

Bill No. \_\_\_\_\_

Ordinance No. FCO 2021-30

## **AN ORDINANCE AUTHORIZING AND ESTABLISHING A SYSTEM OF STORMWATER MANAGEMENT USER FEES**

**WHEREAS**, Floyd County, Indiana (hereinafter the "County"), is mandated by applicable law to address the requirements of the National Pollutant Discharge Elimination System (NPDES) small Municipal Separate Storm Sewer System (sMS4) permit program requirements as administered by the Indiana Department of Environmental Management (IDEM) under 327 IAC 15-13 (Rule 13) and related programs; and,

**WHEREAS**, the County is responsible for stormwater management; and,

**WHEREAS**, the County desires to provide effective stormwater management for all its citizens to protect, to the extent practicable, from the loss of life and property damage from flooding, and to minimize, to the extent practicable, impacts to surface water quality from urban runoff; and,

**WHEREAS**, the County has been mandated by the United States Environmental Protection Agency (USEPA) as administered by the Indiana Department of Environmental Management (IDEM) to obtain and administer a permit, under a prescriptive schedule, for its stormwater quality management system; and,

**WHEREAS**, the County operates a municipal stormwater management program under the provisions of IC 8.1.5-5; and,

**WHEREAS**, the County desires to implement a stormwater management user fee to be used to fund the operation, construction and maintenance of stormwater facilities, stormwater system planning, municipal stormwater quality control operations, and review of stormwater development plans for compliance with stormwater management codes; and,

**WHEREAS**, the benefits of flood control and surface water quality extend to all citizens and businesses in the County; and,

**WHEREAS**, all real property in the County, including property owned by public and tax- exempt entities, contributes to stormwater runoff, and either uses or benefits from the stormwater system; and,

**WHEREAS**, stormwater runoff contributes to non-point source pollution to the streams of the County's watersheds, and a stormwater management program can reduce this type of pollution; and,

**WHEREAS**, the County wishes to provide a fair, equitable, and dependable source of funds to manage stormwater in the County in a manner that can reasonably comply with applicable federal and state law; and,

**WHEREAS**, the costs of improving, maintaining, operating, monitoring, and otherwise managing a stormwater system should be allocated, to the extent practicable, to property owners based on the amount of runoff estimated from impervious areas; and,

**WHEREAS**, in order for the County to provide a fair and equitable means of allocating contribution and resulting cost to each individual property, it must expend effort and resources to make the needed calculations and continue the necessary billing and administrative mechanisms; and,

**WHEREAS**, it is in the interests of the public to fund stormwater management with a user fee system that allocates the costs of stormwater management to all property owners in the County, and that further seeks to establish a stormwater management fee on the rationale that each parcel of real property contributes to the need for stormwater management; and,

**WHEREAS**, management of the stormwater system to protect the public health, safety, and welfare requires adequate revenues, and it is in the interest of the public to finance stormwater management adequately with a user charge system that is reasonable and equitable so that each user of the system pays to the extent to which their property contributes to the need for it.

**NOW, THEREFORE, BE IT ORDAINED BY THESE COMMISSIONERS OF FLOYD COUNTY, INDIANA, AS FOLLOWS:**

Section 1. Definitions.

Agricultural Property – All tracts of real property that are classified as agricultural by the County Assessor.

Board – Department of Stormwater Management Board of Directors charged with administering the stormwater program pursuant to IC 8-1.5-5-4.5.

Department – Department of Stormwater Management.

ERU – Equivalent Residential Unit - The national accepted average of impervious area square footage of a detached single family residential property equal to 3,700 square feet. This is the unit to which the base rate is applied.

IDEM – Indiana Department of Environmental Management

Impervious Area – Surface areas of residential and non-residential properties which water will not penetrate and from which stormwater runoff will be produced. This includes but is not limited to rooftops, driveways, sidewalks, parking lots, pavements, concrete, and asphalt.

Non-residential Developed Property – All tracts of real property either zoned or developed for (i) residential use intended for occupancy by more than two (2) families per residential structure (e.g., apartment houses or condominiums with three (3) or more units under a single roof), (ii) commercial uses, (iii) non-profit non-residential uses (e.g., governmental organizations, churches, and fraternal organizations), and (iv) industrial uses.

NPDES – National Pollutant Discharge Elimination System

Residentially Developed Property – All tracts of real property either zoned or developed for residential use in structures designed and permitted for habitation by one or two families (i.e., single-family homes or two-family homes (duplex units)).

SFR (Single Family Residential) – All tracts of real property with improvements intended for occupancy by one or two families for residential purposes (i.e., single family homes or duplex units).

Stormwater System – A system of constructed and naturally occurring above ground and below ground facilities or infrastructure intended to collect, treat, convey and otherwise manage runoff from rain, snow and other precipitation including, but not limited to, drains, inlets, conduits, culverts, manholes, channels, ditches, drainage easements, retention and detention basins, infiltration facilities, lakes, ponds streams, creek, rivers and other related components.

Vacant/Unimproved Property – All tracts of real property that are wholly vacant and unimproved, regardless of the zoning classification assigned to such property or the uses permitted thereon by applicable law, rules, and regulations.

#### Section 2. Purpose.

This Article establishes a stormwater management user fee to fund and support the County's efforts to address the issues presented in the recital provisions set forth above. The user fees include general public (institutional, agency, federal state and local government, etc.) and/or property owner user fees.

#### Section 3. Stormwater User Fee.

- a. All owners of real property in the County shall be charged for the use of the Stormwater System based on the amount of stormwater and rate of flow of stormwater that is projected to discharge into the Stormwater System from the property.
- b. By this Article, which may be amended from time to time by resolution of the Board, the County hereby sets and establishes a system of fees that is intended to assess users their fair and equitable share of the costs for use of the Stormwater System for each property within the County. Such fees shall be established in an amount sufficient to defray the reasonable costs for operation, maintenance, and construction of necessary improvements or additions to the Stormwater System. Such subsequent amendments or adjustments shall take into consideration the amount of funds reasonably necessary to meet the level and cost of service necessary to manage and operate the stormwater system, including escalation in costs, system expansion, increases in state and federal program mandates, or related issues that may necessitate management program expansion.

#### Section 4. Property Affected.

Except as provided in this article, all Residentially Developed Property, and Non-residential Developed Property, located within the unincorporated areas of the County, shall be subject

to the stormwater service charges established by this Article regardless of whether such properties are privately or publicly owned.

Section 5. Fees Established.

- a. Subject to the provisions of this Article, each and every owner and/or operator of Residentially Developed Property and Non-residential Developed Property shall have imposed upon them a "Stormwater User Fee". The Stormwater User Fee shall be a monthly service charge and shall be determined by the provisions of this Article and the applicable ERU and ERU Rate established hereunder, which provisions may be amended from time to time in accordance with the provisions of this Article or by resolution of the Board.
- b. The Board shall have the authority and discretion to adjust this definition of ERU from time to time by resolution to reflect development trends within the County or more equitably divide the costs of supporting the operation and maintenance of the stormwater system. In adjusting such definition, the Board shall take into consideration the source of the data from which the subject ERU is to be established, the general acceptance and use of such source on the part of other stormwater systems, and the reliability and general accuracy of the source. The Board may also utilize information obtained from property tax assessor's rolls or site examination, mapping information, aerial photographs, and other reliable information in order to determine impervious surface area.
- c. A stormwater fee is hereby established. The rate is to be paid by each owner and/or user, and shall incorporate the following rate structure provisions:
  - i. Residentially Developed Properties shall be billed on a per unit basis at a flat fee established for an equivalent residential unit (ERU).
  - ii. The fee for Non-residential Developed Properties shall be calculated based on the total impervious area of the property divided by the then-effective average impervious area for an ERU multiplied by the then-effective rate established for an ERU. The impervious area estimate shall be based on currently available aerial photography or construction plans as approved through the building permit process or other sources at the discretion of the Board.
  - iii. The Board shall make any changes to the base rate, rate structure or any other levees, fees or taxes on the public based on the cost of providing desired stormwater services.

The following provisions apply to the user fee rate structure:

Off-site Owner Properties – For parcels that are utilized as rental or lease tenant property, the billing will be sent to the property owner address rather than the property address, as provided/determined/maintained by the County Assessor's office. However, the County has the discretion, but not the requirement, as determined appropriate by the County Auditor, to send the bill to the property address for residential property.

Property Transfers – In the event that a property title is transferred during the course of a billing year, the buyer and seller will each pay a prorated stormwater fee based on the recorded date of transfer.

Contiguous Parcels – Through the long-term history of development and redevelopment in Floyd County, multiple contiguous parcels have been consolidated through use, but not through assessor and other land management policies. Stormwater user fee charges for multiple parcels may be consolidated into a single stormwater user fee account provided that the following criteria are met:

- 1) The parcels are contiguous – as verified by the County.
- 2) The parcels have the same specific land use.
- 3) The parcels have the same owner who is also the user fee charge recipient.
- 4) The owner has completed the certification form in Appendix A.

Multiple User/Tenant Properties – Non-SFR properties that are utilized by two or more companies, persons or other entities shall be billed to a single property owner/designated operator regardless of how many sub-parcels or other utility segregating mechanisms such as water meters it contains. A single property that has multiple tenants or other segregations may not be given multiple bills unless the property has been subdivided and each parcel has a separate owner(s).

Condominium Properties – Condominium properties shall be billed as per their property classification. The County may at their discretion apply all charges to a single common property manager / owner. Multi-level residential condominium properties shall be billed as non-SFR. Common areas including but not limited to pools, outbuildings, private roads, recreation courts, and other related impervious area will be charged to the condominium association operating the properties. If such an association does not exist, then the individual properties will be evenly assessed the additional impervious area. Consolidation may be requested using the form in Appendix B.

Mobile Home Parks – Mobile home parks will be categorized as non-SFR properties and billing sent to the property owner. The billing units / ERUs will be calculated based on the currently available digital orthogonally rectified aerial photography. If in the County's opinion, the property has expanded or is being utilized to a significantly higher level as to require a reassessment, then the ERUs to be assigned to the property may be estimated by using one of the following techniques:

- 1) Field survey
- 2) Use of updated digital orthogonally rectified aerial photography

- 3) Use of the "old" digital orthogonally rectified aerial photography supplemented by a hand count of "occupied trailer lots" and the size of the type of trailer units as estimates from the "old" digital orthogonally rectified aerial photography.

Public Roadways and Rights-of-Way – Public roadways and rights-of-way collect and convey a significant portion of stormwater runoff, as well as provide a substantive element of the conveyance system. In this capacity, and as commonly assumed in other stormwater management user fees across the country, these areas will not be assessed a stormwater user fee.

Private Roadways and Rights-of-Way – Private roadways and rights-of-way will be billed to the deed owner of record. For SFR properties, these areas will be included under the single ERU billing for the property. For non-SFR properties, these areas will be individually assessed for impervious area. Gravel areas will not be included in impervious area calculations.

Assumption of Partial Stormwater Bills – On certain parcels of property, impervious areas were built on the parcel for the exclusive use of another entity. Examples are pump stations, transmission towers, electrical substations that may be built on utility easements and private roads that cross property lines. The entity who built the structure may accept responsibility for the part of the stormwater bill that applies to the structure. An agreement must be made whereby the entity who built the structure/road agrees to pay the stormwater bill for the impervious area even though it is on the parcel owner's property using the form found in Appendix C.

Agricultural Properties – Agricultural properties will be assessed in the same manner as Non-SFR properties.

Properties Under Construction – The stormwater fee for properties under construction will be billed to the owner of record as of January 1 of the billing year. The builder or developer is responsible for stormwater charges until such time as the property is sold or transferred, at which point the buyer and seller will be responsible for prorated charges based on the date of transfer.

Annexation – In the event that a property is annexed into an incorporated portion of Floyd County during the billing year, the property will be charged a prorated stormwater fee for the year based on the date of annexation.

- d. Rates and charges incurred under this section shall be prepared and collected by the County in accordance with those provisions regulating the preparation and issuance of bills for property taxes generally. The monies collected under this section shall be used expressly for the benefit of the stormwater system and may not be distributed to the general fund or other unrelated funds.

#### Section 6. Collection.

- a. The billing and collection of Stormwater User Fees shall be administered by the Board. The Stormwater User Fees for Residentially Developed Properties and Non-Residential Developed Properties shall be billed as frequently as

semiannually with payment due as of the date stated in such billing. The bills shall be distributed through the property tax billing mechanism housed within the County Assessor's office. The Board shall determine a policy and procedure for billings and collections from applicable properties.

- b. In the event that a partial payment is received, the payment shall be applied to the Stormwater fees first and shall result in part of the tax bill being unpaid. All bills for Stormwater User Fees shall become due and payable in accordance with the rules and regulations in effect, or subsequently adopted by, the Board.
- c. The Board shall have authority to annually place tax liens on properties in default of fees required by this Article. The Board shall provide notice of any intended tax liens subject to the provisions of applicable Indiana law. Removal of the property tax lien will only occur upon full payment of the Stormwater User Fees or other payment arrangements approved by the Board. In the alternative, the Board may take appropriate legal action to collect unpaid charges.
- d. The threshold for retroactive billing shall be six (6) months, unless an affidavit for credits is signed and submitted to the Floyd County Stormwater Department extending the lookback period for retroactive billing and credits are approved by the Floyd County Stormwater Department. Property that has not been charged stormwater user fees may be billed retroactively up to six (6) months.

#### Section 7. Credits and Adjustments.

In order to recognize property owners' efforts to reduce stormwater impacts and the resulting decrease in the County's level of service, the Board will develop a policy for credits and adjustments to lessen the Stormwater User Fee for certain properties. This policy for credits and adjustments shall be adopted by a resolution of the Board. The Board may also elect to adjust (either upwards or downwards) the user fee rates for selected properties that do not meet the County's minimum stormwater management standards. Property owners may also elect to compensate the County for the additional level of service necessary to address the increased impact on stormwater resulting from a particular property. Section 9 of "Exhibit A" explains in general the user fee credits and adjustments.

#### Section 8. Revenue Administration.

- a. All revenues generated by or on behalf of the stormwater management program shall be deposited in a non-reverting stormwater revenue fund and used exclusively for the stormwater management program.
- b. Revenues generated by or on behalf of the stormwater management program pursuant to this Article shall not exceed the estimated cost of service required to implement the County's identified stormwater quantity and quality level of service. While contingency planning and budgeting is permissible, revenues cannot exceed long-term program cost of service estimates.
- c. To the extent that the stormwater user fees collected are insufficient to construct needed stormwater drainage facilities, the cost of the same may be paid from such County funds as may be determined by the County Commissioners and the County Council.

- d. The Stormwater Utility Fund shall be used for the following purposes:
- i. Acquisition of property by gift, purchase, or condemnation necessary to construct, operate, and maintain stormwater management facilities.
  - ii. Costs of administration and implementation of the stormwater management program.
  - iii. Engineering and design, debt service and related financing expenses, planning, construction costs for new stormwater facilities, and enlargement or improvement of existing facilities.
  - iv. Operation and maintenance of the stormwater system, including the monitoring and inspection of stormwater control devices and facilities.
  - v. Water quality monitoring and water quality programs.
  - vi. Inspection and enforcement activities.
  - vii. Elected official, appointed official, stakeholder, and general public education and outreach relating to stormwater.
  - viii. Billing, revenue collection, and associated administrative costs.
  - ix. Other activities that are reasonably required to manage and operate the stormwater system.

Section 9. Policy Fairness and Equitability.

The Board shall develop, periodically update, and make available to the public a document that expresses in the necessary detail the County's policies governing the Stormwater User Fee rate structure, billing administration, and other related issues.

Section 10. Enforcement.

The Board and County Commissioners are authorized to take appropriate legal action to require compliance with this Article.

Section 11. Appeal.

Any person, firm, corporation or organization notified of non-compliance with this Article or that is aggrieved by a decision of a County employee or contractor issuing such decision with regard to this Article may appeal such decision in writing to the Board within ten (10) days following the effective date of the decision.

- a. If the appeal is in regard to the impervious area calculation of a Non-residential Developed Property, said appeal must contain the impervious square footage as estimated by one of the following ways:
  - i. Field survey utilizing total station or GPS data certified by a Land Surveyor licensed in the State of Indiana.



- ii. Other survey using digital orthogonally rectified aerial photography utilized by a Land Surveyor licensed in the State of Indiana.
- iii. As-built plans certified by a Land Surveyor licensed in the State of Indiana to be representatively accurate of all "new" construction and a whole and accurate representation of all "previously constructed" impervious area on the property.

Construction design plans ARE NOT acceptable for this estimation.

- b. In the event that the appeal is accepted by the Stormwater Board as demonstrating a more accurate estimate, albeit of greater or lesser impervious area, then it will be applied to future billing. If a credit to the property owner is due, credit will be applied for the difference in the user fee for the LESSER of:
  - i. One-hundred eighty (180) days.
  - ii. One (1) billing cycle.
  - iii. The date of property ownership transfer.
- c. In the event that the appeal is denied by the Stormwater Board to be a less accurate estimate, then the property owner has the option to take the matter before the Board for final acceptance or denial. The property owner and the Land Surveyor licensed in the State of Indiana who certified the calculations shall appear before the Board to argue for final appeal. The decision of the Board will be final and not to be reconsidered until a time the property owner can submit other suitable data.


Upon receipt of such request, the Board shall request a report and recommendation from the subject County employee or contractor and shall set the matter for administrative hearing at the earliest practicable date. At said hearing, the Board may hear additional evidence, and may revoke, affirm or modify the earlier decision. Such decision shall be final, subject to appeal to a court of competent jurisdiction. The threshold for retroactive credits and adjustments shall be six (6) months.


Section 12. Effective Date.

This Article shall be in full force and effect following its adoption by this Board of Commissioners and the minimum period of any publication of this Article required by applicable Indiana law.

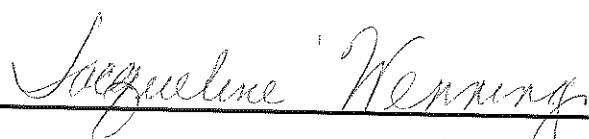
SO ORDAINED BY THIS BOARD OF COMMISSIONERS THIS 21<sup>st</sup> DAY OF


December, 2021.


  
Shawn Carruthers, President  
Floyd County Commissioners

  
John Schellenberger  
Floyd County Commissioner

\_\_\_\_\_  
Tim Kamer  
Floyd County Commissioner

Attest:   
Jacqueline Wenning  
County Auditor

  
Dale Bagshaw Brad Streigel, President  
Floyd County Council

Attest:   
Jacqueline Wenning  
County Auditor

**Appendix A. Request for Consolidation of Contiguous Parcel Stormwater Fees**

I, \_\_\_\_\_ hereby certify and attest that I own the contiguous properties at \_\_\_\_\_, located in Floyd County, Indiana also indicated with the following parcel identification numbers. Consolidate these parcel identification numbers to the master parcel identification number and account billed to the address below.

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Master Parcel No. \_\_\_\_\_  
Billing Address \_\_\_\_\_  
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As such I acknowledge and accept that I will be charged and will pay in a timely manner all stormwater user fees applied under the interim and regular fee schedules according to County Code. I certify and attest that this information is true and correct under penalty of applicable state and local laws. I request that these stormwater accounts be consolidated for the purposes of stormwater user fee billing.

Certifier and Applicant  
Printed Name \_\_\_\_\_  
Signature \_\_\_\_\_  
Date \_\_\_\_\_

County Auditor (Witness)  
Printed Name \_\_\_\_\_  
Signature \_\_\_\_\_  
Date \_\_\_\_\_

**Appendix B. Request for Consolidation of Condominium Stormwater Fees**

I, \_\_\_\_\_ hereby certify and attest that I represent the condominium properties at \_\_\_\_\_, located in Floyd County, Indiana also indicated with the following parcel identification numbers. Consolidate these parcel identification numbers to the master parcel identification number and account billed to the address below.

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Master Parcel No. \_\_\_\_\_

Billing Address \_\_\_\_\_

\_\_\_\_\_

As such I acknowledge and accept that I will be charged and will pay in a timely manner all stormwater user fees applied under the interim and regular fee schedules according to County Code. I certify and attest that this information is true and correct under penalty of applicable state and local laws. I request that these stormwater accounts be consolidated for the purposes of stormwater user fee billing.

Certifier and Applicant  
Printed Name \_\_\_\_\_  
Signature \_\_\_\_\_  
Date \_\_\_\_\_

County Auditor (Witness)  
Printed Name \_\_\_\_\_  
Signature \_\_\_\_\_  
Date \_\_\_\_\_

**Appendix C. Assumption of Partial Stormwater Bill Agreement**

I, \_\_\_\_\_ own the following property:

Master Parcel No. \_\_\_\_\_

Billing Address \_\_\_\_\_

Hereinafter referred to as the OWNER.

And I, \_\_\_\_\_, own the following property:

Master Parcel No. \_\_\_\_\_

Billing Address \_\_\_\_\_

Hereinafter referred to as the ASSIGNEE.

By Virtue of this Agreement, the ASSIGNEE agrees to pay for \_\_\_\_\_ equivalent residential units (ERUs) of impervious area from the OWNER's parcel being described as to dimensions in Attachment "A". Said Attachment shall be considered the legally controlling description of this agreement. This impervious area ERU will be deducted from the OWNER's property and added to the ASSIGNEE's property impervious area measurement. Should the ASSIGNEE fail to make the payment then the responsibility will revert back to the OWNER. This agreement may be terminated by either party by giving written notice to the other party with thirty 30 days notice. The adjustment instormwater service fees will not be reflected until the billing year following the year the agreement is agreed to or terminated.

Owner

Assignee

Printed Name \_\_\_\_\_

Printed Name \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_