

ORDINANCE NO. 9-25-06-A

AN ORDINANCE OF THE HAMILTON COUNTY BOARD OF
COMMISSIONERS ESTABLISHING PROCEDURES FOR IMPOSING
MAINTENANCE DUTIES FOR DRAINAGE STRUCTURES
WHICH DISCHARGE INTO REGULATED DRAINS

WITNESS THAT:

WHEREAS, the Hamilton County Drainage Board, has the authority to regulate direct and indirect discharges into County regulated drains pursuant to the terms of Indiana Code 36-9-27-17 by issuance of permits to discharge into a regulated drain (“an Outlet Permit”); and,

WHEREAS, in order to control storm water discharges into regulated drains, the Hamilton County Drainage Board requires developers of commercial and residential properties to construct collection systems to collect storm water within a development; to construct detention ponds to restrict the amount of water discharged into a regulated drain; and to construct discharge pipes from detention ponds to discharge directly or indirectly into a regulated drain; and,

WHEREAS, from time to time, developers petition the Hamilton County Drainage Board for variances from the terms of Indiana Drainage Code or the Ordinances of Hamilton County; to permit encroachments into regulated drainage easements; or for other special consideration, which Petitions may be approved by the Drainage Board granting a Variance, a Encroachment Permit, or a Crossing Permit; and,

WHEREAS, the Drainage Board may, as a condition of approval, require a landowner or developer to install, construct, or maintain an instrument, structure, or device to improve,

enhance, or maintain the quality of storm water discharge into any part of a regulated drain, which instrument, structure, or device is hereinafter referred to as a “BMP”; and,

WHEREAS, the Drainage Board, as a condition of approval of a Outlet Permit, a Variance, a Crossing Permit, an Encroachment Permit, (hereinafter collectively referred to as “Permits”), often imposes conditions which are reasonable and necessary in consideration for the benefits conferred by a Permit, which conditions are hereinafter referred to as “Permit Conditions”; and,

WHEREAS, it is fair and reasonable for the Board of Commissioners of Hamilton County to pass an ordinance to assure that the developer or landowner of a parcel of real estate and/or their successors in title to continue to comply with the Permit Conditions and to assure that the failure to comply with the Permit Conditions does not impose a financial burden upon all of the taxpayers of Hamilton County.

IT IS THEREBY ORDAINED by the Board of Commissioners of Hamilton County upon recommendation of the Hamilton County Drainage Board as follows:

1. The Hamilton County Drainage Board as a condition of approval of any Outlet Permit, Variance, Crossing Permit, or Encroachment Permit, may impose reasonable conditions (“Permit Conditions”) as a condition of approval of a Permit.
2. For purposes of this Ordinance, “Landowner” means the owner or owners of a parcel of real estate benefitted by the approval of a Permit, including said owner’s successors in title.
3. For purpose of this Ordinance, the term “Drainage Structures” shall include any drainage collection pipes and systems, detention ponds, BMP’s and discharge

pipes to or from a detention pond or regulated drain, located upon or benefitting land owned by a Landowner.

4. As a condition of approving the construction of Drainage Structures to discharge into a regulated drain, the Hamilton County Drainage Board may require the Landowner of land benefitted by the Permit to prepare and record Covenants imposing a duty upon a Landowner to maintain Drainage Structures and/or comply with Permit Conditions imposed by the Drainage Board.
5. The Permit Conditions which the Drainage Board may require include, but are not limited to the following:
 - a. A condition that the Landowner, on behalf of themselves, and their successors in title, to all real estate benefitted by the Permit, shall pay all costs of maintenance of all or a part of the Drainage Structures located upon, or serving the land benefitted by a Permit.
 - b. A condition that the Landowner maintain premises liability insurance for all of the land containing encroachments, or Drainage Structures. Said liability insurance shall provide coverage of up to Seven Hundred Thousand Dollars (\$700,000) for the injury or death of one (1) person, and up to Five Million Dollars (\$5,000,000) for the injury or death per occurrence, which amounts may be increased to the maximum coverage by the Indiana Tort Claims Act as amended (Indiana Code 34-13-3).

- c. A condition that the Landowner shall indemnify the Drainage Board, Hamilton County, and the Board of Commissioners of Hamilton County for any claims, including attorney's fees and defense costs, made by any third parties against the indemnified parties which indemnification shall include the insurance coverage in Section b above.
 - d. A Permit Condition that the Landowner shall file and maintain updated copies of said Certificates of Insurance with coverage set out in Section b above. The Certificates shall be filed with the Hamilton County Surveyor, at One Hamilton County Square, Suite 188, Noblesville, Indiana 46060. Each Certificate shall specifically state the name of the subdivision and the name of the Landowner who maintains the insurance. The Hamilton County Drainage Board, the Board of Commissioners of Hamilton County, and Hamilton County, Indiana, shall all be additional named insureds on said Certificate of Insurance.
- 6. All Covenants required to impose Permit Conditions upon a Landowner shall include the following:
 - a. The name and address of the Landowner.
 - b. The legal description of the real estate and Hamilton County Parcel Number.

- c. The Permit Condition(s) imposed upon the Landowner and the location of any Drainage Structures to be maintained by the Landowner.
- d. In the event a Landowner receives notice from the Hamilton County Surveyor of the need to provide maintenance or reconstruction of the Drainage Structures, the Landowner shall perform said maintenance within sixty (60) days. However, if the Hamilton County Surveyor determines that the required maintenance is an emergency, the Surveyor may, immediately undertake said maintenance upon notice to the Drainage Board; pay the cost of said maintenance; and institute a claim against the Landowner for the cost of the maintenance.
- e. In the event a Landowner dissolves, fails to provide the required Certificate of Insurance, or fails to maintain the Drainage Structures, the Hamilton County Drainage Board, upon request of the Hamilton County Surveyor, may lawfully presume that said failure shall be deemed a request by the owners of all parcels benefitted by the Permit Conditions request that the Drainage Structures to become a regulated drain pursuant to Indiana Code 36-9-27-18. The Drainage Board may, after notice, establish all or part of the Drainage Structures as a regulated drain.

- f. The Drainage Board may impose a maintenance or reconstruction assessment upon all real estate described in the previously approved Covenants to pay all past or future maintenance or reconstruction costs, which arose because of the failure of the Landowners to comply with a Permit Conditions.
- g. All property owners within a subdivision shall receive notice of the hearing to establish the Drainage Structures as a regulated drain and to imposition of the above assessments. However, the Covenants shall provide that all owners of parcels within the subdivision waive their right to remonstrate against the establishment of the drain and all assessments for work which is necessary to repair the Drainage Structures described in the Covenants.
- h. Any charges for the maintenance or reconstruction of the Drainage Structures imposed by the Hamilton County Drainage Board shall become a lien against the real estate as if each parcel of land within the subdivision was uniformly benefitted by the Drainage Structures.
- i. Any maintenance or reconstruction assessment shall be imposed as a charge upon the property tax duplicate of all parcels of land described in the Covenants and become a first lien against each parcel of real estate, superior to all liens

other than taxes pursuant to the Indiana Drainage Code at Indiana Code 36-9-27, as subsequently amended or recodified.

- j. Any notices required to be sent to a Landowner shall be deemed received by the Landowner ten (10) days after mailing of said notice to the address shown on the Hamilton County Property Record Card for the parcel upon which the relevant Drainage Structures are located.

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The Hamilton County Drainage Board may require the Landowner to prepare and record Covenants imposing Permit Conditions upon the Landowner and its successor in title. Recorded copies of the Covenants shall be filed with the Hamilton County Surveyor prior to the release of the applicable Permit. The Board of Commissioners and the Drainage Board shall release the Covenants recorded by a Landowner upon the recording of replacement Covenants imposing the Permit Conditions upon a successor Landowner or a Property Owners Association. If the Permit Conditions are imposed upon a Property Owners Association, the replacement Covenants shall include the following terms:

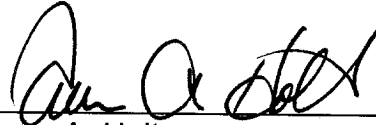
- a. The initial term of the existence of the property owners association shall not exceed thirty (30) years.
- b. After the initial term, the Property Owners Association shall continue for additional consecutive ten (10) year periods, unless at least eighty percent (80%) of the members of the

association vote to dissolve the association.

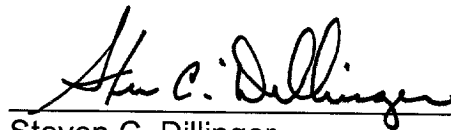
- c. In the event the Property Owners Association dissolves, or fails to perform any of the Permit Conditions, the owners of all parcels who were members of the Property Owners Association, and their successors in title shall be jointly and severally liable to perform all Permit Conditions.
8. The Hamilton County Surveyor shall not release any Permit unless the Permit Conditions imposed by the Drainage Board are secured by recorded Covenants containing the provisions in Section 5, 6, and 7 above.
9. This Ordinance shall be in full force and effect upon passage.

RECOMMENDED by the Hamilton County Drainage Board on the 23 day of October, 2006.

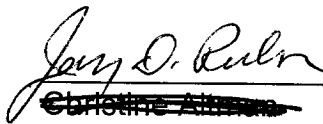
HAMILTON COUNTY DRAINAGE BOARD



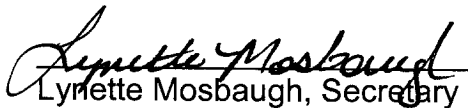
Steven A. Holt



Steven C. Dillinger


~~Christine Atherton~~

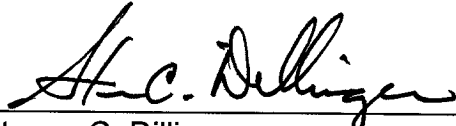
ATTEST:


Lynette Mosbaugh, Secretary


This Ordinance approved and the Hamilton County Auditor is request to compile this Ordinance in the appropriate Section of Hamilton County Code 36-9-27.

BOARD OF COMMISSIONERS OF
HAMILTON COUNTY

DATED: October 23, 2006



Steven C. Dillinger




Steven A. Folt



Christine Altman

ATTEST:



Robin M. Mills, Auditor