

RESOLUTION NO. DB-08-27-07-1

A RESOLUTION OF THE HAMILTON COUNTY DRAINAGE  
BOARD CONCERNING ENCROACHMENTS INTO DRAINAGE  
EASEMENTS ESTABLISHED IN RESIDENTIAL SUBDIVISIONS

WITNESS THAT:

WHEREAS, from time to time, developers of residential subdivisions within Hamilton County, Indiana, have dedicated drainage easements within subdivisions (“the Subdivision Drainage Easements”); and,

WHEREAS, in most situations, the Planning Departments, Plan Commissions, Boards of Zoning Appeals, and other entities authorized to issue building permits within Hamilton County, have authorized, and in some incidences mandated, the construction of driveways, buildings, fences, or other encroachments into the drainage easements (all of which are collectively referred to as “Easement Encroachments”); and,

WHEREAS, in certain subdivisions, the Hamilton County Surveyor, acting on behalf of the Hamilton County Drainage Board (“the Drainage Board”), has exerted control over Subdivision Drainage Easements and prevented Easement Encroachments unless those encroachments were expressly authorized by the Drainage Board; and,

WHEREAS, for purposes of this Resolution, the term “Subdivision Drainage Easement” does not include any regulated drain, or arm of a regulated drain, established within Hamilton County under the authority of Indiana Code 36-9-27; and,

WHEREAS, it is the intent of the Drainage Board to allow municipalities, with planning and zoning jurisdiction, to make decisions concerning Easement Encroachments, if that municipality believes the encroachments are in the best interest of the residents of subdivisions within the jurisdiction of the municipality.

IT IS THEREBY RESOLVED by the Hamilton County Drainage Board as follows:

1. Subject to the following, the Drainage Board, grants to the municipalities exercising planning and zoning jurisdiction within Hamilton County, the right to approve, authorize, or require the construction of Easement Encroachments within Subdivision Drainage Easements, for those subdivisions which are under the planning and jurisdiction of the municipality, and waives any right of the Drainage Board to enforce any rule or regulation of the Drainage Board concerning said easements. This waiver is conditioned upon the Board of Public Works and Safety, the Common Council, or Town Council of the municipality passing a resolution or ordinance which at a minimum states as follows:
  - a. The municipality agrees to undertake any and all authority previously exercised by the Drainage Board to authorize the construction of buildings, driveways, or other structures within a residential Subdivision Drainage Easement.
  - b. The municipality acknowledges that upon the passage of the resolution or ordinance, the Drainage Board, shall, in reliance upon said resolution or ordinance, cease the enforcement of any rule or regulation of the Drainage Board concerning encroachments into Subdivision Drainage Easements.
  - c. The municipality accepts from the Drainage Board, pursuant to this Resolution, the authority to regulate land uses within said Drainage Easement, whether or not said uses might interfere

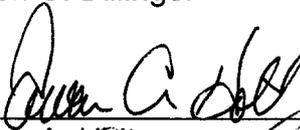
with the proper drainage of the land served by, or contiguous to the Subdivision Drainage Easement.

- d. The municipality agrees to indemnify and hold the Drainage Board, the Hamilton County Surveyor, and Hamilton County harmless from any claims arising out of the enforcement or lack of enforcement of land uses within the Subdivision Drainage Easement.
  - e. The municipality acknowledges that the Drainage Board, acting through the Hamilton County Surveyor, shall continue to regulate uses within regulated drains including any arms of those drains which have been, or shall subsequently be, approved pursuant to Indiana Code 36-9-27.
2. The Hamilton County Surveyor is requested to provide a copy of this Resolution to the Director of Planning, the Chief Executive Officer, and the Clerk-Treasurer of all municipalities within Hamilton County.
  3. This Resolution shall be in full force and affect upon passage.

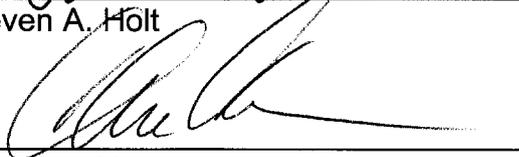
ALL OF WHICH IS RESOLVED this 10<sup>th</sup> day of September, 2007.

HAMILTON COUNTY DRAINAGE BOARD

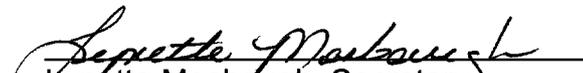
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Steven C. Dillinger

  
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Steven A. Holt

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Christine Altman

  
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ATTEST:

  
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Lynette Mosbaugh, Secretary