.

(E) Appeal of Commission: The party filing the appeal may appeal the decision of the Commission by filing with a court of competent jurisdiction a petition for review within 30 days of the party's receipt of the Commission's decision.

(F) Fine Citation. If the person receiving the notice of violation does not correct the violation, the County Engineer will mail to the violator a fine citation which states the fine due from the violator. The fine is payable to Montgomery County and is due within 30 days of the date of the citation.

(G) Fines. For each violation of this Chapter, the violator is subject to fine in the amount of \$100 per day.

(H) Enforcement. The County Engineer will have the right to file a case for the collection of any and all unpaid fines. In addition, the Surveyor will have the right to issue a stop-work order, obtain injunctive relief in order to prevent the continuing violation of this Chapter, and to obtain any and all other legal relief provided for by Indiana law in order to enforce this Chapter. In addition, in the event that the County Engineer incurs expenses for court costs and/or attorney's fees for the enforcement of this Chapter, the violator will be liable for such court costs and/or attorney's fees.

(I) Other Remedies. Nothing herein shall prevent the county from taking other lawful action to prevent or remedy any violations. All costs connected therewith shall be charged to the person or persons responsible.

(Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99, Am. Ord. 2020-29, passed 8-10-2020).

§154.08 RESERVED

§154.09 FEES

(A) All plans for development, construction, extensions, additions, parking lots, ponds, dams, levees, and other improvements must be evaluated for storm water impact and approved by the County Engineer prior to the issuance of a location improvement permit.

(B) The following user fees shall take effect upon adoption and publication of notice of the adoption in accordance with the law:

(1) Site trip review to see if the impact will require that a plan be submitted, (dimensioned site plan showing existing structures, streams, drainage tile, well and septic and the proposed changes is required): \$40.

(2) Additional trips required because of changes or incomplete information: \$30.

(3) Plan reviews for plans submitted for approval by the Commission:
The amount charged to the Commission or County Engineer by a professional engineer to review or, if reviewed by the County Engineer the amount equal to the time required for the review multiplied by \$100 per hour.

(C) All fees must be paid in full before a location improvement permit can be issued.
(Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99, Am. Ord. 2020-29, passed 8-10-2020).

DRAINAGE CONTROL POLICY

§154.20 POLICY

(A) It is recognized that the smaller streams and drainage channels serving the county may not have sufficient capacity to receive and convey stormwater runoff resulting from continued urbanization. Accordingly, the storage and controlled release rate of excess stormwater runoff shall be required for any development, redevelopment and new construction located within the county.

(B) The Commission, after thorough investigation and evaluation, may waive the requirement of controlled runoff for minor subdivisions and parcelization.

(C) The release rate of stormwater from developments, redevelopments, and new construction is defined in Section 154.60, Determination of Storage Volume, Methods (B)(8) and (9), and the Plan Commission has the authority to increase or decrease the release rates.

(D) The developer must submit to the Commission, detailed computations of runoff before and after development, redevelopment or new construction which demonstrate that runoff will not be increased.

(E) These computations must show that the peak runoff rate after development for the 100-year return period storm of critical duration must not exceed the rates as defined in Section 154.60, Determination of Storage Volume, Methods (B)(8) and (9). The Plan Commission has the authority to increase or decrease these rates. The critical duration storm is that storm duration that requires the greatest detention storage.

(F) Computations for areas of ten (10) acres or more will be based upon the National Resources Conservation Service (NRCS) Curve Number Method for determining runoff rate and sizing storm water storage. Computations for areas less than ten (10) acres will be use the Rational Method for determining runoff rate and sizing storm water storage. Project area means the entire area of the parcel (not just the disturbed area). For areas larger than ten (10) acres, hydrograph techniques and/or computer drainage modeling methods may be used.

(G) Hydrograph techniques and computer modeling methods used to determine stormwater runoff shall be proven methods, subject to approval of the Plan Commission.

(Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99, Am. Ord. 2020-29, passed 8-10-2020).

§154.21 PERMITS FOR CONSTRUCTION

(A) Chapter 318 of the Acts of 1945, as amended, Sections 17 and 19, require the Indiana Department of Natural Resources approval of any construction in a floodway, and of any works for flood control. This includes bridges, dams, levees, dikes, floodwalls, wharves, piers, dolphins, booms, weirs, bulkheads, jetties, groins, excavations, fills or deposits of any kind, utility lines or any other building, structure or obstruction.

(B) Also, any ditch work (new construction, deepening or modification) within one-half mile of a public freshwater lake of ten acres or more in area.

(C) The approval of the Indiana Department of Natural Resources (IDNR), in writing, must be obtained before beginning construction.

(1) Applications for approval should be submitted to the IDNR Division of Water.

(2) All applications should be made on the standard application form provided by the IDNR and should be accompanied by plans, profiles, specifications and other data necessary for the IDNR to determine the effect of the proposed construction upon the floodway and on flood control in the state.

(3) Application made to and approved granted by the IDNR does not in any way relieve the owner of the necessity of security easements or other property rights, and

permits and/or approvals from affected property owners and local, state and federal agencies.

(D) The Montgomery County Floodplain Administrator is available to discuss and offer suggestions regarding requirement sin the design of structures in floodways. High water marks have been set on many of the streams in the state, and information is available from the Administrator on actual and/or potential flooding. Information regarding bench marks set to Mean Sea Level Datum, General Adjustment of 1929, is available from the Montgomery County Surveyor's Office.

(E) Applications are considered by the Plan Commission at regular meetings usually held each month. After the application and plans have been approved by the Plan Commission, a certificate of approval is forwarded to the applicant.

(F) A fee is charged by the Plan Commission for approvals under the Flood Control Act. Unless stated otherwise in the approval, construction is considered to be a permanent development and no renewals of the approval are necessary, except in the cases where temporary approvals are granted for temporary construction. The right is reserved to require additional data where necessary.

(Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99, Am. Ord. 2020-29, passed 8-10-2020).

§154.22 INFORMATION REQUIREMENTS

(A) *Submission Required.* As provided in divisions (B) through (G), the information and data provided by a state-licensed professional engineer or land surveyor engaged in storm drainage design shall be submitted to the Board at the time of application for a building permit for any development, redevelopment or new construction on real estate which lies within the regulated area.

(B) *Topographic and Soils Map.* A soils map of the proposed development indicating soils names and their hydrologic classification must be provided when Soil Conservation Service (SCS) hydrologic methods are used. In addition, a topographic map of the land to be subdivided and adjoining land whose topography may affect the layout or drainage of the development must be provided. The contour intervals shall be one foot when slopes are less than 5% and shall be two feet when the slope exceeds 5%. On this map, the following shall be shown:

- (1) The location of streams and other floodwater runoff channels, the extent of the floodplains at the established 100-year flood elevation where available, regulatory floodway and the limits of the floodway, all properly identified;
- (2) The normal shoreline of lakes, ponds, swamps and detention basins, their floodplains and lines of inflow and outflow, if any;

- (3) The location of regulated drains, farm drains, (if provided by the land owner) storm sewer inlets and outfalls;
- (4) Underground and overhead utilities, sanitary and combined;
- (5) Septic tank and perimeter drains, outlets, if any of record with the Montgomery County Health Department, or as otherwise known to applicant; and
- (6) Seeps, springs, flowing and other wells that are visible or of record.

(C) *Preliminary Drainage Plan.* A comprehensive plan, in preliminary form (or in combined preliminary and final form), designed to handle safely the stormwater runoff and to detain the increased stormwater runoff must be provided. The plan shall provide or be accompanied by maps or other descriptive materials indicating the feasibility of the drainage plan and showing the following:

- (1) The extent and area of each watershed affecting the design of detention facilities and provide a vicinity map which geographically locates project area within the county;
- (2) The preliminary layout and design of proposed storm sewers, the outfall and outlet locations and approximate elevations, the receiving stream or channel and its 100-year return period water elevation;
- (3) The location and design of proposed street systems used to convey or temporarily store overflow from the heavier rainstorms and the outlets for the overflow;
- (4) The locations, cross-sections and profiles of existing streams and floodplains to be maintained and new channels to be constructed;
- (5) The materials, elevations, waterway openings and the basis for design of proposed culverts and bridges;
- (6) Existing detention ponds and basins to be maintained, enlarged or otherwise altered and new ponds or basins to be built and the basis of their design. A professional engineer shall provide documentation that existing detention pond control structure (embankments) have been constructed according to current standards of engineering practices;
- (7) The estimated depth and amount of storage required in the new ponds or basins;
- (8) The estimated location and percentage of impervious surfaces existing and expected to be constructed when the development is completed; and

(9) Any interim plan which is to be incorporated into the development pending completion of the development and the final drainage plan.

(D) *Valley Cross Section.* One or more typical cross-sections must be provided showing all existing and proposed channels or other open drainage facilities carried to a point above the 100-year high water elevation showing the elevation of the existing land and the proposed changes thereto, together with the high water elevations expected from the 100-year storm under the controlled conditions called for by this chapter and showing the relationship of structures, streets and other facilities.

(E) *Site Plan.* A plan drawn to scale showing dimensions of the site with existing and proposed storm drainage facilities must be provided.

(F) *Final Drainage Plans.* Upon approval of the preliminary drainage plans by the Plan Commission, final drainage plans shall be submitted to the Commission. The final plans shall provide or be accompanied by calculations, maps and/or other descriptive material showing the following:

- (1) The extent and area of each watershed tributary to the drainage channels in the development;
- (2) The street storm sewers and other storm drains to be built, the basis of their design, outfall and outlet locations and elevations, the receiving stream or channel and its high-water elevation, and the functioning of the drains during high water conditions;
- (3) The parts of the proposed street system where pavements are planned to be depressed sufficiently to convey or temporarily store overflow from storm sewers and over the curb runoff resulting from the heavier rainstorms and the outlets for the overflow;
- (4) Existing streams and floodplains to be maintained and new channels to be constructed their locations, cross-section and profiles;
- (5) Proposed culverts and bridges to be built, their materials, elevations, waterway openings and basis of their design;
- (6) Existing detention basins and ponds to be maintained, enlarged or otherwise altered and new basins or ponds to be built and the basis of their design;
- (7) The estimated location and percentage of impervious surfaces existing and expected to be constructed when the development is completed;
- (8) The slope, type and size of all sewers and other waterways;

(9) For all detention basins, a plot or tabulation of storage volumes with corresponding water surface elevations and a plot or tabulation of the basin outflow rates for those water surface elevations; and

(10) In all platted residential and commercial/industrial developments, the owner will provide a twenty-foot (20') drainage easement along the subdivision perimeter, along the rear yards, storm sewer between lots of all lots which are not along the perimeter and centered along all storm sewers within development. These easements will be shown on the plans and secondary plat. Storm sewers larger than 42-inches may require a larger easement width and shall be determined by the Montgomery County Engineer. A 50-foot drainage easement shall be provided beyond the top of the bank of all stormwater detention/retention ponds. The purpose of the drainage easement is to allow the Montgomery County Drainage Board to maintain or replace the proposed infrastructure.

(G) *Submittal; Consideration of Plans.*

(1) Preliminary and final drainage plans and/or construction plans shall be submitted to the Plan Commission 20 days prior to their regularly scheduled meeting. All preliminary plans, final plans and/or construction plans in compliance with the standards of this chapter shall be approved by the Commission. The Commission and/or the County Engineer shall stamp the approval on a copy of the plans and deliver the same to the applicant. The Commission shall approve or disapprove any preliminary plans, final plans and/or construction plans within 60 days of submission unless the applicant consents to a continuance or extensions.

(2) All approvals and disapprovals with written reasons shall be incorporated into the Commission minutes. The County Engineer and the County Surveyor having the authorization to review engineering summaries of projects and based upon the same grant exemptions from any and all requirements of this chapter and/or waive any requirements of this chapter. Any applicant may appeal the decision of the Engineer and/or Surveyor to the Commission which shall also be authorized to grant exemptions from any and all requirements of this chapter and/or waive any requirements of this chapter at its discretion. (Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99, Am. Ord. 2020-29, passed 8-10-2020).

§154.23 DETERMINATION OF RUNOFF QUANTITIES

(A) Runoff quantities shall be computed for the area of the parcel under development plus the area of the watershed flowing into the parcel under development.

(B) The quantity of runoff which is generated as the result of a given rainfall intensity may be calculated as follows:

(1) (a) For areas up to and including 10 (10) acres, the rational method maybe used. In the rational method, the peak rate of runoff, Q , in cubic feet per second is computed as:

$$Q = CIA$$

(i) C equals runoff coefficient, representing the characteristics of the drainage area and defined as the ratio of runoff to rainfall.

(ii) I equals average intensity of rainfall in inches per hour for a duration equal to the time of concentration (tc) for a selected rainfall frequency.

(iii) A equals tributary drainage area in acres. Guidance to selection of the runoff coefficient “ C ” is provided by the first table below, which show values for different types of surface and local soil characteristics.

(b) The composite “ C ” value used for a given drainage area with various surface types shall be the weighted average value for the total area calculated from a breakdown of individual areas having different surface types.

(c) The second table below provides runoff coefficients and inlet times for different land use classifications. In the instance of undeveloped land situated in an upstream area, a coefficient or coefficients shall be used for this area in its present or existing state of developments.

<i>Urban Runoff</i>	
<i>Type of Surface</i>	<i>Runoff Coefficient "C"</i>
Asphalt	0.82
Concrete	0.85
Roof	0.85
<i>Lawns (Sandy):</i>	
Flat (0-2%)	0.07
Rolling (2-7%)	0.12
Steep (greater than 7%)	0.17
<i>Lawns (Clay):</i>	
Flat (0-2%)	0.16
Rolling (2-7%)	0.21
Steep (greater than 7%)	0.30
<i>Woodland (Sandy):</i>	
Flat (0-5% Slope)	0.10
Rolling (5-10% Slope)	0.25
Steep (greater than 10%)	0.30
<i>Woodland (Clay):</i>	
Flat	0.30
Rolling	0.35
Steep	0.50
<i>Pasture (Sandy):</i>	
Flat	0.10
Rolling	0.16
Steep	0.22
<i>Urban Runoff</i>	
<i>Type of Surface</i>	<i>Runoff Coefficient "C"</i>
<i>Pasture (Clay):</i>	
Flat	0.30
Rolling	0.36
Steep	0.42
<i>Cultivated (Sandy):</i>	
Flat	0.30
Rolling	0.40
Steep	0.52
<i>Cultivated (Clay):</i>	
Flat	0.50
Rolling	0.60
Steep	0.72

NOTES TO TABLE:

The coefficients of this tabulation are applicable to storms of five- to ten-year frequencies.

Coefficients for less frequent higher intensity storms shall be modified as follows:

<u>Return Period (years)</u>	<u>Multiply "C" by</u>
25	1.1
50	1.2
100	1.25

Land Use and Typical Inlet Times

<i>Land Use</i>	<i>Runoff Coefficients</i>			<i>Inlet Times (minutes)</i>
	<i>Flat</i>	<i>Rolling</i>	<i>Steep</i>	
Commercial (CBD)	0.75	0.83	0.91	5
Commercial (Neighborhood)	0.54	0.60	0.66	5 – 10
Industrial	0.63	0.70	0.77	
Garden Apartments	0.54	0.60	0.66	
Churches	0.54	0.60	0.66	
Schools	0.31	0.35	0.39	10 - 15
Semi-Detached Residential	0.45	0.50	0.55	
Quarter-Acre Lots	0.36	0.40	0.44	
Half-Acre Lots	0.31	0.35	0.39	
Parkland	0.18	0.20	0.22	TBC

NOTES TO TABLE:

Flat terrain 0-2% slopes.

Rolling terrain 2-7% slopes.

Steep terrain greater than 7% slopes.

Interpolation, extrapolation and adjustment for local conditions shall be based on engineering experience and judgment.

The coefficients of this tabulation are applicable to storms of five- to ten-year frequencies.

Coefficients for less frequent higher intensity storms shall be modified as follows:

<u>Return Period</u>	<u>Multiply "C" by</u>
25	1.1
50	1.2
100	1.25

(d) Rainfall intensity shall be determined from the rainfall frequency curves shown in § 1 of the appendix to this chapter or from data shown in § 154.58(B). The time of concentration (tc) to be used shall be the sum of the inlet time and flow time in the drainage facility from the most remote part of the drainage area to the point under consideration. The flow time in the storm sewers may be estimated by the distance in feet divided by velocity of flow in feet per second. The velocity shall be determined by the Manning Formula. Inlet time is the combined time required for the runoff to reach the inlet of the storm sewer. It includes overland flow time and flow time through established surface drainage channels such as swales, ditches and sheet flow across such areas as lawns, fields and other graded surfaces. It may be computed by using § 2 of the appendix to this chapter.

(2) The runoff rate for areas in excess of 200 acres shall be determined by methods described herein.

(Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99)

§154.24 AMOUNT TO BE ACCOMMODATED

Various parts of drainage facility must accommodate runoff water as follows:

(A) The minor drainage system such as inlets, catch basins, street gutters, swales, sewers and small channels which collect stormwater must accommodate peak runoff as defined in Section 154.60, Determination of Storage Volume, Methods (B)(8) and (9). Rainfall duration shall be equal to the time of concentration or one hour if the time of concentration is less than one hour. A first quartile storm distribution shall be used for computer modeling. The following additional requirements must be satisfied:

(1) Open channels carrying peak flows greater than 30 cubic feet per second shall be capable of accommodating peak runoff for a 50-year return period storm within the drainage easement.

(2) Culverts shall be capable of accommodating peak runoff from a 50-year return period storm when crossing under a road which is part of the State Department of Highways rural functional classification system and are classified as principal or minor arterial, major or minor collector roads.

(3) Temporary water storage will not be permitted on any local street or road, except by special exception of the Plan Commission.

(4) The lowest floor elevations of all living units, open vents in crawl space, windows in basements, commercially or industrially used buildings, shall be such that all floors including basements shall two feet of freeboard above the 100-year flood elevation or at the, flood protection grade. A flood route shall be shown on the construction plans.

(B) Major drainage systems are defined herein and shall be designed in accordance with State Department of Natural Resources Standards, as described herein.

(Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99, Am. Ord. 2020-29, passed 8-10-2020).

DESIGN STANDARDS

§154.35 GENERAL DESIGN

All storm sewers subject to this chapter shall conform to the design standards and other requirements contained herein.

(Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99, Am. Ord. 2020-29, passed 8-10-2020).

§154.36 MANNING EQUATION

(A) The hydraulic capacity of storm sewers shall be determined using Manning's Equations:

$$V = 1.486(2/3)(1/2) N(R)(S)$$

(1) **V** equals mean velocity of flow in feet per second.

(2) **R** equals the hydraulic radius in feet.

(3) **S** equals the slope of the energy grade line in feet per foot.

(4) **n** equals roughness coefficient.

(B) The hydraulic radius, **R**, is defined as the cross-sectional area of flow divided by the wetted flow surface or wetted perimeter. Typical "n" values and maximum permissible velocities for storm sewer materials are listed herein. Roughness coefficient "n" values for

other sewer materials can be found in standard hydraulics texts and references. (Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99)

§154.37 MINIMIZE SIZE

The minimum size of all storm sewers shall be 12 inches. The rate of release for detention storage shall be controlled by an orifice plate or other devices, subject to approval of the Plan Commission, where the 12-inch pipe will not limit rate of release as required. Minimum and Maximum slopes shall be those capable of producing velocities of between 2.5 and 10 feet per second, respectively, when the sewer is flowing full. A minimum of two (2) feet of vertical separation between storm and sanitary sewer is required. When the vertical separation distance is not possible, the sanitary sewer must be encased in concrete or ductile steel within five (5) feet, each side, of the crossing centerline.

(Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99, Am. Ord. 2020-29, passed 8-10-2020).

§154.38 GRADE

(A) Sewer grade shall be such that, in general, a minimum of two feet of cover is maintained over the top of the pipe.

(B) Pipe cover less than the minimum may be used only upon approval of the Plan Commission. Uniform slopes shall be maintained between inlets, manholes and inlets to manholes.

<i>Typical Values of Manning's</i>		
<i>Material</i>	<i>Manning's</i>	<i>Desirable Maximum Velocities</i>
Closed Conduits:		
Concrete	0.013	15 f.p.s.
Vitrified	0.013	15 f.p.s.
Brick	0.015	15 f.p.s.
Cast Iron	0.013	15 f.p.s.

Circular Corrugated Metal Pipe, Annular Corrugations 2 2/3 x 1/2 inches:		
Unpaved	0.024	7 f.p.s.
25% paved	0.021	7 f.p.s.
50% paved	0.018	7 f.p.s.
100% paved	0.013	7 f.p.s.
Circular Corrugated Metal Pipe, Helical, 2 2/3 x 1/2 inches; Unpaved Corrugations;		
12 inches	0.011	
18 inches	0.013	
24 inches	0.015	
36 inches	0.018	
48 inches	0.020	
60 inches or larger	0.021	
Corrugated polyethylene smooth interior pipe	0.012	15 f.p.s.
Concrete culverts	0.013	
Open Channels:		
Concrete, trowel finish	0.013	
Concrete, broom or float finish	0.015	
Gunite	0.018	
Riprap placed	0.030	
Riprap dumped	0.035	
Gabion	0.028	
New earth (uniform, sodded, clay)	0.025	
Existing earth (fairly uniform With some weeds)	0.030	
Dense growth of weeds	0.040	
Dense weeds and brush	0.040	
Swale with grass	0.035	

(Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99, Am. Ord. 2020-29, passed 8-10-2020).

§154.39 ALIGNMENT

(A) Storm sewers shall be straight between storm manholes and inlet structures.

(Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99, Am. Ord. 2020-29, passed 8-10-2020).

§154.40 MANHOLES

(A) Manholes shall be installed to provide access to continuous underground storm sewers for the purpose of inspection and maintenance. Manholes shall be provided at the following locations:

- (1) Where two or more storm sewers converge;
- (2) Where pipe size changes;
- (3) Where an abrupt change in alignment occurs;
- (4) Where a change in grade occurs; and/or
- (5) At suitable intervals in straight sections of sewer.

(B) The maximum distance between storm sewer manholes sections of sewer.

<i>Size of Pipe</i>	<i>Maximum Distance</i>
12 inches through 42 inches	400 feet
48 inches and larger	600 feet

(Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99, Am. Ord. 2020-29, passed 8-10-2020).

§154.41 INLETS

(A)(1) Inlets or drainage structures shall be utilized to collect surface water through grated openings and convey it to storm sewers, channels or culverts.

(2) Inlet design and spacing shall be in accordance with § 7-400 of the Indiana Department of Transportation's Road Design Manual Volume 1 or other approved design procedure. The inlet grate openings provided must be adequate to pass the design ten (10) year flow with 50% of the sag inlet areas clogged.

(B) An overload channel from sag inlets to the overflow channel or basin shall be provided at sag inlets, so that the maximum depth of water that might be ponded in the street sag shall not exceed six inches.

(Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99, Am. Ord. 2020-29, passed 8-10-2020).

§154.42 WORKMANSHIP AND MATERIALS

(A) The specifications for the construction of storm sewers shall not be less stringent than those set forth in the latest edition of the Indiana Department of Transportation's Standard Specifications. Additionally, ductile iron pipe shall be laid in accordance with American Society of Testing Materials (ASTM) C-12.8.

(B) Storm sewer manholes and inlets shall be constructed of masonry, cast in place concrete or precast reinforced concrete. Material and construction shall conform to Indiana Department of Transportation's Standard Specifications, § 720. Pipe and fittings used in storm sewer construction shall be extra-strength clay pipe (ASTM C-700), ductile iron pipe (AWWA C-151), or concrete pipe (ASTM C-76). Other pipe and fittings not specified herein may be used only when specifically authorized by the Commission. Pipe joints shall be flexible and watertight and shall conform to the requirements of § 715.02 of the latest edition of the Indiana Department of Transportation's Standard Specifications. All storm sewers within the public right-of-way will be concrete or corrugated metal pipe and able to handle HS-20 loading. The minimum size of a storm sewer is 12 inches.

(C) (1) Special hydraulic structures required to control the flow of water in storm runoff drainage systems include junction chambers, drop manholes, inverted siphons, stilling basins and other special structures.

(2) The use of these structures shall be limited to those locations justified by prudent planning and by careful and thorough hydraulic engineering analysis.

(Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99, Am. Ord. 2020-29, passed 8-10-2020).

§154.43 OPEN CHANNELS

(A) All open channels subject to this chapter, whether private or public and whether constructed on private or public land, shall conform to the design standards and other design requirements contained herein.

(B) The waterway for channels shall be determined using Manning's Equation.

$$Q = AV = \underline{A1.486} (2/3)(1/2) N(R)(S)$$

(1) **A** equals waterway area of channel in square feet.

(2) **Q** equals discharge in cubic feet per second (cfs).

(3) **V, R, S** and **N** are explained herein.

(C) The required channel cross-section and grade are determined by the design capacity, the material in which the channel is to be constructed, and the requirements for maintenance. A minimum depth may be required to provide adequate outlets for subsurface drains, tributary ditches or streams. The channel grade shall be such that the velocity in the channel is high enough to prevent siltation but low enough to prevent erosion. Velocities less than one and one-half feet per second should be avoided because siltation will take place and ultimately reduce the channel cross-section. The maximum permissible velocities in vegetal-

lined channels are shown herein. Developments through which the channel is to be constructed must be considered in design of the channel section. Earthen channel side slopes shall be no steeper than three to one. Flatter slopes may be required to prevent erosion and for ease of maintenance.

(D) Where channels will be lined, side slopes shall be no steeper than one and one-half to one with adequate provision made for weep holes. Side slopes retaining wall shall be designed and constructed with provisions for live and dead load surcharge.

<i>Maximum Permissible Velocities in Vegetal-Lined Channels</i>			
<i>Cover</i>	<i>Slope Range (2%)</i>	<i>Permissible Velocity</i>	
		<i>Erosion Resistant Soils (feet per second)</i>	<i>Easily Eroded Soils (feet per Second)</i>
Bermuda grass	0 – 5	8	6
	5 – 10	7	5
	Over 10	6	4
Bahia			
Buffalo grass	0 – 5	7	5
Kentucky bluegrass			
Smooth brome	5 – 10	6	4

Bluegrass	Over 10	5	3
Grass mixtures	0 – 5	5	4
Reed canary grass	5 – 10	4	3
Lespedeza Sericea			
Weeping love grass			
Yellow bluestem			
Redtop			
Alfalfa			
Red fescue	0 – 5	3.4	2.5
Common		(5)	
Lespedeza(4)			
Sudangrass (4)	0 – 5	3.5	2.5

NOTES TO TABLE:

Use velocities exceeding five feet per second only where good covers and proper maintenance can be obtained.

Do not use on slopes steeper than 10%, except for vegetated side slopes in combination with stone, concrete or highly resistant vegetative center section.

Do not use on slopes steeper than 5%, except for vegetated side slopes in combination with stone, concrete or highly resistant vegetative center section.

Annuals use on mild slopes or as temporary protection until permanent covers are established.

Use on slopes steeper than 5% is not recommended.

(E) (1) Characteristics of a stable channel are:

- (a) It neither aggrades nor degrades beyond tolerable limits.
- (b) The channel banks do not erode to the extent that the channel cross-section is changed appreciably.
- (c) Excessive sediment bars do not develop.
- (d) Excessive erosion does not occur around culverts, bridges or elsewhere.
- (e) Gullies do not form or enlarge due to the entry of uncontrolled surface flow to the channel.

(2) Channel stability shall be determined for an aged condition and the velocity shall be based on the design flow or the bank full flow, whichever is greater, using "n" values

for various channel linings as shown herein. In no case is it necessary to check channel stability for discharges greater than that from a 100-year period storm.

(3) Channel stability must be checked for conditions immediately after construction. For this stability analysis, the velocity shall be calculated for the expected flow from a ten-year return period storm on the watershed, or the bank full flow, whichever is smaller. The "n" value for new constructed channels in fine-grained soils and sands may be determined in accordance with the National Engineering Handbook 5, Supplement 8, Soil Conservation Service and shall not exceed 0.025. The allowable velocity in the newly constructed channel may be increased by a maximum of 20% to reflect the effects of vegetation to be established under the following conditions:

- (a)** The soil and site in which the channel is to be constructed are suitable for rapid establishment and support of erosion controlling vegetation;
- (b)** Species of erosion controlling vegetation adapted to the area and proven methods of establishment are shown; and
- (c)** The channel design includes detailed plans for establishment of vegetation on the channel side slopes.

(F) Vegetated waterways that are subject to low flows of long duration or where wet conditions prevail shall be drained with a tile system or by other means such as paved gutters. The lines may be outlet through a drop structure at the end of the waterway or through a standard tile outlet.

(G) **(1)** When the Plan Commission or Board determines it is necessary to establish a new regulated drain, each developer must provide the necessary information and meet the requirements of the 1965 State Drainage Code, as amended, for the establishment of a new regulated drain.

(2) The Commission or Board shall determine the necessary easements for adequate maintenance of any new regulated drain.

(H) **(1)** The design of channels will provide all structures required for the proper functioning of the channel and the laterals thereto and travel ways for operation and maintenance.

(2) Recessed inlets and structures needed for entry of surface and subsurface flow into floodway.

(Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99, Am. Ord. 2020-29, passed 8-10-2020).

§154.44 CONSTRUCTION AND MATERIALS

(A) Specifications shall be in keeping with the current standards of engineering practice and shall describe the requirements for proper installation of the project to achieve its intended purpose.

(B) Materials acceptable for use as channel lining are:

(1) Grass;

(2) Revetment riprap;

(3) Concrete;

(4) Hand-laid riprap;

(5) Precast cement concrete riprap;

(6) Grouted riprap; and

(7) Gabions.

(C) **(1)** Spoil material resulting from clearing, grubbing and channel excavation shall be disposed in a manner which will:

(a) Minimize over bank wash;

(b) Provide for the free flow of water between the channel and floodplain unless the valley routing and water surface profile are based on continuous dikes being installed;

(c) Not hinder the development of travel ways for maintenance;

(d) Leave the right-of-way in the best condition feasible, consistent with the project purposes, for productive use by the owner;

(e) Improve the aesthetic appearance of the site to the extent feasible; and

(f) Be approved by the IDNR, IDEM, or US Army Corps of Engineers (whichever is applicable) if deposited in the channels without significant erosion or degradation shall be included in the design of channel improvements. The design is also to provide the necessary flood gates, water level control devices and any other appurtenance affecting the functioning of the channels and the attainment of the purpose for which they are built.

(2) The effect of channel improvements on existing culverts, bridges, buried cables, pipelines and inlet structures for surface and subsurface drainage on the channel being improved and laterals thereto shall be evaluated to determine the need for modification or replacement. Culverts and bridges which are modified or added as part of channel improvement projects shall meet reasonable standards for the type of structure and shall have a minimum capacity equal to the design discharge or governmental agency design requirements, whichever is greater.

(3) Other lining materials shall receive specific approval of the Commission. Materials shall comply with the latest edition of the Indiana Department of Transportation's Standard Specifications. (Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99, Am. Ord. 2020-29, passed 8-10-2020).

STORMWATER DETENTION

§154.55 GENERAL DESIGN

The following shall govern the design of any improvement with respect to the detention of stormwater runoff.

(Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99)

§154.56. ACCEPTABLE METHODS

The increased stormwater runoff resulting from a proposed development shall be detained onsite by the provisions of appropriate detention or retention basins, parking lots, lawns or other acceptable techniques. Measures which further retard the rate of overland flow and the velocity in runoff channels may also be required to partially control the runoff rate. Detention basins shall be sized to store excess flows from storm with a 100-year return period. Control devices shall limit the discharge to a rate not greater than that prescribed by this chapter. (Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99)

§154.58 ALLOWABLE RELEASE RATE

(A) The allowable release rate of stormwater originating from a proposed development shall not exceed the amount specified herein. In the event the natural downstream channel or storm sewer system is inadequate to accommodate the release rate provided above, then the allowable release rate shall be reduced to that rate permitted by the capacity of the receiving downstream channel or storm sewer system and additional detention as determined by the Plan Commission shall be required to store that portion of the runoff exceeding the capacity of the receiving sewers or waterways.

(B) If more than one detention basin is involved in the development of the area upstream of the limiting restriction, the allowable release rate from any one detention basin shall be in

direct proportion to the ration of its drainage area to the drainage area of the entire watershed upstream of the restriction.

<i>Duration</i>	<i>Rainfall Depths (inches)</i>					
	2	5	10	25	50	100
5 min.	0.42	0.52	0.59	0.68	0.75	0.82
10 min.	0.64	0.79	0.91	1.04	1.15	1.25
15 min.	0.80	0.99	1.13	1.29	1.43	1.55
20 min.	0.95	1.17	1.34	1.53	1.70	1.85
30 min.	1.11	1.34	1.57	1.79	1.98	2.16
40 min.	1.23	1.52	1.74	1.99	2.20	2.40
50 min.	1.33	1.64	1.87	2.14	2.36	2.58
60 min.	1.40	1.73	1.97	2.26	2.49	2.72
1.5 hrs.	1.70	2.09	2.39	2.73	3.03	3.30
2 hrs.	1.71	2.11	2.41	2.76	3.05	3.33
3 hrs.	1.84	2.27	2.60	2.97	3.29	3.59
4 hrs.	2.06	2.54	2.90	3.31	3.67	4.00
5 hrs.	2.16	2.66	3.04	3.48	3.85	4.20
6 hrs.	2.22	2.74	3.13	3.58	3.96	4.32
7 hrs.	2.31	2.85	3.26	3.72	4.12	4.49
8 hrs.	2.35	2.90	3.32	3.79	4.20	4.58
9 hrs.	2.42	2.99	3.41	3.90	4.32	4.71
10 hrs.	2.49	3.07	3.51	4.01	4.44	4.84
12 hrs.	2.58	3.18	3.63	4.15	4.59	5.01
14 hrs.	2.66	3.29	3.76	4.30	4.75	5.18
16 hrs.	2.75	3.40	3.68	4.44	4.91	5.39
18 hrs.	2.82	3.48	3.98	4.55	5.03	5.49
20 hrs.	2.89	3.56	4.07	4.65	5.15	5.62
24 hrs.	3.00	3.70	4.23	4.83	5.35	5.83

<i>Rainfall Intensity (inches/hour)</i>						
<i>Duration</i>	<i>Return Period (years)</i>					
	2	5	50	25	50	100
5 min.	5.04	6.24	7.08	8.16	9.00	9.84
10 min.	3.84	4.74	5.46	6.24	6.90	7.50
15 min.	3.20	3.96	4.52	5.16	5.72	6.20
20 min.	2.85	3.51	4.02	4.59	5.10	5.55
30 min.	2.22	2.74	3.12	3.58	3.96	4.32
40 min.	1.85	2.28	2.61	2.99	3.30	3.60
50 min.	1.60	1.97	2.24	2.57	2.83	3.10
60 min.	1.40	1.73	1.97	2.25	2.49	2.72
1.5 hrs.	1.13	1.39	1.59	1.82	2.02	2.20
2 hrs.	0.86	1.06	1.21	1.38	1.53	1.67
3 hrs.	0.61	0.76	0.87	0.99	1.10	1.20
4 hrs.	0.52	0.64	0.73	0.83	0.92	1.00
5 hrs.	0.43	0.53	0.61	0.70	0.77	0.84
6 hrs.	0.37	0.46	0.52	0.60	0.66	0.72
7 hrs.	0.33	0.41	0.47	0.53	0.59	0.64
8 hrs.	0.29	0.36	0.42	0.47	0.53	0.57
9 hrs.	0.27	0.33	0.38	0.43	0.48	0.52
10 hrs.	0.25	0.31	0.35	0.40	0.44	0.48
12 hrs.	0.22	0.27	0.30	0.35	0.38	0.42
14 hrs.	0.19	0.24	0.27	0.31	0.34	0.37
16 hrs.	0.17	0.21	0.24	0.28	0.31	0.34
18 hrs.	0.16	0.19	0.22	0.25	0.28	0.31
20 hrs.	0.14	0.18	0.20	0.23	0.26	0.28
24 hrs.	0.13	0.15	0.18	0.20	0.22	0.24

(Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99, Am. Ord. 2020-29, passed 8-10-2020).

§154.59 DRAINAGE SYSTEM OVERFLOW DESIGN

Drainage system shall have adequate capacity to safely and adequately convey the stormwater runoff from all upstream tributary areas through the development under consideration for a storm of 100-year design return period calculated on the basis of the upstream land in its present state of development. An allowance, equivalent to the reduction in flow rate provided, shall be made for upstream detention when the upstream detention and release rate previously been approved by the Plan Commission or Board and evidence of its construction

can be shown. The overflow path area shall be shown on the construction documents and recorded plat as hatched area or another distinctive symbol.

(Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99, Am. Ord. 2020-29, passed 8-10-2020).

§154.60 DETERMINATION OF STORAGE VOLUME; METHODS

(A) For areas of 200 acres or less, the rational method may be used to determine the required volume of stormwater storage. The following eleven step procedure may be used to determine the required volume of storage. Other design methods may also be used, subject to approval of the Board, and as described herein.

- (1)** Determine total drainage area in acres “A;”
- (2)** Determine composite runoff coefficient “C” based on-existing land use (undeveloped);
- (3)** Determine time of concentration “tc” in minutes based on existing conditions;
- (4)** Determine rainfall intensity “I” in inches per hour, based on time of concentration and using data given herein for the three-year return period;
- (5)** Compute runoff based on existing land use (undeveloped):

$$Qu = CUIUA$$

- (6)** Determine composite runoff coefficient “Cd” based on developed conditions and a 100-year return period;
- (7)** Determine the 100-year return period rainfall intensity “Id” for various storm durations “td” up through the time of concentration for the developed area using information herein;
- (8)** Determine developed inflow rates “Qd” for various storm durations “td” measured in hours;

$$Qd = CdIdA$$

- (9)** Compute a storage rate “Std” for various storm durations “td” up through the time of concentration of the developed area; and

$$Std = Qd - Qu$$

- (10)** Compute required storage volume “Sr” in acre-feet for each storm duration “td” hours;

$$Sr = Std \quad (td/12)$$

(11) Select the largest storage volume computed in subsection (10) for detention basin design.

(12) The release rate of stormwater from developments, redevelopments, and new construction is defined in Section 154.60, Determination of Storage Volume, Methods (B)(8) and (9), and the Plan Commission has the authority to increase or decrease the release rates.

(B) Methods other than the rational method for determining runoff and routing of stormwater may be used to determine the storage volume required to control stormwater runoff. The procedures or methods used must receive the prior approval of the Board. The ILLUDAS, TR20 and TR-55 models are approved by the Board for appropriate use in analysis of the runoff and routing of stormwater. The use of these models or other approved procedures can be defined in a seven-step procedure to determine the required storage volume of the detention basin.

(1) Calibrate the hydrologic/hydraulic model that is to be used for prediction of runoff and routing of stormwater;

(2) For each storm duration listed herein, perform steps three through six;

(3) Determine the three-year, undeveloped peak flow. (Denote this flow by Q^3_u);

(4) Determine the 100-year runoff hydrograph (H^{100}_d) for developed conditions;

(5) Determine the hydrograph that must be stored (H^{100}_d) by subtracting a flow up to Q^3_u from the hydrograph (H^{100}_d) found in subsection (4);

(6) Determine the volume of water (V_5) to be stored by calculating the area under the hydrograph (H^{100}_d);

(7) The detention basin must be designed to store the largest volume (V_5) found for any storm duration analyzed in subsection (6);

(8) Retention/Detention systems will be designed to store the 10-year developed CN and have a release rate equal to 0.2 cubic feet per second (cfs) per acre of development; and

(9) Retention/Detention systems will be designed to store the 100-year developed CN and have a release rate equal to 0.4 Cfs per acre of development.

(Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99, Am. Ord. 2020-29, passed 8-10-2020).

§154.61 BASIN REQUIREMENTS

(A) Basins shall be constructed to detain temporarily the stormwater runoff which exceeds the maximum peak flow rate authorized by this chapter. The volume of storage provided in these basins, together with such storage as may be authorized in other on-site facilities shall be sufficient to control excess runoff from the 100-year storm. The following design principles shall be observed:

(1) The maximum volume of water stored and subsequently released at the design release rate shall not result in a storage duration in excess of 24 hours unless additional storms occur within the period.

(2) The maximum planned depth of stormwater stored (without a permanent pool) shall not exceed five (5) feet.

(3) All stormwater detention facilities shall be separated by not less than 50 feet from any building or structure to be occupied and if located within seventy-five (75) feet of a roadway or sidewalk must have a vehicular barrier in a design acceptable to the Commission. In addition, all detention facilities will have an emergency access ramp.

(4) All excavated excess soil may be spread so as to provide for aesthetic and recreational features such as sliding hills, sports fields and the like. Slopes no steeper than **four** horizontal to one vertical for safety, erosion control, stability and ease of maintenance shall be permitted.

(5) Safety screens having a maximum opening of four inches shall be provided for any pipe or opening to prevent children or large animals from crawling into the structures.

(6) All basins must be surrounded by a chain link fence surrounding its perimeter. The property owner of the basin may apply for a waiver of this requirement of the owner provide proof of liability insurance and executes an indemnity agreement in which the owner agrees to indemnify and hold Montgomery County, and its boards, officers, employees, and agents harmless from the liability for claims asserted by persons or other entities because of personal injury, death, property damages or other injury relating to the basin. Any such indemnity obligation will be permanent and will become an obligation of the owner of the land in perpetuity. In addition, any such indemnity obligation must appear as a covenant running with the land and be recorded in the Office of the Recorder of Montgomery County. The Commission, in its discretion, may grant or deny any such waiver request. As a condition of any approval of the waiver, the Commission may require the owner to post a performance bond in order to secure its faithful performance. Danger signs shall be mounted at appropriate locations to warn of deep water, possible flooding condition during storm periods, and other dangers that exist.

(7) Outlet control structures shall be constructed and locate 0.5 feet above an approved receiving ditch or storm sewer system and be designed to operate as simply as possible and shall require little to no maintenance and/or attention for proper operation. They shall limit discharges into existing or planned downstream channels or conduits so as not to exceed the predetermined maximum authorized peak flow rate.

(8) Emergency overflow facilities such as a weir or spillway shall be provided for the release of exceptional storm runoffs or in emergency conditions should the normal discharge devices become totally or partially inoperative. The overflow facility shall be of the design that its operation is automatic and does not require manual attention.

(9) Grass or other suitable vegetative cover shall be provided throughout the entire basin area. Grass should be cut regularly at approximately bi-monthly intervals during the growing season or as required.

(10) Debris and trash removal and other necessary maintenance shall be performed on a regular basis to assure continued operation in conformance to design.

(11) A report shall be submitted to the Commission describing the proposed development; the current land use conditions; the method of hydraulic and hydrologic analysis used, including any assumptions or special conditions; the results of the analysis; and the recommended drainage control facilities. Hydraulic and hydrologic calculations, including input and output files, shall be included as appendices to the report.

(12) The minimum size for a retention/detention restrictor is 4 inches.

(B) Detention basins which will not contain a permanent pool of water shall comply with the following requirements:

(1) Provisions shall be incorporated to facilitate complete interior drainage of detention basins, to include the provisions of natural grades to outlet structures, longitudinal and transverse grades to perimeter drainage facilities, paved gutters or the installation of subsurface drains.

(2) The detention basin shall, whenever possible, be designed to serve a secondary or multi-purpose function. Recreational facilities, aesthetic qualities (open spaces) or other types of use shall be considered in planning the detention facility.

(3) All detention basins will be designed and constructed with a flow line slope of 1.0%. Flow line slopes between 0.5% and 1.0% shall install a minimum of four-inch perforated under drain. The perforated under drain shall be constructed in a chevron pattern spaces on 30-foot centers across the bottom of the detention basin and shall be located at least one (1) foot below the bottom of the basin. The perforated under drain

will be connected to the detention basin outlet structure. If the flow line slope is less than 0.5%, a concrete paved ditch will be installed, and the paved ditch will be constructed in a chevron pattern spaced on 30-foot centers across the bottom of the basin.

(C) Since a retention basin by definition will contain a permanent pool of water, all the items required for detention storage shall apply except that the system of drains with a positive gravity outlet required to maintain a detention basin will not be required. A controlled positive outlet will be required to maintain the design water level in the retention basin and provide required detention storage above the design water level. However, the following additional conditions shall apply:

(1) Basins designed with permanent pools or containing permanent ponds shall have a water area of at least one-half acre, a minimum depth of eight (8) feet shall be maintained over at least 50% of the pond area, and a safety ledge which meets the requirements of subsection (3). If fish are to be maintained in the pond, a minimum depth of approximately ten feet shall be maintained over at least 25% of the pond area. The remaining pond area shall have no extensive shallow areas, except as required by division (C)(4) below.

(2) In excavated ponds, the underwater side slopes in the pond shall be stable. In the case of valley storage, natural slopes may be considered to be stable.

(3) A safety ramp exit from the pond is required in all cases and shall have a minimum width of 14 feet and exit slope to six horizontals to one vertical. The ramp shall be of a material that will prevent its deterioration due to vehicle use and/or wave action. Adequate access to the safety ramp shall be provided by locating it adjacent to the public right-of-way or by providing a clear route recorded within an access easement or a common area.

(4) Periodic maintenance is required in ponds to control weed and larval growth. The pond shall also be designed to provide for the easy removal of sediment which will accumulate during periods of pond operation. A means of maintaining the designed water level of the pond during prolonged periods of dry weather is also required.

(5) For emergency use, basin cleaning or shoreline maintenance, facilities shall be provided or plans prepared for auxiliary equipment to permit emptying and drainage.

(6) Facilities to enhance and maintain pond water quality shall be provided, if required to meet applicable water quality standards. Design calculations to substantiate the effectiveness of these aeration facilities shall be submitted with final engineering plans. Agreements for the perpetual operation and maintenance of aeration facilities shall be submitted with final engineering plans. Agreements for the perpetual operation

and maintenance of aeration facilities shall be prepared to the satisfaction of the Board. (Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99, Am. Ord. 2020-29, passed 8-10-2020).

(D) Standards for Peak Flow Control.

(1) In the design of detention ponds, route the on-site 10-year and 100-year in-flow hydrographs through the pond (with the initial elevation at normal pool) and size the main outlet to limit peak outflows to the allowable release rates. If an orifice will need to be used to limit outflow, use the actual orifice size needed to meet the release rate requirements, unless calculated diameter is less than 4 inches, in which case the minimum 4-inch orifice diameter will be used. The resulting maximum water surface elevation is to top peak flow control storage for on-site flows. If no off-site flows are routed through the detention facility, then this will be the pond's 100-year elevation and the emergency spillway invert elevation is set one (1) foot higher than the 100-year elevation.

(2) Off-site flows that are by-passes (no detention) through the site detention pond (rather than bypassed around the pond), should be routed through a separate outlet (such as drop inlet structure) with its control elevation set one (1) foot above the on-site 100-year pond elevation. The 100-year pond elevation is determined by routing the on-site and off-site 100-year inflow hydrographs through the pond. Ideally, a separate emergency spillway should be provided with an invert elevation set at the combined (on-site and off-site) 100-year ponding elevation. A less desirable option would be to route the off-site flows through the emergency spillway with the invert elevation set one (1) foot above the on-site 10-year ponding elevation. However, since this would result in water flowing over the emergency spillway more frequently, this option may require additional erosion control measures based upon the estimated frequency of use.

(E) Management of Off-Site Runoff. Runoff from all upstream, tributary areas (off-site land areas) may be bypassed around the retention/detention facility without attenuation. Such runoff may also be routed through the detention/retention facility provided that a separate outlet system is incorporated for the safe passage of such flows (i.e. not through the primary of an on-site detention facility). Note that the efficiency of the retention/detention facility in controlling on-site runoff may be severely affected if the off-site area is considerably larger than the on-site area. As a general guidance, on-line detention may not be effective in controlling on-site runoff where the ratio area to the on-site area is larger than 5:1. Additional detention (above and beyond that required for on-site area) may be required by the Montgomery County Engineer when the ratio of off-site area to on-site area is larger than 5:1.

(F) Downstream Restrictions. In the event the downstream receiving channel or storm water system is inadequate to accommodate the post-developed release rate, as determined by the Montgomery County Engineer or Montgomery County Surveyor, then the allowable release rate will be reduced to that rate permitted by the capacity of the receiving downstream channel or storm sewer system. Additional detention, as determined by the Montgomery County Engineer, will be required to store that portion of the runoff exceeding the capacity of the receiving sewers or waterways. When such downstream restrictions are suspected, the

Montgomery County Engineer may require additional analysis to determine the receiving system's limiting downstream capacity. If the proposed development makes up only a portion of the underdeveloped watershed upstream of the limiting restriction, the allowable release rate for the development shall be in direct proportion to the ratio of its drainage area to the drainage area of the entire watershed upstream of the restriction. As an alternative to reduction of the release rates, the Montgomery County Engineer may require the applicant to pursue alleviating downstream restrictions. The applicant would be responsible for obtaining all permits and consents required and for all expenses involved in such undertaking. (Am. Ord. 2020-29, passed 8-10-2020).

§154.62 PARKING LOT STORAGE

Paved parking lots may be designed to provide temporary detention storage of stormwater on all or a portion of their surfaces. Outlets will be designed so as to empty the stored waters slowly. Depth of storage must be limited to a maximum depth of six inches so as to prevent damage to parked vehicles and so that access to parked vehicles is not impaired. Ponding should, in general, be confined to those positions of the parking lots furthest from the area served. (Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99)

§154.63 FACILITY FINANCIAL RESPONSIBILITY

The construction cost of stormwater control systems and facilities as required by this chapter shall be accepted as part of the cost of land development. If general public use of the facility can be demonstrated, negotiations for public participation in the cost of such development may be considered.

(Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99)

§154.64 FACILITY MAINTENANCE RESPONSIBILITY

(A) Facility maintenance responsibility of detention/retention facilities during construction and thereafter, shall be the responsibility of the land developer/owner. Assignment of responsibility for maintaining facilities serving more than one lot or holding shall be documented by appropriate covenants to property deeds, unless responsibility is formally accepted by a public body, and shall be determined before the final drainage plans are approved.

(B) Stormwater detention and retention basins may be donated to the county or other unit government designated by the county, for ownership and permanent maintenance providing:

(1) The county or other governmental unit is willing to accept responsibility;

(2) The facility has been designed and constructed according to all applicable provisions of this chapter;

(3) All improvements have been constructed, approved and accepted by the county for

the land area served by the drainage basin;

(4) Retention ponds containing a permanent pool of water have all slopes between the riprap and high water line sodded and the remaining land area hydro seeded; are equipped with electrically driven aeration devices, if required to maintain proper aerobic conditions and sustain aquatic life; have a four-foot-wide crushed limestone walkway at the high water line entirely around the body of water; provide suitable public access acceptable to the responsible governmental agency; and have the high water line not closer than 75 feet to any property line; and

(5) Dry detention ponds shall have all slopes, bottom of the basin and area above the high water line hydro seeded and shall have the high-water line not closer than 50 feet to any development boundary. (Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99)

§154.65 INSPECTIONS

All public and privately owned detention and retention storage facilities may be inspected by representatives of the County not less than once every two years. A certified inspection report covering physical conditions, available storage capacity and operational condition of key facility elements will be provided to the owner.

(Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99)

§154.66 CORRECTIVE MEASURES

If deficiencies are found by the Inspector, the persons responsible for the detention/retention facility will be required to take the necessary measures to correct the deficiencies. If the persons responsible fail to do so, the county will undertake the work and collect from the persons responsible using lien rights, if necessary.

(Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99)

§154.67 JOINT DEVELOPMENT

Stormwater control systems may be planned and constructed jointly by two or more developers as long as compliance with this chapter is maintained. (Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99)

§154.68 INSTALLATIONS

(A) Runoff and erosion control system shall be installed as soon as possible during the course of site development. Detention/retention basins shall be designed with an additional 6% of available capacity to allow for sediment accumulation resulting from development and to permit the pond to function for reasonable periods between cleanings.

(1) Platted residential developments must include a perforated underdrain for each lot which connects to the sump pump(s). This underdrain system must be designed by an engineer and sized to handle anticipated flows. No sanitary sewage or garage floor drains or roof drains may be connected to the underdrain system. This underdrain system must connect to the subdivision storm water system. Perimeter septic system tile may connect to the perforated underdrain system with the approval of the Montgomery County Health Department. A professional engineer will design the perforated underdrain system to ensure that water will not back flow into the septic system.

(2) Platted residential developments must submit a report by a licensed geotechnical engineer which includes a determination of the anticipates ground water table. The engineer will recommend appropriate spacing for the soil borings, soil boring locations, soil profile, and ground water elevations will be shown on the recorded plat. The residential developer may request a waiver of this requirement as long as the recorded plat clearly states (bold text) “no soil borings were obtained for development). Ground water elevation determination and flow rates shall be the responsibility of the residential builder in sizing sump pump where the proposed structure includes a basement.”

(3) Platted residential developments must file an application with the Plan Commission and drainage Board and cooperate with the Plan Commission and Drainage Board in designating the storm water system for the subdivision, including retention basins, detention basins, storm sewers, storm inlets, manholes, and underdrains, to be a separate legal drain which is subject to the legal jurisdiction of the Drainage Board. The Board will determine the appropriate regulated drain rate for each development. No approvals may be granted for development and no permits may be issued until this designation has been approved by the Board.

(4) The owner will provide the Board and Commission with As-Built drawings of all storm water systems, including but not limited to all basins. These As-Built drawings must also be submitted to the Montgomery County Mapping Department in an electronic format consistent with the Mapping Department’s layering system. All storm water structures inverts must be constructed to within 0.083 feet of the approved construction documents. All stormwater detention/retention basins must be constructed to within 0.167 feet of the approved construction documents. Drainage systems may not be constructed below the drainage outlet for the development.

(5) Platted residential developments will provide a 100-year flood route. Residence finish floor and/or crawl space vents will be set a minimum of 1 foot above the 100-year flood route elevation.

(6) Platted residential developments will provide a 20-foot wide drainage easement along the perimeter of the subdivision and along all lot rear yards abutting another residential lot.

(7) Un-platted residential lots may not have impervious area exceeding 35%.

(B) Basins should be designed to collect sediment and debris in specific locations so that removal costs are kept to a minimum.

(Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99, Am. Ord. 2020-29, passed 8-10-2020).

§154.69 DETENTION FACILITIES IN FLOODPLAINS

If detention storage is provided within a floodplain, only the net increase in storage volume above that which naturally existed on the floodplain shall be credited to the development. No credit will be granted for volumes below the elevation of the regulatory flood at the location unless compensatory storage is also provided. (Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99)

§154.70 OFF-SITE DRAINAGE

When the allowable runoff is released in an area that is susceptible to flooding, the developer may be required to construct appropriate storm drains through the area to avert increased flood hazard caused by the concentration of allowable runoff at one point instead of the natural overland distribution. The requirement of off-site drains shall be at the discretion of the Plan Commission. (Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99, Am. Ord. 2020-29, passed 8-10-2020).

PLANS AND DETERMINATIONS

§154.80 CERTIFICATIONS REQUIRED

(A) After completion of the project and before final approval and acceptance can be made, a professionally prepared and certified “record set” of plans shall be submitted to the County Engineer and Commission for review.

(B) These plans shall include all pertinent data relevant to the completed storm drainage system and shall include:

(1) Pipe size and pipe material;

(2) Invert elevations;

(3) Top rim elevations;

- (4) Lengths of all pipe structures;
- (5) Data and calculations showing detention basin storage volume; and
- (6) Certified statement on plans stating the completed storm drainage system substantially complies with construction plans as approved by the Commission.

(C) All submitted plans shall be reviewed for compliance within 30 days after submission to the County Engineer and Commission. If notice of noncompliance is not given within 30 days of submission of the plans, the plans shall be construed as approved and accepted. (Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99, Am. Ord. 2020-29, passed 8-10-2020).

§154.81 CHANGES IN PLAN

Any revision, significant change or deviation in the detailed plans and specifications after formal approval by the Commission, and if a subdivision, also by the Board, shall be filed in duplicate with and approved by the Commission prior to implementation of the revision or change. Copies of the revisions or changes, if approved, shall be attached to the original plans and specifications. (Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99, Am. Ord. 2020-29, passed 8-10-2020).

§154.82 DETERMINATION OF IMPACT DRAINAGE AREAS

- (A) The Plan Commission is authorized, but is not required to classify certain geographical areas as impact drainage areas and to enact and promulgate regulations which are generally applied. In determining impact drainage areas, the Commission shall consider the factors as topography, soil type, capacity of existing regulated drains and distance from adequate drainage facility.
- (B) The following areas shall be designated as impact drainage areas, unless good reason for not including them is presented to the Commission:
 - (1) A floodway or floodplain, as designated by the Indiana Department of Natural Resources and/or Federal Emergency Management Agency (FEMA);
 - (2) Land within 75 feet of each bank of any regulated drain;
 - (3) Land within 75 feet of the centerline of any regulated drain tile; and
 - (4) Land where there is not an adequate outlet, taking into consideration the capacity

and depth of the outlet, may be designated as an impact drainage area by resolution of the Commission. Special requirements for development within any impact drainage area shall be included in the resolution (Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99, Am. Ord. 2020-29, passed 8-10-2020).

§154.83 SUMP PUMPS

(A) Sump pumps installed to receive and discharge groundwaters or other stormwaters shall be connected to a designated underdrain system as provided for in Section 154.68(A)(1).

(B) Sump pumps installed to receive and discharge floor drain flow or other sanitary sewage shall be connected to the sanitary sewers. A sump pump shall be used for one function only, either the discharge of stormwater or the discharge of sanitary sewage.

(Ord. 90-5, passed 8-30-90; Am. Ord. 2-16-99, Am. Ord. 2020-29, passed 8-10-2020).

§154.84 DOWNSPOUTS

All downspouts or roof drains shall discharge onto the ground or be connected to the storm sewer. No downspouts or roof drains shall be connected to the sanitary sewers or sump pump underdrain system. (Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99, Am Ord. 2020-29, passed 8-10-2020).

§154.85 FOOTING DRAINS

Footing drains shall be connected to storm sewers where possible or designated storm drainage channels. No footing drains or drainage tile shall be connected to the sanitary sewer. (Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99)

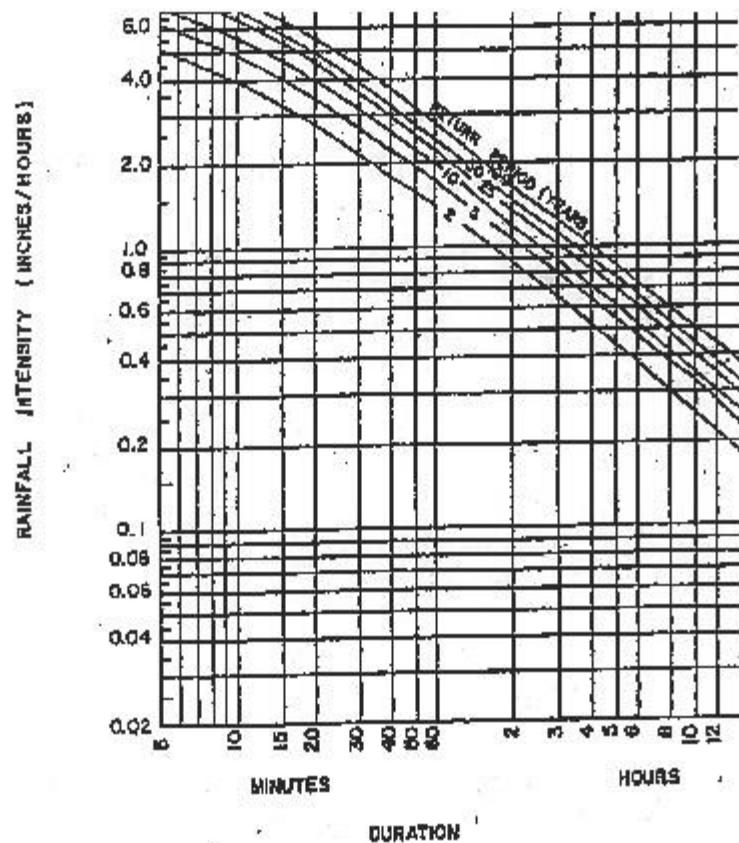
§154.86 BASEMENT FLOOR DRAINS

Basement floor drains shall be connected to the sanitary sewers.
(Ord. 90-5, passed 8-30-90; Am. Ord. passed 2-16-99)

Title XV: Land Usage
APPENDIX: RAINFALL DATA

§ 1 Rainfall intensity-duration-frequency curves
§ 2 Nernograph for determining time of concentration

§ 1 RAINFALL INTENSITY-DURATION-FREQUENCY CURVES.



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8-30-91)

rd. 90-5, passed

Title XV: Land Usage
§ 2 NOMOGRAPH FOR DETERMINING TIME OF CONCENTRATION.

(Ord. 90-5, passed 8-30-90)

Time of Concentration of Rainfall on Small Drainage Basins

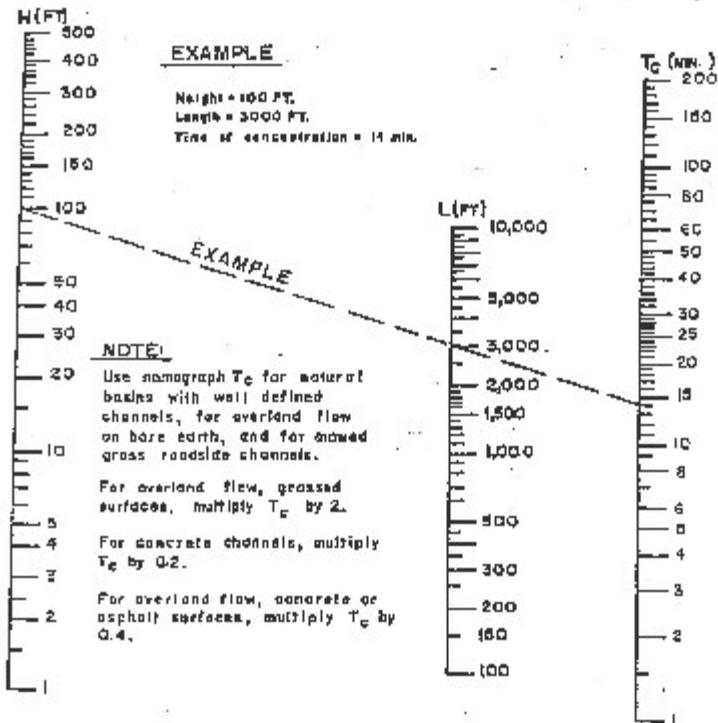


Figure 2. Nomograph for Determining Time of concentration
{Developed from the Kirpich Equation}

CHAPTER 155: WIND ENERGY CONVERSION SYSTEMS

Section

- 155.01 Statutory Authorization
- 155.02 Purpose
- 155.03 Definitions
- 155.04 Applicability and Scope
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- 155.06 Administration
- 155.07 WECS Project Approval
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- 155.10 WECS Tower Building Permits
- 155.11 Design and Installation Standards
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- 155.14 Liability Insurance
- 155.15 Decommissioning Plan
- 155.16 Variances
- 155.17 Enforcement
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§155.01 STATUTORY AUTHORIZATION

This Chapter is enacted as an exercise of the County's police power to regulate the use or possession of property that might endanger the public health, safety or welfare, pursuant to I.C. 36-8-2-4 and the Indiana Home Rule Law, I.C. 36-1-3.

(Commissioners Ord. 2009-5, passed 7-29-05)

§155.02 PURPOSE

This Chapter is adopted for the following purposes:

- (A)** To assure that any development and production of wind-generated electricity in Montgomery County will preserve the public health, safety and welfare; and
- (B)** To provide a regulatory scheme for the permitting, construction, operation, maintenance and decommissioning of wind-generated electricity facilities in the County. (Commissioners Ord. 2009-5, passed 7-27-09)

§155.03 DEFINITIONS

For purposes of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

APPLICANT. The entity or person who submits to the Building Commissioner an application for a WECS Project, or a Building Permit for one or more WECS Towers.

BOARD. The Board of Commissioners of Montgomery County, Indiana.

BUILDING COMMISSIONER. The Building Commissioner of Montgomery County, Indiana.

COUNTY. Montgomery County, Indiana.

FAA. The Federal Aviation Administration.

FINANCIAL ASSURANCE. Reasonable assurance from a credit-worthy party, examples of which include a surety bond, trust instrument, cash escrow, or irrevocable letter of credit or combinations thereof.

LANDOWNER. Any person or entity owning real estate in Montgomery County, Indiana.

NON-PARTICIPATING LANDOWNER. Any Landowner who is neither an “Owner” nor a “Participating Landowner,” as those terms are defined herein.

OPERATOR. The entity or person responsible for the day-to-day operation and maintenance of a WECS, including any third party subcontractors.

OWNER. The entity(ies) or person(s) with an equity interest in a WECS, including its or their respective successors and assigns. Owner does not include (i) a Participating Landowner who owns less than a 5% equity interest in the WECS, or (ii) any person holding a security interest in the WECS solely to secure an extension of credit.

PARTICIPATING LANDOWNER. A Landowner from whom land is leased for locating a WECS.

PRIMARY STRUCTURE. For each property, a structure that one (1) or more persons occupy principally for either business or personal use. Primary Structure includes structure such as Residences and commercial building. Primary Structures excludes structures such as hunting sheds, storage sheds, pool houses, unattached garages and barns.

PROFESSIONAL ENGINEER. A qualified individual who is licensed as a professional engineer in any state in the United States.

RESIDENCE. A structure that is used or intended for use by one (1) or more persons use as a dwelling place.

SUBSTATION. A structure containing apparatus that connects below- or above-ground electrical collection lines of the WECS to the electric utility grid, with or without increasing the voltage.

WECS PROJECT. A WECS development consisting of two (2) or more WECS Towers.

WECS TOWER. A free-standing or guyed support structure to which the rotor, nacelle and generator are attached.

WECS TOWER HEIGHT. The distance from the rotor blade at its highest point to the top surface of the WECS Tower foundation.

WIND ENERGY CONVERSION SYSTEM(S) (“WECS”). All necessary devices that together convert wind energy into electricity to an electric utility’s transmission lines, including but not limited to one or more rotors, nacelles, generators, WECS Towers, electrical components, WECS Tower foundations, Substations, electrical cabling from WECS Towers to Substations, meteorological towers, communications facilities, and other related facilities and equipment. (Commissioners Ord. 2009-5, passed 7-27-09)

§155.04 APPLICABILITY AND SCOPE

This Chapter governs WECS Projects that generate electricity to be sold to wholesale or retail markets, except owners of WECS with an aggregate generating capacity of 100 kilowatts (KW) or less and a WECS Tower height of not less than 120 feet and not greater than 325 feet, who locate a WECS entirely on their own property. If a WECS Project is located or to be located partly in Montgomery County and partly in another county, this Chapter applies to the part of the Project located in Montgomery County. (Commissioners Ord. 2009-5, passed 7-27-09)

§155.05 PROHIBITION

Except as expressly provided otherwise herein, no person or entity shall construct or operate a WECS in Montgomery County without having fully complied with the provisions of this Chapter and all applicable regulations of the Montgomery County Zoning Ordinance and Code of Ordinances. (Commissioners Ord. 2009-5, passed 7-27-09)

§155.06 ADMINISTRATION

(A) WECS Building Permit Required. No person or entity may construct or operate a WECS Tower within the corporate boundaries of Montgomery County unless a WECS Building

Permit has been approved, all applicable zoning approvals have been obtained, financial assurances for decommissioning have been given pursuant to the Montgomery County Zoning Ordinance, and an Economic Development Agreement and a Road Use Agreement (both as described herein) have been entered into by the Board and the Applicant, Owner or Operator.

(B) Supercedure. Nothing in this Chapter is intended to supersede any requirement of state or federal law, except that this Chapter may impose stricter requirements, in whole or in part, that may be imposed by any state or federal authority.

(C) Powers and Duties of the Building Commissioner. The Building Commissioner has the following powers and duties:

- (1)** To issue WECS Building Permits in accordance with the criteria set forth in this Chapter and Chapter 150 of this Code;
- (2)** To administer and enforce the provisions of this Chapter and all orders issued pursuant thereto;
- (3)** To conduct investigations and obtain data with respect to any aspect of any WECS regulated under this Chapter, and to collect and disseminate information regarding any WECS;
- (4)** To order suspension of operation of any WECS upon any repeated or willful violation of any of the provisions of this Chapter or when there is an imminent threat of substantial harm to the health, safety or welfare of Montgomery County residents, public or private property in Montgomery County, or natural resources;
- (5)** To accept grants or funds for purposes of administration of this Chapter and research into wind-generated electricity;
- (6)** To cooperate with any other governmental entity to further the purposes of this Chapter; and
- (7)** To collect fees from Applicants in accordance with this Chapter, as amended from time to time.

(Commissioners Ord. 2009-5, passed 7-27-09)

§155.07 WECS PROJECT APPROVAL

(A) Requirement. No entity or person may construct, own or operate a WECS Project in Montgomery County without first obtaining WECS approval process, the following information shall be submitted to the Building Commissioner and Zoning Administrator:

(1) Project Description. A narrative description of the project, including its approximate name plate generating capacity; the potential equipment manufacturer(s), type(s) of WECS(s), number of WECS Towers, and name plate generating capacity of each wind turbine generator; the maximum height of the WECS Towers and maximum diameter of the WECS rotor(s); the general location and total acreage of the WECS Project; and

(2) Applicant, Owner and Operator. Identification of the name, mailing address, email address, telephone number and brief description of each Applicant, Owner, and Operator, including their respective business structures; and

(3) Property Owners. Identification of the names, mailing addresses and tax parcel numbers of all property owners who will have WECS Towers, Substations, access roads or underground cabling located on their properties; and

(4) Topographic Map. A topographic map of the WECS project site and the surrounding area with contours of not more than five (5) foot intervals. If any WECS Tower is to be constructed within six (6) nautical miles from a public use airport, a map of sufficient scale depicting the airport and Towers shall also be provided; and

(5) Site Plan. A site plan submitted both on paper (on one or more 36" x 24" sheets showing individual WECS Tower sites at a scale not greater than 1 inch = 20 feet), and on digital media in shapefile format and coordinate system State Plane Indiana West, NAD83. The site plan shall include:

(a) the proposed location of each WECS Tower, guy lines and anchor bases (if any);

(b) WECS access roads;

(c) Substations;

(d) electrical cabling;

(e) ancillary equipment;

(f) Primary Structures within one quarter (1/4) of one (1) mile of any WECS Tower;

(g) property lines, including identification of adjoining properties;

(h) setback lines;

(i) public roads, bridges, and drainage;

(j) location of all above-ground utility lines within a distance of two (2) times the WECS Tower Height of any WECS Tower;

(k) recognized historic or heritage sites within the WECS area, as noted by the Division of Historic Preservation and Archeology of the Indiana Department of Natural Resources;

(l) any wetlands within the WECS area, based upon a delineation prepared in accordance with the applicable U.S. Army Corps of Engineer requirements and guidelines;

(m) Location of existing underground utility lines associated with the WECS site;

(n) Location of any lay down yard to be used in construction; and

(6) *Jobs Estimate.* An estimate of the number of permanent jobs to be created in the County by the WECS Project; and

(7) *Estimated Project Budget and Construction Timetable.* A project budget to include the estimated investment in real and personal property, any applicable phasing of construction, and the estimated timetable for construction; and

(8) *Decommissioning Plan.* A Decommissioning Plan which satisfies the requirements of § 6.03(L) of the Montgomery County Zoning Ordinance; and

(9) *Financial Assurance for Property Owners.* An affidavit by the Applicant stating that all easements for WECS, Substations and underground cabling shall contain terms that provide financial assurance, including access to the salvage value of the equipment, for the Participating Landowners to ensure that the WECS facilities will be properly decommissioned within twelve (12) months of termination or abandonment of the WECS and in accordance with § 6.03 of the Montgomery County Zoning Ordinance and this Chapter.

(10) *Noise Study.* A noise study by a licensed acoustician chosen by the Montgomery County Board of Zoning Appeals and paid for by the wind developer shall be submitted with any application for a wind turbine generation tower. This study must conform with the requirements as detailed in the Montgomery County Zoning Ordinance § 6.03(D)(1).
(Commissioners Ord. 2009-5, passed 7-27-09)

§155.08 ECONOMIC DEVELOPMENT AGREEMENT

(A) *Agreement Required.* No WECS Project shall be constructed or substantially modified unless the Applicant or Operator first enters into an Economic Development Agreement with the Board. The Economic Development Agreement shall provide for the following:

- (1) Detailed description of the WECS Project;
- (2) Detail of the timing of project implementation;
- (3) Detail of economic development incentives provided to the Applicant or Operator by the County including, but not limited to:
 - (a) The level of Tax Abatement to be granted, if any, for consideration of the Road Use Agreement, and other benefits accruing to the County; and
 - (b) Other reasonable assistance to be provided by the County.
- (4) Payment(s) to be made by the Applicant or Operator to the County in consideration for the possible elimination or restriction of other new residential, agricultural, recreational or commercial/industrial development resulting from the development of the wind farm (“Economic Development Payments”).
- (5) Allowance for the payment in lieu of property taxes (“PILOT”) in the event of any change in law, rules, or regulations which would exempt any or all of the investment in the WECS by the Applicant or Operator.
- (6) *Jobs Estimate.* An estimate of the number of permanent jobs to be created in the County by the WECS Project; and
- (7) *Estimated Project Budget and Construction Timetable.* A project budget to include the estimated investment in real and personal property, any applicable phasing of construction, and the estimated timetable for construction; and
- (8) *Decommissioning Plan.* A Decommissioning Plan which satisfies the requirements of §155.15 of this Chapter; and
- (9) *Financial Assurance for Property Owners.* An affidavit by the Applicant stating that all easements for WECS, Substations and underground cabling shall contain terms that provide financial assurance, including access to the salvage value of the equipment, for the Participating Landowners to ensure that the WECS facilities will be properly decommissioned within twelve (12) months of termination or abandonment of the WECS.

(Commissioners Ord. 2009-5, passed 7-27-09)

§155.09 COUNTY ROADS AND DRAINAGE

(A) *Agreement Required.* No WECS Project shall be constructed or substantially modified unless the Applicant or Operator first enters into a County Road Use and Drainage Repair

Agreement with the Board. The County Road Use and Drainage Repair Agreement shall provide for the following:

- (1)** A detailed map indicating any County road to be utilized for construction, operation, maintenance, or decommissioning by the Applicant, Owner, or Operator; including any other County-owned or controlled property such as bridges, culverts, road shoulders, and intersections (“Designated Roads”).
- (2)** Process for determining the existing condition of each Designated Road prior to any use by the Applicant, Owner, or Operator. Such process may involve video and/or textual narrative for each Designated Road, with the cost of such report to be borne by the Applicant, Owner, or Operator (a “Designated Road Condition Report”).
- (3)** Timelines for completing the Designated Road Condition Report, role of the Montgomery County Highway Superintendent (“Highway Superintendent”), and process for settling any disputes as to the Road Condition Report.
- (4)** Identification of any County-regulated drains that may be affected (“Drain Location Map”) by the Applicant, Owner, or Operator to be provided to the Montgomery County Drainage Board.
- (5)** Allowed Usage of the Designated Roads by the Applicant, Owner, or Operator as granted by the Board.
- (6)** Required improvements to the Designated Roads by the Applicant, Owner, or Operator as granted by the Board.
- (7)** Safety requirements, including:
 - (a)** Speed limits,
 - (b)** Directional and/or warning signage,
 - (c)** Notices to emergency agencies, school corporations, and other entities as deemed necessary for road closures that may be required.
- (8)** Dust control measures.
- (9)** Removal of temporary improvements.
- (10)** Designated road repair identification, repair, and cost responsibility.
- (11)** Performance assurances required of the Applicant, Owner or Operator.

- (12) Applicable fines for non-compliance with the County Road Usage and Drainage Repair Agreement.
- (13) Any other provisions deemed necessary and agreed to by the Applicant, Owner, or Operator and the Board.

(B) *Agreement Individually Negotiated.* A County Road Use and Drainage Repair Agreement will be negotiated for each WECS between Applicant, Owner, or Operator and the Board based on the project scope and specifics for each WECS project in the County. And such agreement will contain the following terms:

- (1) *Post-Construction Requirements:* Post-construction, the applicants will comply with the following provisions:

- (a) *Road Repairs:* Any road damage caused by the transport of any matter or material utilized in any way regarding the WECS, in the construction of the WECS, the installation of the same, and/or the removal and decommissioning of the same, shall be repaired to the satisfaction of the Montgomery County Highway Department Superintendent (as per the Road Use and Maintenance Agreement). The Superintendent may choose to require other remediation of road(s) upon completion of the WECS or said Superintendent is authorized to collect fees for oversized load permits.
- (b) *Performance Bond:* A corporate surety bond in an amount to be determined by a professional highway engineer selected by the Board of County Commissioners will be required by the Superintendent to ensure Montgomery County that future repairs are completed to the satisfaction of the Board of County Commissioners. The cost of such bond shall be paid by the WECS applicant, and/or operator and said bond shall remain in full force and effect until the Decommissioning Plan and Decommissioning Agreement are fully completed as prescribed by this Chapter and the Decommissioning Agreement.
- (c) *As-Built Plans Requirement:* Upon completion of all development, the exact measurements of the location of utilities, structures and components erected during the development are necessary for public record and shall therefore be recorded. The applicant, owner, and/or operator shall submit a copy of the Final Construction Plans (as build plans), if amended, said Plans shall be submitted as amended, to the Building Commissioner and Highway Superintendent with the exact measurements shown thereon. The Building Commissioner, after being satisfied that the measurements are substantially the same as indicated in the originally approved final plan(s) or as the same were from time to time amended, shall approve, date and sign said Construction Plans for the WECS, which the applicant, owner, and/or operator shall then record.

(d) *Change in Ownership:* It is the duty and responsibility of a WECS applicant, WECS owner or WECS operator, and any subsequent WECS owner and WECS operator, in addition to the notice requirements of any WECS plan(s) and WECS agreement(s) to notify by written affidavit the Building Commissioner of any change in the ownership of the WECS or any part of the ownership thereof, and/or any change of any description whatsoever in the operation of the WECS during the life of the WECS, to and through the time that the final Decommissioning Plan and Decommissioning Agreement are concluded and all applicable acceptances, releases and performance standards of any description have been met, concluded, and accepted by the proper local, state, federal or private authority, department, agency, and person(s), and all financial payments or financial obligations are fully satisfied and all appropriate parties are in receipt thereof. In order for the owner and/or operator to inform said Building Commissioner of the required information regarding changes as herein provided, said notices shall be sent by certified mail with certified funds for any required recording fees and any other applicable fees to the Building Commissioner.

§155.10 WECS BUILDING PERMITS

(A) *Building Permit Required.* No WECS Tower or Substation shall be constructed or substantially modified unless the Applicant or Operator first obtains a WECS Building Permit from the Building Commissioner, pursuant to Chapter 150 of this Code and the requirements of this Chapter. The Building Commissioner may not issue a permit if the Economic Development Agreement, Road Use Agreement, or Decommissioning Agreement entered into by and between the Board of Commissioners and the applicant was executed more than two (2) years prior to the date of the permit application.

(B) *Application for WECS Building Permit.* In addition to the requirements for a Building Permit under Chapter 150 of this Code, the Applicant shall provide the following information to the Building Commissioner.

- (1)** Location of all above-ground utility lines within a radius equal to two (2) times the heights of the proposed WECS Towers.
- (2)** Location of all underground utility lines associated with the WECS Tower sites.
- (3)** Dimensional representation of the structural components of the tower construction including the base and footings.
- (4)** Schematic of electrical systems associated with the WECS Towers including all existing and proposed electrical connections.
- (5)** Certificate(s) of design compliance that the relevant wind turbine manufacturers

have obtained from Underwriters Laboratories, Det Norske Veritas, Germanishcher Lloyd Wind Energie, or an equivalent third party, that the nacelle, rotor, generator and electrical components conform to industry standards then applicable.

(6) Certificate by a Professional Engineer that the foundation and tower design of each WECS Tower is sufficient to withstand wind load requirements for structure as defined by the International Code Council, and is within accepted professional standards, given local soil and climate conditions.

(7) Copies of all necessary recorded access easements and necessary recorded utility easements.

(8) A fire protection plan for construction and operation of the facility.

(9) To the extent applicable, a drainage plan for construction and operation approved by the Montgomery County Drainage Board.

(10) To the extent applicable, an erosion control plan approved by the Montgomery County Soil and Water Conservation District.

(11) Proof of compliance with the Indiana Tall Structures Act, I.C. 8-21-10.

(12) Any other information reasonably requested by the Building Commissioner.
(Commissioners Ord. 2009-5, passed 7-27-09)

(C) *Expiration of Permit:* Any WECS Building Permit issued by the Building Commissioner expires two (2) years after the date of issuance. No WECS Tower or Substation may be constructed or modified without a valid WECS permit. Permits issued under this Chapter may be renewed after the initial two-year period for a period one (1) year so long as the application for such renewal is filed before the expiration of the permit. The fee for a WECS Tower permit is \$1,750.00 per megawatt of generating capacity. The fee for a Substation permit is \$300.00. The fee for the renewal of either a WECS Tower or Substation permit is \$50.00.

(Ord. 2018-4, passed 7-9-18)

§155.11 DESIGN AND INSTALLATION STANDARDS

(A) *Electrical Components.*

(1) All turbines and other electrical components of the WECS Tower shall conform to applicable local, state, and national codes, and relevant national and international industry standards. Used, experimental or prototype equipment shall not be installed or used as part of a WECS Tower without the prior written approval of the Building Commissioner.

(2) All electrical collection cables between WECS Towers shall be located underground. All transmission lines that are buried should be at a depth of 10 feet until the same reach the property line or a substation adjacent to the property line.

(3) No appurtenances other than those associated with the wind turbine operations shall be connected to any WECS Tower except with express, written permission by the Building Commissioner.

(B) *Controls and Brakes.* All WECS shall be equipped with a redundant braking system. This includes both aerodynamic over-speed controls (including variable pitch, tip, and other similar systems) and mechanical brakes. Stall regulation shall not be considered a sufficient braking system for over-speed protection. All mechanical brakes shall be operated in a fail-safe mode.

(C) *Aesthetics.* Each wind turbine generator or meteorological testing tower shall be subject to any applicable standards of the FAA. When the owners are not subject to the FAA regulation, each wind turbine generator, including all accessory structures, shall, to the extent possible, use material, and colors that will blend them then into the natural setting and surrounding buildings.

(D) *Warnings.*

(1) A reasonably visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and Substations.

(E) *Climb Prevention.* All WECS Towers must include features to deter climbing or be protected by anti-climbing devices including at minimum the following:

- (1) Fences with locking portals at least high; or
- (2) Anti-climbing devices 15 feet away from the base of the tower.
- (3) Locked tower doors.

(F) *Blade Clearance.* The lowest point of the arc created by rotating wind vanes or blades on a wind turbine generator shall be no less than 50 feet or 1/3 of the tower height, whichever is greater.

Noise. Any proposed wind turbine generator shall produce sound levels that are no more than 32 decibels as measured on the dB(A) scale at the property lines of the site in question. For all tower systems, a Noise Study shall be submitted in accordance with the provisions of the Montgomery County Zoning Ordinance § 6.03(D)(1).

(5) Noise a

(ord. 2018-4, passed 7-9-18)

(G) *Vibrations.* Any proposed wind turbine generator shall not produce vibrations humanly perceptible beyond the property on which it is located or cause vibrations that could be detected in nearby structures or damage underground wells.

(H) *Utility Interconnection.* The WECS, if interconnected to a utility system, shall meet the requirements for interconnection and operate as set forth in the electrical utility's service regulations applicable to WECS, as amended from time to time.

(I) *Setbacks.*

(1) Except as otherwise provided herein, no WECS Tower shall be located within any of the following minimum setback distances:

Distance from ...	Minimum Setback Distance
Any adjoining Property lot line, road right-of-way or overhead electrical transmission or distribution lines measured from the center of the WECS Tower	2,640 feet or 5 times the height of the tower from the base to the tip of the blade in vertical position, whichever is greater.
Any town, city or school as measured from the center of the WECS Tower to the closest Corporate Limit boundary line or school property, respectively	1 Mile
Regulated drains subject to the jurisdiction of the Montgomery County Drainage Board, measured from the nearest edge of the WECS Tower foundation.	75 Feet (i) from the centerline of any tiled drain or (ii) the top edge of any open ditch.
Sugar Creek measured from the center of the WECS tower to the nearest ordinary high-water mark.	2,640 feet

(2) **Substations:** No Substation shall be located nearer than 1,000 feet from any Residence. Participating Landowners may agree in writing to reduce the 1,000-foot Substation setback from Residences on their property. Any such written agreement shall be executed and acknowledged by all affected Participating Landowners, filed with the Building Commissioner and recorded in the office of the Recorder of Montgomery County.

(3) **Right or Way:** No WECS Tower or Substation shall be located within any dedicated public easement or public right-of-way.

(4) Waivers: Adjacent Landowners may agree in writing to reduce the minimum setbacks from their common property lines. Any such written agreement shall be executed and acknowledged by all affected Landowners, filed with the Building Commissioner and recorded in the office of the Recorder of Montgomery County.

Grandfathered Set-Backs: Once a WECS Tower or Substation is constructed, the setback and noise buffer are established. If after construction, a landowner sells the land to another person or entity, the new owner is treated, for the purposes of this section, in the same manner as the previous owner, regardless of whether the new landowner has an agreement with a WECS provider.

(5) WECS' Occupying Multiple Parcels.: Wind Farms and WECS' occupying multiple parcels may have internal property line setbacks waived by execution of a written document signed by all landowners sharing such a property line.

(Ord. 2018-4, passed 7-9-18)

(J) Lighting.

(1) Except with respect to lighting required by the FAA all lighting shall be shielded so that no glare extends substantially beyond the boundaries of the WECS facilities. In the instance that “strobe” lighting is required it should be configured so that it is alternating lighting; white light during the daylight, red light at night.

(2) Any WECS Tower, Substation, underground cabling or other WECS facility declared to be unsafe by the Montgomery County Building Inspector by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage or abandonment is hereby declared to be a public nuisance and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedures set forth in the County Ordinances governing the removal of nuisances.

(K) Water Wells and Septic Systems. All WECS facilities shall comply with applicable septic and well regulation as required by the Montgomery County Health Department and the State of Indiana Department of Public Health.

(L) Navigable Airspace. No WECS Tower or Substation shall be located at a location or a height that is determined by the FAA to be an obstruction or a hazard to navigable airspace.

(M) Compliance with Additional Regulations. Nothing in this Chapter is intended to preempt other applicable state and federal laws and regulations.

(Commissioners Ord. 2009-5, passed 7-27-09)

§155.12 WASTE MANAGEMENT

All solid waste whether generated from supplies, equipment, parts, packaging used or consumed in the construction, operation or maintenance of a WECS, including retired or replaced parts and equipment, shall be removed from the site in a timely manner consistent with industry standards. All hazardous waste generated by the operation and maintenance of a WECS, including but not limited to lubricating materials, shall be handled in a manner consistent with all local, state and federal rules and regulations.

(Commissioners Ord. 2009-5, passed 7-27-09)

§155.13 OPERATION AND MAINTENANCE

(A) *Interference.* If, after construction of the WECS, the Owner or Operator receives a written complaint related to interference with local broadcast residential television, telecommunication, communication or microwave transmissions, the Owner or Operator shall take reasonable steps to respond to resolve the interferences.

(B) *Coordination with Local Fire Department.*

(1) The Applicant, Owner or Operator shall submit to the local fire department a copy of the site plan.

(2) Upon request by the local fire department, the Owner or Operator shall cooperate with the local fire department to develop the fire department's emergency response plan.

(3) Nothing in this Section shall alleviate the need to comply with all other applicable fire laws and regulations.

(C) *Materials Handling, Storage and Disposal.*

(1) All solid wastes related to the construction, operation and maintenance of the WECS shall be removed from the site promptly and disposed of in accordance with all federal, state and local laws.

(2) All hazardous materials or waste related to the construction, operation and maintenance of the WECS shall be handled, stored, transported and disposed of in accordance with all applicable local, state and federal laws.

(Commissioners Ord. 2009-5, passed 7-27-09)

§155.14 LIABILITY INSURANCE

The Owner or Operator of a WECS shall maintain a current general liability policy covering bodily injury and property damage and name of Montgomery County as an additional insured with limits of at least two million dollars (\$2,000,000) per occurrence, per wind tower and

five million dollars (\$5,000,000) in the aggregate, with a deductible of no more than five thousand dollars (\$5,000). (Commissioners Ord. 2009-5, passed 7-27-09)

§155.15 DECOMMISSIONING PLAN

(A) The Applicant, Owner or Operator must provide financial assurance in an amount at least equal to 125% of the amount of the demolition and removal contractor cost estimate in the form of an irrevocable letter of credit reasonably acceptable to the Building Commissioner. No irrevocable letter of credit shall be released until the WECS is properly decommissioned in accordance with the Decommissioning Plan, as determined by the Building Commissioner.

(Am. Commissioner Ord. 2019-13, passed 5-13-19).

§155.16 SPECIAL EXCEPTIONS

(A) Prior Approval Required. No WECS may be constructed, modified or expanded without full and complete compliance with the requirements and standards contained in this Chapter, or the Zoning Ordinance, unless a variance or a special exception is first granted by the Board or the Board of Zoning Appeals.

§155.17 ENFORCEMENT

(A) The Owner or Operator of a WECS shall submit, on an annual basis, a summary of the operation and maintenance reports to the Building Commissioners and Zoning Administrator. In addition to the above annual summary, the Owner or Operator shall furnish such other operation and maintenance reports as the Building Commissioner or Zoning Administrator reasonably requests.

(B) Any physical modification to a WECS that alters the mechanical load, mechanical load path, or major electrical components shall require re-certification. Like-kind replacements shall not require re-certification. Prior to making any physical modification (other than a like-kind replacement), the Owner or Operator shall confer with the Building Commissioner and Zoning Administrator to determine whether the physical modification requires re-certification.

(C) The Building Commissioner or Zoning Administrator may and his or her staff, along with licensed professionals retained for the specific purpose of conducting inspections, may inspect any WECS facility upon twenty-four (24) hours prior notice, or without notice in the event of an emergency posing a threat of imminent harm to the environment or to the health, safety or general welfare of the public. If any Owner or Operator refuses the Building Commissioner or Zoning Administrator access to a WECS for purposes of making an

inspection, the Building Commissioner or Zoning Administrator may order a suspension all WECS operations until such time as the inspection has occurred and the Building Commissioner or Zoning Administrator is satisfied that no imminent threat of substantial harm to health, human safety or the environment exists, or that such threat has been eliminated.

- (D) The fee for each inspection shall as determined by the Board time to time, and shall be payable by the Owner or Operator to the Building Commissioner or Zoning Administrator, in addition to reimbursement to the County of the actual fees charged by licensed professionals retained by the Building Commissioner or Zoning Administrator to conduct or assist with such inspection.
- (E) If the Building Commissioner or Zoning Administrator finds that any WECS facility is in violation of the requirements of this Chapter, he or she may order the Owner or Operator to take appropriate actions in order to bring facilities into compliance with this Chapter. Noncompliance with any such order is a separate violation of this Chapter in addition to the violation complained of.
- (F) The Building Commissioner or Zoning Administrator may also suspend or revoke a WECS Project approval or WECS Tower Building Permit for repeated or willful violation of any of the terms of the WECS Project approval or Building Permit or the provisions of this Chapter if the Building Commissioner or Zoning Administrator determines there is an imminent threat of irreparable harm to the environment; or of serious hazard to the health, safety, and general welfare of the public.
- (G) If a WECS Project Approval or WECS Tower Building Permit is revoked, the Building Commissioner may order the Applicant, Owner or Operator to commence decommissioning of the WECS within 30 days issuance of the notice.
- (H) It is unlawful to violate any of the provisions of this Chapter, or fail to perform any duty imposed by this Chapter, or any order issued by the Building Commissioner or Zoning Administrator. Any Owner or Operator found to have committed any such violation shall be subject to a penalty to be assessed by the Building Commissioner in an amount not to exceed \$2,500 for each day such violation continues.
- (I) In determining the amount of a penalty to assess under this Chapter, the Building Commissioner or Zoning Administrator shall consider the Owner or Operator's history of previous violations with respect to the WECS, the seriousness of the violation, including any irreparable harm to the environment and hazard to the health, safety, and general welfare of the public, the Owner or Operator's negligence, and the demonstrated good faith of the Owner or Operator to achieve repaid compliance after notification of the violation.
- (J) Upon the assessment of a penalty under this Chapter, the Building Commissioner or Zoning Administrator shall immediately inform the Owner or Operator of the amount of the

penalty assessed and issue an order to pay the penalty. The Owner or Operator shall have 30 days from the receipt of the order to pay the penalty or appeal the assessment pursuant to §155.18 of this Chapter. (Commissioners Ord. 2009-5, passed 7-27-09)

(K) Violations. In the event that a violation exists and the permit holder or operator of the WECS facility or system fails or refuses to comply with an order of the Building Commissioner or Zoning Administrator, fails to pay a fine as provided for in subsection H of this Section, or otherwise violates the provisions of this Chapter, the Building Commissioner or Zoning Administrator has the authority to seek against such violator a money judgment, injunction or other legal remedy, either legal or equitable, in order to enforce this Chapter. If such enforcement action is filed by the Building Commissioner or Zoning Administrator, the violator will be responsible for all costs incurred in the enforcement action, including but not limited to reasonable attorney's fees, court costs, litigation expenses, the cost of consultants and experts and other expenses related to the enforcement action.

(Ord. 2018-4, passed 7-9-18)

§155.18 HEARINGS AND APPEALS

The Board shall hear and determine (1) appeals from any order, requirement, decision, or determination made by the Building Commissioner under this Chapter or in relation to its enforcement, and (2) applications for approval of variances from the requirements of this Chapter.

(A) *Appeals from Decisions or Orders of Building Commissioner.*

- (1)** An appeal from a decision or order of the Building Commissioner must specify the grounds of the appeal and must be filed with the Board within thirty (30) days after the date of the decision or order being appealed.
- (2)** The Building Commissioner shall, on the request of the Board, transmit to it all documents, plans, and papers constituting the record of the action from which an appeal is taken.
- (3)** Certified copies of the documents, plans, and papers constituting the record may be transmitted for purposes of subsection (2) above.
- (4)** Upon appeal, the Board may reverse, affirm, or modify the order, requirement, decision, or determination appealed from. For this purpose, the Board has all the powers of the Building Commissioner from which the appeal is taken.

(C) *Hearings*

- (1)** The Board shall fix a reasonable time for the hearing of appeals.

(2) Notice by publication in accordance with I.C. 5-3-1, and written notice to interested parties by certified mail, shall be given at least ten (10) days before the date set for the hearing.

(3) Interested persons shall include all Landowners owning real estate located within 2,640 feet of the property involved in the appeal or in the Application for Variance, and any other Landowner who files a written statement with the Building Commissioner of his or her claim of interest at least fourteen (14) days before the hearing. The Board may in its discretion designate additional interested parties.

(4) The party taking the appeal, shall assume the cost of publication and mailing of notice of the hearing.

(5) At the hearing, the party appealing or applying for the variance may appear in person, by agent, or by attorney.

(6) The Building Commissioner may appear before the Board at the hearing and present evidence in support of or in opposition to the granting of a variance or the determination of any other matter.

(7) Other persons may appear and present relevant evidence.

(8) No person may communicate with any member of the Board before the hearing with intent to influence the member's action on an appeal or Application for Variance pending before the Board. Not less than five (5) days before the hearing, however, the Building Commissioner or any interested party may file with the Board a written statement setting forth any facts or opinions relating to the matter.

(9) The Board may require any party adverse to any appeal to enter a written appearance specifying the party's name and address.

(10) The Board shall hear and decide all appeals in an open public meeting, and each such decision shall be filed with the minutes of the Board's meetings. (Commissioners Ord. 2009-5, passed 7-27-09)

§155.19 JUDICIAL REVIEW.

Each decision of the Board under §155.18 is subject to judicial review by certiorari. Any person, other than the Building Commissioner, who is aggrieved by a decision of the Board may file a verified petition for judicial review, alleging that the decision is illegal in whole or in part and specifying the grounds of the illegality. All petitions for judicial review must be

filed with an Indiana state court of general jurisdiction sitting in Montgomery County, Indiana, within thirty (30) days after the date of the decision of the Board.

CHAPTER 157: PRIVATE SEWAGE DISPOSAL

Section

- 157.01 Definitions
- 157.02 Sewage Disposal
- 157.03 Construction Requirements
- 157.04 Construction Permit
- 157.05 Registration of Installers
- 157.06 Inspections
- 157.07 Maintenance and Sampling
- 157.08 Economic Hardship
- 157.09 Denial, Suspension, Revocation
- 157.10 Penalties

§157.01 DEFINITIONS

The following definitions apply to this Chapter:

STATE DEFINITION means all definitions set forth in 410 IAC 6-8.2, as amended from time to time, from the Indiana State Department of Health are hereby incorporated by reference;

BEDROOM means a room as defined by 410 IAC 6-8.3-6, as amended from time to time;

BEDROOM EQUIVALENT means as defined by 410 IAC 6-8.3-6, as amended from time to time;

BOARD means the Montgomery County Board of Public Health, Montgomery County, Indiana;

BUILDING means a structure having a roof supported by columns or walls built or used for the enclosure, shelter, protection or occupancy or persons, fixtures or personal property, and from which there emanates any sewage;

COMMERCIAL means any building which is not a one or two-family dwelling;

DEPARTMENT means the Montgomery County Health Department, and/or its employees;

DWELLING means any building, structure, manufactured home or mobile home, or part thereof, used and occupied for human habitation or intended to be so used;

ENVIRONMENTAL HEALTH SPECIALIST means an individual as defined in Indiana Code § 25-32-1-1(B);

HEALTH OFFICER means the Director of Public Health for the Montgomery County Health Department, Montgomery County, Indiana, or his/her authorized representative.

INSTALLER means any person who constructs, installs, replaces, alters, modifies or repairs any residential or commercial sewage disposal system subject to the provisions of this Chapter, other than one which services his/her/its building. In the event that the person is an association of two or more people, then said association shall designate one individual who shall be designated as the installer and responsible for compliance with all provisions hereunder;

LEGAL DRAIN means any tile or drainage-way regulated by the Montgomery County Surveyor;

PERMIT means a certificate of a size and style approved by the Health Officer or his/her designee;

PERMITTEE means the person who is the owner of the real estate, his/her/its authorized representative, who is responsible for the application of a construction permit and who shall be responsible for the acceptance of notices at the address listed on the permit applications;

PUBLIC SEWER means any sanitary sewer constructed, installed, maintained, operated or owned by a municipality, sewage district or utility company. A county legal drain, mutual drain or private drain installed for the sole purpose of carrying surface water runoff and subsoil drainage shall not be considered a public sewer under this definition;

RESIDENTIAL means a building used or intended to be used as a one or two-family dwelling.

SEWAGE means all water-carried waste derived from ordinary living processes. This does include grey-water discharge;

SOIL SCIENTIST means an individual who is a Specialist or Classifier of soils, certified by the Indiana Registry of Soil Scientists.

§157.02 SEWAGE DISPOSAL

(A) State Rules: All rules and regulations of 410 IAC 6-8.2, as amended from time to time, of the Indiana State Department of Health are hereby incorporated by reference.

(B) Public/Municipal Sewer Available: Whenever a public sewer is or becomes available within 300 feet of a residential or commercial building, a direct connection shall be made to said public sewer as defined under IC 36-9-23-30 subsection (b), provided direct access is reasonably available via easement or other appropriate means. All existing septic tanks, sewage pits, outhouses, privy pits and similar sewage disposal systems or treatment facilities shall be abandoned and filled in a safe and sanitary manner. Permittee shall have ninety (90) days from the date that the public sewer becomes available to make a direct connection to the public sewer and to abandon and fill in the existing sewage disposal system.

(C) Public/Municipal Sewer Not Available: All residential and commercial buildings which are not connected to a public sewer shall be connected to a private sewage disposal system which shall comply with the standards set forth herein.

(D) Construction of Privy: Sanitary vault privies constructed and maintained pursuant to Bulletin SE-11 (1986) must be approved by the Health Commissioner and maintained in accordance with this Chapter and Indiana law.

(E) Correction of Defects: Should any defect exist or occur in any private sewage disposal system or privy which would cause the sewage disposal system or privy to fail to meet the requirements of this Chapter, then the defect shall be corrected by the owner/permittee pursuant to the time table established by the Health Officer or his/her designee. Failure to correct the defect within the time table established by the Health Officer or his/her designee shall be considered a violation of this Chapter and shall subject the owner/permittee to the sanctions set forth in Section 157.10, subject, however, to the provisions of Section 157.09.

(F) Adaptation of Residential System: Whenever there is any alteration of the structure or significant change in the use or occupancy of a residential building which would affect the functioning of the existing private sewage disposal system, including the addition of a bedroom or bedroom equivalent, then the system shall be modified, enlarged or replaced in accordance with the requirements of this article. Plans for any such changes shall be submitted to the Montgomery County Health Department.

(G) Adaptation of Commercial System: Whenever there is any alteration of the structure or significant change in the use of occupancy of a commercial building which would affect the functioning of the existing private sewage disposal system, including but not limited to the addition of bathrooms, kitchens or other related water disposal mechanisms, then the system shall be modified, enlarged or replaced in accordance with the requirements of this Chapter. Any such changes will require Indiana State Department of Health approval and/or waiver.

§157.03

CONSTRUCTION REQUIREMENTS OF PRIVATE SEWAGE DISPOSAL SYSTEMS

(A) *Indiana State Department of Health Requirements:* All rules and regulations of 410 IAC 6-8.2 as amended from time to time, of the Indiana State Department of Health are hereby incorporated by reference.

(B) *Lot Dimensions:* Lots or tracts of real estate on which residential or commercial sewage disposal systems are to be installed and which are rated slight or moderate for septic tank absorption fields by the U.S. Department of Agriculture Soil Conservation Service, shall contain a minimum of one (1.0) acre or 43,560 square feet as per Montgomery County Code Section 152.52 (Lots; A;2) and suitable soils and topography to permit compliance with this Chapter.

(C) *On-Site Evaluation:* At least three borings from the proposed septic disposal system location. One boring shall be done with a soil auger. The second sample from the proposed septic disposal system location, and any additional confirmation samples, may be taken with a push probe. Additional borings shall be required if the original proposed septic area soils are disturbed.

(D) *Requirements for Septic Tanks:* Residential tanks shall be of concrete construction. Residential septic tanks shall have the following capacity in gallons:

Number of Bedrooms	Size of tank (gallons)
1, 2 or 3	1,000
a. 1,250	
b. 1,500	
c. or more	1,500 + 150 for each bedroom greater than 5

(E) *Distribution Boxes:* All distribution boxes shall be of concrete construction.

(F) *Access Openings:* All septic tanks shall have at least one (1) access opening per tank (or per compartment in two-compartment tanks) of at least eighteen (18) inches in diameter, with a riser that extends to ground level for inspection and cleaning purposes. Such access opening shall be fitted with a safely secured, childproof, gas-tight cover.

(G) *Abandoned Septic Tanks:* Abandoned septic tanks must be pumped, can have the top crushed in and shall be filled with sand or pea gravel, as not to hold water or shall be removed.

§157.04

CONSTRUCTION PERMITS

(A) *Construction Permit Required:* An owner or permittee shall first obtain a construction

permit (new, repair) from the Health Department prior to the commencement of any excavation, construction, modification or addition to any existing or new private sewage disposal system.

(B) Permit to be Posted: No person shall perform any work on a private sewage disposal system project unless a valid construction permit is first obtained and is properly posted in a conspicuous place at or near the building where the private sewage disposal system is to be constructed. The permit shall be plainly visible from the public thoroughfare serving the building until the project is completed.

(C) Application for Permit: The application for such permit shall be submitted to the Health Department on a form provided by the Health Department and shall be supplemented by any building plans, specifications and other information deemed necessary by the Health Department or as required by 410 IAC 6-8.2.

(D) Permit Fees: Prior to the issuance of any permit, each owner/permittee shall first tender to the Montgomery County Health Department, a fee or fees, which shall be deposited into the County Health Fund, for each system being constructed, modified, altered or repaired in accordance with the following schedule:

Type of Permit	Fee
Commercial System – new or replacement	\$250.00
Residential System – new or replacement	\$150.00
Construction – re-inspection	\$25.00
Renewal of Expired Permit	\$50.00
Abandonment – inspection	\$25.00
Contractor Testing	\$50.00
Contractor Annual Registration –before January 31	\$50.00
Contractor Annual Registration –after January 31	\$75.00

(E) Term and Renewal: A construction permit shall be valid for two (2) years from the date of issuance. If the permit is renewed, the permittee shall comply with any changes in the rules, standards or requirements which may have come into effect subsequent to the original date of issuance. The construction permit is not transferable.

§157.05 REGISTRATION OF INSTALLERS

(A) Registration Requirements: Except for a person working on his/her own private sewage disposal system which serves as the dwelling in which he/she resides, no person shall construct, install, replace, alter, modify or repair any private sewage disposal system unless that person has first registered with the Montgomery County Health Department as an installer. Application for registration shall be on forms provided by the Health Department.

(B) Conditions for Registration: Every person required to register under this section shall be knowledgeable of all laws, rules and regulations of both the state and county governing private sewage disposal systems. Prior to registration, the applicant must demonstrate knowledge of the applicable laws, rules and regulation by passing a proficiency exam conducted by the Health Department with a score of eighty percent (80%) or higher. The registration exam shall be reviewed from time to time to determine its applicability to current laws, rules and regulations. Where taking a written exam is not feasible, due to language or reading difficulties, arrangements will be made to allow for an oral examination to assure proficiency. Opportunity for re-examination shall be afforded to an applicant upon request, but not more than frequently than once per month.

(C) Seminar: At the request of the Local Board of Health, but not more often than once per year, a person registered under this section shall attend a seminar on sewage disposal conducted by the Montgomery County Health Department, Indiana State Department of Health, or IOWPA. **(D) Expiration:** Registrations under this section shall expire annually on December 31. Each installer shall be required to re-register annually on or before January 15, 2012 and on or before January 15th of each succeeding year.

(D) Annual Fee: An annual registration fee of fifty dollars (\$50.00) will be charged which shall be paid no later than January 31 of each year. If the annual fee is not paid on or before January 31 of each year, the fee will be Seventy-Five dollars (\$75.00).

(E) Notice of Violation: Whenever the Health Department determines that there has been a violation of any provision of this Ordinance or the applicable rules and regulations of the Indiana State Department of Health by an installer, the Health Department shall give written notice, in person or by certified mail, of the alleged violation to the installer. Such notice shall include the following:

- (1) A statement of the alleged violation; and
- (2) An order allowing a reasonable time for the performance of any act required to correct the violation.

(F) Suspension or Revocation: If the violation is not corrected within the designated time, the Health Department may suspend or revoke the installer's registration subject to the provisions contained in Sections 157.02, 157.03, 157.04 or 157.09 of this Chapter.

- (1) If the registration is suspended, the installer may be reinstated by the Health Department upon correction of all violations.
- (2) If the registration is revoked, the Health Department shall require, at a minimum, that the installer:
 - (a) be retested;
 - (b) pay registration fee; and
 - (c) correct all outstanding violations to the satisfaction of the Health Department prior to being re-registered.

(G) Not Registered: Any person constructing, installing, replacing, altering or repairing, any private sewage disposal system who is not registered as an installer under this section shall be deemed to be in violation of this Chapter and shall be subject to all penalties set forth in this Chapter.

(H) Testing Fees: The testing fee is Fifty dollars (\$50.00). If the installer is IOWPA certified, this fee is waived.

(Ord. 2012-12, passed 9-24-12; amended by Ord. 2018-20, passed 7-23-18)

§157.06 INSPECTIONS

(A) Commencement of Construction: Upon issuance of a construction permit under Indiana Code §16-41 et seq. and Section 157.04 of this Chapter, the permittee may commence installation and construction of the private sewage disposal system. The Health Department may inspect the work at any stage of construction.

(B) Substantial Completion: Upon substantial completion of the installation, the permittee shall notify the Health Department that the work is ready for inspection. No portion of the installation shall be covered until the inspection is made.

(1) No portion of the installation shall be used and, when the system serves a new building, no person shall be permitted to use the building or buildings until the inspection has been completed and the system is found to be in full compliance.

(2) The inspection shall be made within two (2) working days of the Health Department's receipt of notice that the system is ready for inspection.

(C) Abandoned Tanks: Upon substantial completion of the work required for abandonment of a septic tank, and prior to covering the tank, the owner/permittee/installer shall notify the Health Department that the work is ready for inspection and pay the inspection fee.

§157.07 MAINTENANCE AND SAMPLING

(A) Sanitary Condition Mandatory: Every private sewage disposal system will be constructed and maintained so that the effluent leaving the Permittee's system will be sanitary.

(B) Inspection and Sampling: The Health Department will be permitted to enter upon any property at any reasonable time to inspect and take samples from a private sewage disposal system. If said test results should indicate a residential or commercial sewage disposal system failure, said failure will constitute a violation of Indiana Code §16-20 et seq.

§157.08 ECONOMIC HARDSHIP

(A) Economic Hardship: In the event an owner/permittee is unable to comply with the provisions of Section 157.02 of this Chapter due to the economic hardship that might be imposed, then the Health Officer may, upon application and proof of inability to pay the cost of compliance, extend the period within which said owner/permittee shall be required to make the hook-up provided the owner/permittee has an existing private sewage disposal system which is operating properly. No extension or extensions may exceed 12 months in length.

§157.09 DENIAL, SUSPENSION, REVOCATION

(A) Denial and Approval of Permit

(1) In the event the Health Department determines that the application for the Construction Permit does not meet the standards set forth in this article, then the Health Department shall be required to notify the Permittee of such denial in person and/or in writing, within thirty (30) days of the original application, stating the specific reasons for the denial of the permit.

(2) In the event the Health Department issues written directives regarding corrective actions, then the Permittee shall have a reasonable amount of time to address and comply with the items set forth in the directives in order to be able to obtain the Construction Permit.

(B) Suspension of Permit/Registration: The Health Department may order the suspension of a Construction Permit or Installer Registration. The Health Department may order the suspension of a permit or registration for any of the following reasons:

(1) Failure to meet any of the standards of any of the provisions of this Chapter or violations of any of provisions of this Chapter.

(2) Interference with Health Department personnel in the performance of

his/her duties. Interference shall be defined as the process of obstructing, hampering or preventing the Health Department personnel in the performance of his/her duties.

(C) *Revocation of Permit/Registration:* Any Permit and/or registration issued hereunder may be revoked by the Health Department as the result of the willful or continued violation of any provision of this Chapter.

(D) *Immediate Revocation:* Notwithstanding any of the other provisions of this Chapter, whenever the Health Department finds unsanitary or other conditions, which, in its opinion constitute an imminent health hazard, the Health Department may, without notice or hearing, issue and serve a written order on the owner/permittee/installer requiring the immediate cessation of operation/installation. Said written order shall state the existence of the imminent health hazard and shall specify the corrective action to be taken. Such order shall be effective immediately.

(E)Appeal

(1) Any owner/permittee/installer aggrieved by any final order of the Health Officer or designee is entitled to a review of the final order before the Commissioners of Montgomery County, Indiana by filing a written request therefor with the Secretary for the Board of Commissioners of Montgomery County within fifteen (15) days of the Health Officer or designee's final order.

(2) The Board of Commissioners shall conduct a hearing on the appeal within 30 days of the receipt of the appeal. The Board shall provide notice to the owner/permittee/installer at least 10 days prior to the hearing. The owner/permittee/installer is entitled to present evidence and be represented by an attorney at the hearing. Within 10 days of the hearing, the Board will make written findings of fact and enter its final order or determination of the matter in writing in its permanent records and mail a copy of its findings and final order or determination to the owner/permittee/installer.

§157.10 PENALTIES

(A) *Enforcement:* It shall be the duty of the Health Officer or his/her designee to enforce the provisions of this Chapter. Any Permit or registration issued in conflict with the provisions of this Chapter shall be null and void. A violation of an order issued by the Health Officer or designee or Health Board shall be considered to be a violation of this Chapter.

(B) *Violations:* Whenever the Health Officer or his/her designee determines that any owner, permittee, installer or any other person, is in willful violation of any of the provisions of this Ordinance, the Health Officer or his/her designee shall furnish evidence of said willful

violation to the Prosecuting Attorney of Montgomery County, Indiana or the attorney for the Board who shall seek all appropriate legal remedies against the person(s).

(C) *Penalty:* Any person who willfully violates any of the provisions of this Chapter shall be subject to a fine of not more than \$500.00 for each violation. Each day of the existence of any violation of this Chapter shall be considered to be a separate offense.

(D) *Injunction :* The Health Officer or designee may bring an action for an injunction in the Circuit or Superior Court of Montgomery County, Indiana to restrain any person from violating the provisions of this Chapter, or to cause such violation to be prevented, abated or removed.

(E) *Expense:* Any person violating any of the provisions of this Chapter shall be liable to the Department for the expense, loss or damage occasioned by reason of such violation, including reasonable attorney's fees and court costs.

(F) *Cumulative:* The remedies provided in this section shall be cumulative, and not exclusive, and shall be in addition to any other remedy provided by law.

(Ord. 2012-13, passed 9-24-12; Amended by Ord. 2018-20, passed 7-23-18)

CHAPTER 158: PUBLIC AND SEMI-PUBLIC SWIMMING POOL AND SPA OPERATIONS

Section

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§158.01 TITLE.

This chapter may be referred to as the “Montgomery County Swimming Pool Ordinance.”

(Ord. 2013-4, passed 5-28-2013)

§158.02 ADOPTION BY REFERENCE.

The regulations located at 410 IAC 6-2.1 et seq. entitled “Public and Semi-Publics,” as amended from time to time and promulgated by the Indiana State Department of Health and 675 IAC 20-1.1 et seq., 675 IAC 20-2 et. seq., and 675 IAC 20-3 et seq. entitled “Swimming Pool Code,” as amended from time to time and promulgated by the Indiana Fire Prevention

and Building Safety Commission are hereby incorporated and adopted by reference. One copy of these regulations shall be on file with the Montgomery County Health Department.

(Ord. 2013-4, passed 5-28-2013)

§158.03 DEFINITIONS.

Except as provided below, the terms defined in 410 IAC 6-2.1 and 675 IAC 2-1.1 shall carry the same definitions wherever used in this chapter as the definition provided in those regulations. For the purpose of this chapter, the terms below shall be defined as follows:

ALKALINITY. The total amount of bicarbonate, carbonate, and hydroxide compounds present in water. **ALKALINITY** refers to the ability or capacity of water to resist change in pH.

ANNUAL POOLS. Pools that are open all year.

CALCIUM HARDNESS. The amount of calcium dissolved in the water. **CALCIUM HARDNESS** shall be expressed in parts per million of calcium carbonate.

CHLORINE. The chemical element Cl that exists as a gas in its elemental form and which is an oxidant and biocidal agent, used in swimming pool disinfection. **CHLORINE** may be derived from chlorine gas, calcium hypochlorite, sodium hypochlorite, or lithium hypochlorite.

COMBINED CHLORINE (CHLORAMINE). The portion of the total chlorine existing in water in chemical combination with ammonia, nitrogen, and/or organic compounds. **CHLORAMINE** causes eye and skin irritation and has a strong, objectionable odor.

CYANURIC ACID. A chemical family of pool sanitizer products (isocyanurates) that are used to prevent the decomposition of chlorine by ultra-violet light. **CYANURIC ACID** is also referred to as stabilizer, isocyanuric acid, conditioner, or triazinetrione.

DISINFECTANT. A chemical or chemicals used to react with and to kill undesirable or pathogenic organisms and having an easily measured free residual.

FREE CHLORINE. That portion of the total chlorine remaining in chlorinated water that is not combined with ammonia, nitrogen compounds, or other compounds and will react chemically with undesirable or pathogenic organisms.

HEALTH DEPARTMENT. The Montgomery County Health Department.

HEALTH OFFICER. The Montgomery County Health Officer or his/her duly authorized representative.

HEALTH HAZARD. Any condition which in the opinion of the Health Officer may reasonably lead to injury or disease or put the public health at risk. A **HEALTH HAZARD** may include, but shall not be limited to: unacceptable disinfection residuals; unacceptable bacterial levels; water clarity that does not allow viewing all parts of the pool.

IMMINENT HEALTH HAZARD. Any event, circumstance or situation, which in the discretion of the Health Officer, presents a serious and present health or safety risk to a person or to the public at large.

INSPECTION. A review of any portion of a swimming pool facility and its operations. The facility shall include the swimming pool and surrounding area, water supply, sewage disposal system, mechanical equipment and equipment room, chemical storage facility, safety and testing equipment, bathhouse, and any other portion of the swimming pool facility as deemed necessary by the Health Officer. The operations shall include bacteriological reports, operating records, and chemical water testing results.

LICENSEE. Any individual, association, company, corporation, partnership, division of government or other group acting as a unit, trust, estate, agent or legal representative thereof who shall hold title to the real estate upon which the pool is placed, or who shall be legally responsible for the operations of the pool, or who shall be so named as the owner on the pool permit application.

MECHANICAL CHEMICAL FEEDER. A device approved by the Health Officer that allows for the continuous (24 hours per day) and automatic addition of a chemical which imparts an easily measured free residual. All such devices must be sized to provide an acceptable chemical residual, sufficiently adjustable to readily increase or decrease the chemical as necessary, and durable enough to operate continuously 24 hours per day.

OPERATING RECORDS. A written record on approved forms, completed daily, outlining hours of operation, and all testing results (including bacterial, disinfectant residual, combined chlorine, pH, alkalinity, cyanuric acid calcium hardness), and any changes to the pool operation.

PERSON(S) IN CHARGE (PIC). The individual(s) who has knowledge of all laws, rules and regulations of both the State of Indiana and Montgomery County governing swimming pools and who supervises compliance with all parts of this chapter. The PIC shall be available to the health department, either in person or by telephone, at all times during normal working hours. In addition, the PIC shall be available within one hour for emergencies during non-working hours.

pH. A measure of the relative acidity or basicity of water as indicated by the hydrogen ion concentration. **pH** is expressed as a number on the scale of 0 to 14.

POOL ENCLOSURE. The barrier between the swimming pool area and the area outside which is intended to deter unauthorized entry from outside the swimming pool area. The **POOL ENCLOSURE** shall provide self-closing and self-latching hardware on all gates, doors, or other accesses through the enclosure; and shall be locked when the swimming pool is closed.

PUBLIC POOL. Any pool, other than a semi-public pool defined in this section, which is intended to be used for swimming or bathing and is operated by a concessionaire, owner, lessee, operator, or licensee, regardless of whether a fee is charged for use. Nothing in this Chapter will be construed as applying to any pool constructed at a one (1) or two (2) family dwelling and maintained by an individual for the sole use of the household or house guests.

SEASONAL POOLS. Pools that are open less than all year.

SEMI-PUBLIC POOLS. Any pool restricted for use by residents, members, or registered guests that is intended to be used for swimming or bathing and is operated solely for and in conjunction with

- (1) hotels, motels, apartments, condominiums, bed and breakfast facilities or similar facilities associated with lodging;
- (2) camps or mobile home parks; or
- (3) membership clubs, churches or associations.

STATE HEALTH DEPARTMENT. The Indiana State Department of Health.

STOP WORK ORDER. A written order of the Health Officer to stop all work on a project or construction of a swimming pool until the project is in compliance with all provisions of this chapter.

SUPERCHLORINATE. The practice of adding a sufficient amount of chlorine to water to destroy chlorine demand compounds and any combined chlorine which may be present. **SUPERCHLORINATION** is referred to as breakpoint chlorination. Generally, chlorine must be added to ten times the difference between the free chlorine and the total chlorine in the swimming pool water to super chlorinate and achieve breakpoint chlorination.

SWIMMING POOL. An artificial body of water used by individuals primarily for the purposes of swimming, wading, diving, recreation, or instruction, and includes all related equipment, bathhouses, structures, areas, and enclosures intended for the use of individuals

using or operating the swimming pool. **SWIMMING POOLS** shall include any structure, basin, chamber, or tank containing water for swimming, wading, diving, recreation or instruction and shall include swimming pools, pools, slide pools, spa pools, wave pools, wading pools, diving pools, whirlpools, hot tubes, water slides, and spas. **SWIMMING POOLS** shall not include:

- (4) Residential swimming pools serving one- or two-family dwellings and maintained by an individual for the sole use of the household and house guests;
- (5) Portable hot tubs or other pools or spas operated for medical treatment, physical therapy, or related purposes, or that are drained and cleaned between uses and filled directly prior to use; and
- (6) Natural bathing areas such as streams, lakes, rivers, or man-made lakes.

TEST KIT. A set of devices and reagents used to accurately monitor the disinfectant residual, pH, alkalinity, calcium hardness, combined chlorine, and any other chemical characteristic of the water determined by the Health Officer as important in the control of water quality. A **TEST KIT** shall be durable; shall have the appropriate range of standards which are accurate and stable; shall have fresh reagents; and shall be simple to use. When cyanuric acid is used, a test kit for determining cyanuric acid levels shall be provided.

TOTAL DISSOLVED SOLIDS. The total amount of dissolved matter in water (such as calcium, magnesium, carbonate, bicarbonates, metallic compounds and the like).

(Ord. 2013-4, passed 5-28-2013)

§158.04 LICENSE REQUIREMENTS

(A) License Requirement. No person shall operate a swimming pool in Montgomery County without a valid license. A swimming pool license shall be issued for a term of one year commencing May 1st and expiring on April 30th of the subsequent year and must be renewed annually.

(B) Limitations. The person(s) in charge shall only be in charge of one pool for any given facility except for facilities with more than one pool located on the same or contiguous property. The licensee may be the person in charge or must specify a person in charge. At any time the swimming pool is not under the operation of the specified person(s) in charge, the licensee shall find a new person in charge within one week. If the new person in charge is not specified within one week, the swimming pool shall close. Swimming pool licenses are not transferable and shall be conspicuously posted at every swimming pool.

(Ord. 2013-4, passed 5-28-2013)

§158.05 ISSUANCE OF LICENSE

(A) Application. Any pool owner wishing to operate a swimming pool in Montgomery County shall make written application for a license to operate the swimming pool on approved forms. The application shall include the name and address of the owner, the location and type of proposed swimming pool, dimensions and volume of pool(s), the signature of the owner, the names, addresses, and phone numbers of the person(s) in charge, the days and hours of operation, and any other information deemed necessary by the Health Officer. Application for licensure must be completed prior to all requests for inspection.

(B) Education. Each applicant must have its Person in Charge participate in a Certified Pool Operator's course or pass a test administered by the Health Department in order to demonstrate the requisite knowledge of operations prior to issuance of a license.

(C) Inspection. Before approving an application for a license to operate a swimming pool, the Health Officer shall inspect the swimming pool to determine compliance with this chapter.

(D) Fee. The applicant shall pay a license fee as required by Section 158.16.

(E) The Health Officer shall promptly issue a license if the applicant satisfied the conditions of this section and all rules of the Department, the swimming pool is in compliance with this chapter and is designed, constructed, and equipped to be operated in a manner which protects public health.

(Ord. 2013-4, passed 5-28-2013)

§158.06 LICENSE RESTRICTIONS

A swimming pool which has not held a required license to operate for a period of one year, or has had its license revoked by the Health Officer, shall be required to apply for a new license before resuming operations and shall not be issued a license to operate unless it complies with all of the requirements of this chapter, including the construction, design, equipment, and sanitation requirements applicable to a new swimming pool. Upon change of ownership of a swimming pool, a new license to operate must be obtained from the Health Department prior to operating under the new owner. A license will not be issued to the new owner unless the swimming pool is in compliance with current codes and regulations.

(Ord. 2013-4, passed 5-28-2013)

§158.07 SAMPLING AND TESTING

Bacteriological examination of all swimming pools must be completed prior to opening and at least once per week as outlined in Rule 410 IAC 6-2.1. Sample results must be submitted in writing to the Health Department within seven days of sample collection. Every swimming pool shall be equipped with a chemical test kit. Tests for residual disinfectant and pH in the swimming pool shall be conducted not less than two times per day and recorded on approved forms. These tests shall be conducted prior to opening the pool and spa to swimmers and one other time later in the day when the pool is in use by swimmers. Tests for alkalinity and cyanuric acid shall be conducted as necessary to maintain acceptable chemical balance but not less than once per week. Tests for combined chlorine shall be conducted at least twice per week. The Health Department recommends but does not require that the test for calcium hardness be conducted at least once per month. Results shall be recorded on the approved operating record forms. All such records shall be maintained for at least one year and shall be available for examination by the Health Officer.

(Ord. 2013-4, passed 5-28-2013)

§158.08 ADDITION OF CHEMICALS.

(A) The water chemistry and bactericidal chemical concentrations shall be maintained within the parameters as established in Rule 410 IAC 6-2.1.

Required Disinfectant Levels

	Chlorine		Bromine	
Pool Type	Minimum	Maximum	Minimum	Maximum
Wading pool	3.0 ppm	7.0 ppm	4.0 ppm	10 ppm
Spa pools	2.0 ppm	7.0 ppm	4.0 ppm	10 ppm
Waterslide plunge pool	2.0 ppm	7.0 ppm	3.0 ppm	10 ppm
Wave pool	2.0 ppm	7.0 ppm	3.0 ppm	10 ppm
All other pool	1.0 ppm	7.0 ppm	2.0 ppm	10 ppm

Required Levels of Other Chemical Parameters

	Minimum	Maximum
Ph	7.2	7.8
Cyanuric Acid	NA	60 mg/L

Alkalinity	80 mg/L	NA
Combined Chlorine	NA	0.50 mg/L
NA=not applicable		
Cyanuric Acid shall not be used in any indoor pool		

(B) Where the concentration of combined chlorine is greater than 0.50 mg/L (ppm), the swimming pool shall be superchlorinated or otherwise treated in a manner to oxidize and diminish the concentration of combined chlorine. No harsh or irritating chemical shall be added manually and directly to the water of any swimming pool except under emergency conditions. Should it be necessary to add any such chemical in concentrated form directly into the water of any swimming pool, use of the swimming pool shall be terminated until such time as the chemical is dissolved completely in and is diffused thoroughly throughout the swimming pool. The broadcasting or manual application of chemicals to maintain a disinfectant residual or pH is prohibited except as may be required to superchlorinate the swimming pool. Under no conditions may superchlorination or manual adjustment of pH occur while the swimming pool is in use by swimmers.

(Ord. 2013-4, passed 5-28-2013)

§158.09 INSPECTIONS

The Health Officer may enter upon the swimming pool premises and other property of a person at all reasonable times for the purpose of inspecting the swimming pool, examining records maintained by the operator, and carrying out the requirements of this chapter upon producing proper credentials and identification. No person shall open or place in service any swimming pool without first obtaining a license for such cooperation from the Health Officer. An applicant for licensure shall notify the Health Officer, to request an initial inspection, at least one week prior to the anticipated opening. The Health Officer shall make the inspection within three working days of the receipt of notice from the applicant but only after a minimum of one satisfactory bacterial sample is received by the Health Department. A minimum of one additional inspection will normally be completed during the swimming pool's regular operating season but inspections may be performed as often as necessary for the efficient and effective enforcement of this chapter.

(Ord. 2013-4, passed 5-28-2013)

§158.10 REPORT OF INSPECTION

Whenever an inspection is made of a swimming pool, the findings shall be recorded on an approved inspection report form. The inspection report form shall summarize the violations of this chapter and shall set forth requirements for correction. A copy of the completed

inspection report form shall be presented to the person(s) in charge of the swimming pool at the conclusion of the inspection. The complete inspection report form constitutes an official notice of the inspection findings and an order of the Health Officer to correct all violations found.

(Ord. 2013-4, passed 5-28-2013)

§158.11 CORRECTION OF VIOLATIONS

The completed inspection form shall specify a reasonable period of time for the correction of the noted violations. Correction of all violations shall be accomplished within the period specified in accordance with the following provisions:

- (A)** If an imminent health hazard is determined by the Health Officer to exist, the swimming pool shall immediately close to all swimmers and guests until the violation can be corrected. Operations shall not be resumed until authorized by the Health Officer.
- (B)** If the weekly bacterial water tests do not demonstrate acceptable water quality, the swimming pool shall immediately close to all swimmers. The pool may reopen only after a satisfactory bacterial test result is obtained.
- (C)** If inspection by the Health Officer determines a disinfectant residual below the levels required in 410 IAC 6-2.1 for the type of pool in question, the swimming pool shall immediately close to all swimmers and guests as required by Rule 410 IAC 6-2.1 until disinfectant levels are acceptable. Suitable chlorine levels shall be verified by the Health Officer prior to reopening the swimming pool to swimmers and guests.
- (D)** All other violations of this chapter shall be corrected in accordance with the Montgomery County Swimming Pool Inspection Form and the following schedule:
 - (1) Water quality:** Corrective action required to commence immediately with compliance required within 24 hours.
 - (2) Water clarity:** Corrective action required to commence immediately with compliance required within 48 hours.
 - (3) Disinfectant residual:** Corrective action required to commence immediately with compliance required within 48 hours.
 - (4) Circulation and filtration:** Compliance required within 30 days if water quality is being maintained. If water quality cannot be maintained, the Health Officer may order closure until repairs are completed.
 - (5) Tests and records:** Corrective action required to commence immediately with

compliance required within ten days.

(6) Structures and fixtures: Compliance required within the number of days specified by the Health Officer dependent upon severity, but with compliance always required prior to renewal of the license.

(7) Safety: Corrective action required to commence immediately with compliance required within the number of days specified by the Health Officer.

(8) Signs and enclosure: Compliance required prior to opening; replacements required within 30 days.

(9) Cleanliness: Compliance required within ten days.

(10) License: License to be obtained and posted prior to opening; if licensure cannot be demonstrated, then immediate closure is required until the license is obtained.

(Ord. 2013-4, passed 5-28-2013)

§158.12 SUSPENSION OF LICENSE.

(A) The Health Officer may, upon written notice without prior warning or hearing, suspend any license to operate a swimming pool for any of the following reasons:

(1) The operation, in the opinion of the Health Officer, constitutes an imminent health hazard.

(2) Interference with the Health Officer in the performance of his or her duties;

(3) Failure to correct any specific violation on two or more consecutive routine inspections; or

(4) Failure to comply with the correction schedule established by the Health Officer.

(B) The license shall be promptly reinstated when it has been verified by the Health Officer that the reason for suspension has been corrected. Suspension shall be for a period not exceeding 30 days. Whenever the license to operate a swimming pool is suspended, the licensee or the person(s) in charge shall be notified in writing that the license to operate the swimming pool is, upon serving of the notice, immediately suspended. Opportunity for a hearing will be provided if a written request for a hearing is filed, by the licensee or the person(s) in charge, with the Health Officer shall be afforded within 20 days of receipt of the request. If no written request for hearing is filed within ten days, the suspension is sustained. The Health Officer shall end the suspension upon request of the licensee or the person(s) in

charge if the reason for the suspension no longer exists. If after 30 days the suspension is still in place, the Health Officer shall conduct a hearing for license revocation.

(Ord. 2013-4, passed 5-28-2013)

§158.13 LICENSE REVOCATION

(A) The Health Officer may, after providing opportunity for hearing, revoke a license to operate a swimming pool for any of the following reasons:

- (1)** Repeated violations of this chapter found in consecutive inspections;
- (2)** Interference with the Health Officer in the performance of his or her duties; or
- (3)** As a result of a license suspension which has exceeded 30 days.

(B) Before revocation, the Health Officer shall notify the licensee or the person(s) in charge, in writing, of the reasons for which such license is subject to revocation. The license to operate the swimming pool shall be revoked at the end of ten days following service of such notice unless a written request for a hearing is filed with the Health Officer within the ten-day period. If no request for hearing is filed within the ten-day period, the revocation of the license to operate the swimming pool becomes final.

(Ord. 2013-4, passed 5-28-2013)

§158.14 SERVICE OF NOTICE

Any notice provided for in this chapter is properly served when it is delivered to the licensee or to the person(s) in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the licensee. A copy of the notice shall be filed in the records of the Health Department.

(Ord. 2013-4, passed 5-28-2013)

§158.15 HEARINGS

(A) The hearings provided for in this chapter shall be conducted by the Health Officer at a time and place designated by the Health Officer. The Health Officer shall make a final finding based upon the complete hearing record and shall sustain, modify, or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the licensee, or to the person in charge, by the Health Officer within ten days of the hearing if requested. The licensee and person(s) in charge shall immediately comply with an order or decision of the Health Officer. Should the Health Officer be unable to conduct a hearing or should he consider it in the best interests of Montgomery County to do so, he or

she may in his or her discretion request that the Montgomery County Board of Health conduct the hearing.

(B) In the event that the licensee or his or her authorized representative fails to attend any hearing, he or she shall be deemed to have accepted the decision of the Health Officer.

(C) In the event that the licensee or the person(s) in charge fails to abide by the hearing decision or written orders of the Health Officer, the Health Officer may furnish written evidence of the violation to the Montgomery County Prosecutor for prosecution for violation of the provisions of this chapter. The Health Officer may also furnish written evidence of the violation to the office of the Montgomery County Attorney for appropriate action against the licensee including enforcement action for violation of the provisions of this chapter.

(Ord. 2013-4, passed 5-28-2013)

§158.16 LICENSE FEES

(A) Application Fees. License fees shall be charged prior to the issuance of a license to operate a swimming pool in Montgomery County. The fees shall be as follows:

(1) Seasonal Pools: \$125.00;

(2) Seasonal Water Park: \$125.00

(3) Baby Pool / Splash Pad: \$50.00

(4) Annual Pools: \$175.00;

(5) Annual Pools and Spas: \$225.00; and

(6) Schools: Exempt.

(B) Renewal Fees. Each year, the holder of a valid license may apply for renewal. The fee for such renewal is the same as the license fee provided for in Section 158.16(A).

(C) Additional Inspection Fees: For re-inspection due to violations, closures and revocations, an additional inspection fee in the amount of \$50.00 per inspection shall be paid by the operator. Schools are subject to this fee.

(D) Pool License Fund. The fees payable under this Chapter shall be deposited into the Pool License Fund. These funds may be used by the Health Department to pay any and all expenses associated with the regulation of pools as provided for in this section, including but

not limited to salaries, supplies, services, and capital equipment. This shall be a non-reverting fund.

(Ord. 2013-4, passed 5-28-2013; Am. Ord. 2023-35, passed 12-20-2023)

§158.17 LICENSE FEE PENALTY

Any person found to be operating a swimming pool without a valid license shall be assessed a fine in the amount of \$100.00 per day. The Health Officer may not issue a license until the fines arising from this subsection are paid.

(Ord. 2013-4, passed 5-28-2013)

§158.18 PLAN REVIEW

Prior to the construction, rehabilitation, or alteration of any swimming pool in Montgomery County a plan review fee shall be paid, as provided in the Health Department Fee Schedule as amended periodically. The plans and specification sheets stamped with the State of Indiana Plan Release, shall also be submitted to the Health Officer for plan review. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans, construction materials of work areas, and the type and model of proposed fixed and non-fixed equipment and facilities. Failure to submit the appropriate plan review fee and construction plans prior to beginning construction, rehabilitation, or alteration may result in a stop-work order.

(Ord. 2013-4, passed 5-28-2013)

§158.19 CONSTRUCTION

(A) In the event that any provision of this chapter is ultimately determined by a court of competent jurisdiction to conflict with any provision of 410 IAC 6-2.1 et seq., 675 IAC 20-1.1 et seq., 675 IAC 20-2 et seq., or 675 IAC 20-3 et seq., then and in any such event the more strict provision shall govern.

(B) In the event that any provision of this chapter is ultimately determined by a court of competent jurisdiction to be preempted by any state or federal law or regulation, this chapter shall automatically be deemed amended by eliminating the pre-empted provision and incorporating in its place the applicable provision of the preempting state or federal law or regulation.

(C) Each provision of this chapter shall be construed as separate, to the end that if any part of it shall be held invalid for any reason, remainder shall continue in full force and effect.

(D) Compliance with the requirements of this chapter does not obviate or eliminate the necessity of complying with any other applicable federal, state or local laws and regulations affecting swimming pools.

(Ord. 2013-4, passed 5-28-2013)

§158.20 AUTHORITY OF HEALTH OFFICER

It is hereby acknowledged, understood, and declared by the Commissioners of the County of Montgomery, Indiana, that under this chapter the Health Officer is required to exercise and is vested with the authority to exercise his or her discretion and judgment in order to protect and preserve the public health, safety, and general welfare of the citizens of the County of Montgomery, Indiana in regulating swimming pools. The authority of the Health Officer to issue, deny, suspend, or revoke or fail or refuse to issue, deny, suspend, or revoke any license, approval, order registration or similar authorization under this chapter is hereby declared to be discretionary.

(Ord. 2013-4, passed 5-28-2013)

§158.99 PENALTY

Any person who violates any provision of this chapter shall be deemed to have committed a violation and, upon conviction, shall be fined not more than \$500 for the first offense and not more than \$1,000 for the second and each subsequent offense. Each violation of the chapter shall constitute a separate violation, and each day that a violation continues shall constitute a separate violation. In addition to the specific enforcement mechanisms contained within this chapter, the Health Officer may furnish written evidence of any violation of this chapter to the Montgomery County Prosecutor and/or the Montgomery County Attorney for appropriate action against the licensee and the person(s) in charge, including prosecution and enforcement action for violation of the provisions of this chapter.

(Ord. 2013-4, passed 5-28-2013)