

12-2-19

AMENDED ORDINANCE NO. 12-09-19-A

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF HAMILTON COUNTY PROHIBITING STRUCTURES WITHIN DRAINAGE EASEMENTS REGULATED BY THE HAMILTON COUNTY DRAINAGE BOARD; PROVIDING FOR PAYMENT OF COSTS OF REMOVAL OR REPAIR OF DRAINAGE STRUCTURES WITHIN DRAINAGE EASEMENTS; AND IMPOSING PENALTIES FOR FAILURE TO REMOVE STRUCTURES PROHIBITED WITHIN DRAINAGE EASEMENTS

WHEREAS, the Hamilton County Drainage Board ("the Drainage Board"), has the authority to prohibit and/or limit the construction of structures and the planting of trees, shrubs, or wooded vegetation within regulated drainage easements established pursuant to Indiana Code 36-9-27-33(d), (the "Regulated Drain Easements"); and,

WHEREAS, the Drainage Board has jurisdiction to regulate the use of dedicated drainage easements located within platted real estate, which easements may be located inside and outside of the corporate limits of municipalities within Hamilton County, Indiana, ("the Platted Drainage Easements"); and,

WHEREAS, from time to time landowners construct fences and other improvements, or plant trees, shrubs, and wooded vegetation within Regulated or Platted Drainage Easements; and,

WHEREAS, from time to time persons intentionally or negligently, caused damage to the land and structures within Regulated or Platted Drainage Easements, which damage must be repaired in order to permit the use of the drainage easement for its intended purpose; and,

WHEREAS, upon the recommendation of the Hamilton County Drainage Board, the Board of Commissioners of Hamilton County believes that it is necessary to approve an Ordinance to expressly prohibit the placement and construction of structures, plantings, and other potential obstructions within drainage easements which limit, or in any way restrict access of the Hamilton County Surveyor, his employees, or contractors to maintain, repair, or use any drainage easement for its intended purpose; and,

WHEREAS, in order to assure that landowners are clearly informed of their duties caused by any prohibited use and/or damage within the drainage easement, it is necessary that the Board of Commissioners pass an Ordinance to codify the rights, powers, and remedies of the Drainage Board to protect its drainage easement rights for the benefit of all of the citizens and landowners in Hamilton County.

WHEREAS, the rights and powers of the Drainage Board under Indiana Code 36-9-27 is exercised by the Board of Commissioners as Executive of Hamilton County, Indiana; and,

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

SECTION I. DEFINITIONS.

For purposes of this Ordinance, the following terms shall have the following definitions:

- a. "Drainage Board" means Hamilton County Drainage Board.
- b. "Drainage Easement" means: i) The Regulated Drainage Easement granted to the Hamilton County Drainage Board by Indiana Code 36-9-27-33; or ii) and any Platted Drainage Easement, whether inside or outside of the limits of a city or town within Hamilton County ("the County Drainage Easements"), which Drainage Easements are to be used for construction or maintenance of any drainage structure, or to provide access to a drainage structure for maintenance or repair.
- c. "Drainage Encroachments" includes any structure, tree, shrub, or other material located within a Drainage Easement, which impedes the flow of surface water or subsurface water within the Drainage Easement, or which obstructs access of authorized personnel to repair or maintain any structures or land within any part of a Drainage Easement.
- d. "Drainage Structure" means any structure, pipe, ditch, wall, fence, bridge or any other improvement located within a Drainage Easement. Drainage Structures shall also include grasses, grading, stone, or other materials or conditions of the land within the Drainage Easement, which provide positive flow of rain or surface water through and along the Drainage Easement.
- e. "Real Property Owner" means the owner of record of a parcel of land, which is encumbered by a Drainage Easement, as the ownership is shown on the real property tax records of Hamilton County.

- f. "Surveyor" means the Hamilton County Surveyor, any employee of the Surveyor's Office, and/or any contractor or other person or company designated by the Surveyor to perform any work or activity within a Drainage Easement.

SECTION II. VIOLATIONS OF THIS ORDINANCE.

- a. All Real Property Owners owning, occupying, or controlling any real estate subject to a Regulated Drainage Easement defined in Indiana Code 36-9-27-33; a Platted Easement located inside or outside of the boundaries of any City or Town; or any other Drainage Easement expressly dedicated to Hamilton County or the Drainage Board, shall maintain the Drainage Easement free of Drainage Encroachments. The placement or maintenance of any Drainage Encroachments within the Drainage Easement, shall be a violation of this Ordinance.
- b. Any person who is not the Real Property Owner of the land burdened by a Drainage Easement and who causes damage to any Drainage Structure within a Drainage Easement, shall reimburse the Drainage Board the costs to repair the damage caused by the person.

SECTION III. EXCEPTIONS.

The Drainage Board, in its sole discretion, may permit Drainage Encroachments to be located within a Drainage Easement, subject to such conditions which the Drainage Board may choose to impose. Any such Drainage Encroachment shall be evidenced by a permit issued by the Drainage Board and recorded in the Office of the Hamilton County Recorder.

SECTION IV. ENFORCEMENT PROCEDURES.

Any person who causes, permits, or maintains any Drainage Encroachment within a Drainage Easement in violation of this Ordinance shall be guilty of an Ordinance violation. The person may be subject to an enforcement action under this Ordinance as authorized by Indiana Code 36-1-6-2, and the Drainage Board may seek fines, costs of removal of Drainage Encroachments; and reimbursement of the Drainage Board's costs of collection including Court costs and reasonable attorney's fees. The enforcement procedures under this Ordinance are as follows:

- a. The Hamilton County Surveyor, any of his employees, or his designated contractors may:
 1. Enter upon the Drainage Easement where a Drainage Encroachment is located or appears to be located, to repair, maintain, or remove any Drainage Encroachment within the Drainage Easement.
 2. In the event the obstruction is a structure, planting, or equipment, which could potentially obstruct the flow of water within the Drainage Easement, the Surveyor may, without notice, enter upon the real estate of the Real Property Owner and remove the Drainage Encroachment without notice or liability to the Real Property Owner.
 3. In the event the Drainage Encroachment has been placed, within the Drainage Easement, but there is no present restriction of water within the Drainage Easement, the Surveyor may issue a Notice of Violation.
 4. The Notice of Violation shall include the following:
 - a. A general description of the condition of the Drainage Encroachment, which is in violation of this Ordinance.
 - b. The date of the Notice and the number of days the Real Property Owners are given to remedy the violation, which shall be no less than ten (10) days, nor more than sixty (60) days pursuant to Indiana Code 36-1-6-2(a), unless there is an immediate need to remove an obstruction to prevent potential damages to private or public property.

- c. In the event the Drainage Encroachment is not removed within the time stated in the Notice, the Surveyor, or his designee, may enter upon the Drainage Easement; remove the Drainage Encroachment; and record a lien against the real estate for the costs of removal, all as authorized by Indiana Code 36-1-6.
- d. In the event the land within the Drainage Easement is not brought into compliance with above section of this Ordinance by a Landowner, the Surveyor may, in addition to the remedies stated in Section IV:
 - i. File an Ordinance violation citation in the appropriate Court in Hamilton County seeking Court costs and a fine of up to Two Thousand Five Hundred Dollars (\$2,500) for a first offense, and up to Seven Thousand Five Hundred Dollars (\$7,500) for any subsequent offense. The citation shall refer to the number of this Ordinance and the Section of the Ordinance, describing the violation;
 - ii. Seek a mandatory Order to remove the obstruction within the Drainage Easement;
 - iii. In the event the violation of this Ordinance is not brought into compliance within the time set out in the above Notice, the Surveyor may: a) enter onto the property and remove the Drainage Encroachment without liability to the Real Property Owner, any tenant, or other person occupying the Real Property Owner's real estate; and b) initiate an action to enforce any or all of the terms of this Ordinance pursuant to Indiana Code 36-1-6, including requesting a Court Order for a representative of the County, or its designated contractors, to enter onto the Drainage Easement, remove any or all obstructions located within the Drainage Easement in violation of this Ordinance; charge the Real Property Owner of the costs of removing the Drainage Encroachment; impose a lien upon the Owner's real estate to recover all costs to complete removal of the Drainage Encroachment; and record a lien against the Owner's real estate including Court

costs and reasonable attorney's fees. In order to recover the Drainage Board's costs, the Drainage Board may foreclose the lien upon the real estate of the Real Property Owner through the annual Hamilton County Tax Sale, all as permitted by Indiana Code 36-1-6-2(f).

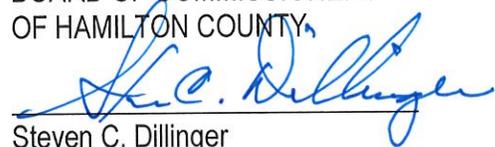
- iv. None of the penalties or remedies of this Ordinance are exclusive of the other penalties and remedies listed above, and the Drainage Board may seek any, or all, of such remedies.
- v. The issuance of each second or subsequent Notice of Violation to a Real Property Owner shall be deemed a separate offense.

SECTION V. EFFECTIVE DATE AND REPEAL OF PRIOR ORDINANCE.

This Ordinance shall be in full force and effect on the 1st day of March, 2020, which is more than thirty (30) days after publication of Notice of Adoption. The Hamilton County Auditor is directed to have the provisions of this Ordinance codified in the Hamilton County Code of Ordinances.

ALL OF WHICH IS ORDAINED by the Board of Commissioners of Hamilton County on the 27th day of January, 2020.

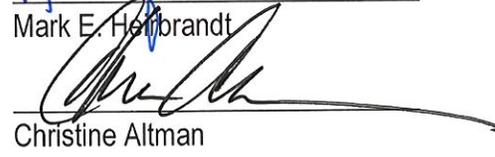
BOARD OF COMMISSIONERS
OF HAMILTON COUNTY



Steven C. Dillinger



Mark E. Heibrandt



Christine Altman

ATTEST:



Robin M. Mills, Auditor