

MARCH 20, 2017

REGULAR SESSION

The LaGrange County Commissioners met in Regular Session on Monday, March 20, 2017, in their meeting room, County Office Building, 114 W. Michigan Street, LaGrange, Indiana, 46761, at 8:30 a.m., with the following present: Commissioners, Mr. Larry N. Miller, Mr. Terry A. Martin, and Mr. Dennis H. Kratz; and LaGrange County Auditor, Kay M. Myers. Mr. Larry Miller called the meeting to order and led those present in saying the Pledge of Allegiance to the Flag. Mr. Terry Martin made a motion to adopt the proposed agenda with flexibility. Mr. Dennis Kratz seconded the motion and it carried unanimously.

COUNTY ROAD 700 N – WATER PERMIT

Mr. Kurt Bachman, County Attorney, presented a document granting to LaGrange County Regional Utility District, and its employees, contractors, subcontractors and agents the right to enter upon, over under and across certain property situated in LaGrange County, and to perform work on County Road 700 North and County Road 375 East.

Mr. Terry Martin made a motion to approve the water permit valid as of March 20, 2017 for one year and have all three Commissioner sign. Mr. Dennis Kratz seconded the motion and it carried unanimously.

WAIVER OF CERTAIN CONFLICTS OR POTENTIAL CONFLICTS OF INTEREST

Mr. Kurt Bachman, County Attorney, presented a waiver of certain conflicts or potential conflicts of interest regarding the LaGrange County Regional Sewer Districts issuance of revenue bonds for construction of additions and improvement to the waterworks serving the Howe Travel Plaza. Beers, Mallers, Backs & Salin will be representing the District as its Bond Counsel. Mr. Terry Martin made a motion to approve and sign the document. Mr. Dennis Kratz seconded the motion and it carried unanimously.

FAWN RIVER CROSSING – TERMINATION AGREEMENT

Mr. Kurt Bachman, County Attorney, presented a Termination Agreement, terminating certain Interlocal Agreements between LaGrange County, the LaGrange County Redevelopment Commission and the LaGrange County Regional Utility District. Mr. Terry Martin made a motion to approve and sign the document. Mr. Dennis Kratz seconded the motion and it carried unanimously.

ORDINANCE REGULATING WORK AND PERMITS ON LAGRANGE COUNTY RIGHT-OF-WAYS

Mr. Kurt Bachman, County Attorney, presented the following Ordinance for consideration:

COUNTY OF LAGRANGE
ORDINANCE NO. 2017-03-20

AN ORDINANCE REGULATING WORK AND PERMITS ON LAGRANGE COUNTY RIGHT-OF-WAYS.

WHEREAS, the Board of Commissioners of the County of LaGrange (“Board”) on behalf of LaGrange County desires to provide for the health, safety, and well-being of the people in the County as they use the right-of-ways;

WHEREAS, the Board desires to ensure the structural integrity of its right-of-ways;

WHEREAS, the Board finds that unauthorized persons have been performing unauthorized construction work on its right-of-ways;

WHEREAS, the Board has the authority under Indiana Code § 36-9-2-7 to regulate the use of public ways;

WHEREAS, the Board has the authority under Indiana Code § 36-8-2-4 to regulate the conduct, or use or possession of property, that might endanger the public health, safety, or welfare; and

WHEREAS, the Board desires to regulate work performed on County right-of-ways by providing, among other things, for the issuance of permits granting authority to perform work thereon and by providing for the subsequent restoration of those right-of-ways.

BE IT THEREFORE ORDAINED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF LAGRANGE, INDIANA THAT:

SECTION I

Definitions.

The following definitions shall apply throughout this Ordinance unless the context clearly indicates or requires a different meaning:

APPLICANT. The person, including the applicant’s agents, employees, contractors, subcontractors, heirs, administrators, executors, and assigns, who files an application requesting permission to perform work on County right-of-ways.

APPLICATION. Collectively, all the documents submitted to the Department in order to perform work on County right-of-ways, including the Department’s form and its attached terms and conditions, the plans and specifications, the proof of the contractor’s work qualifications, the proof of insurance, the bond, any fees required, and any addendums to any such document.

BOARD. The Board of Commissioners of the County of LaGrange.

BOND. A bond or set of related bonds procured from a surety in conjunction with an application under this Ordinance.

COUNTY. LaGrange County, Indiana.

DEPARTMENT. The LaGrange County Highway Department.

EMERGENCY. A condition that poses a clear and immediate danger to life or health, or of a significant loss of property, or requires immediate repair or replacement in order to restore service to a customer.

ENGINEER. The County Engineer or his or her designee.

EQUIPMENT. Any tangible thing, other than naturally occurring substances, located on a right-of-way. The term especially includes, but is not limited to, wires, pipes, switches, etc. that belong to a public or private utility.

FEE SCHEDULE. A list of published fees that will be uniformly charged to the applicant by the Department to the extent those fees relate to the proposed work. The fees should approximate the average respective costs actually occurred over the recent past.

ON. With respect to a right-of-way, on, over, above, under, in, or along that right-of-way.

PERMIT. The written authority that must be obtained from the Engineer prior to beginning work; it allows the permittee to perform work on that part of the right-of-way described in such permit.

PERMITTEE. The person to whom a permit has been granted by the Engineer. Where applicable, the term also includes the permittee's agents, employees, contractors, subcontractors, heirs, administrators, executors, and assigns.

PERSON. Any natural or corporate person, business association, or other business or governmental entity, including a successor or assign of any of the foregoing.

PRINCIPAL. With regard to a bond, the applicant or permittee who submitted that bond with a respective application and/or received a respective permit.

RIGHT(S)-OF-WAY. A roadway, highway, street, alley, path, bicycle lane, sidewalk, curb, shoulder, or easement, in which the County has an interest.

SURETY. A person who is authorized to do business in the State of Indiana and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the U.S. Treasury Department's Circular No. 570, as amended.

WORK. Construction projects that include, but are not limited to, the grading, trenching, cutting, boring, excavating, wiring, obstructing, or maintenance on County right-of-ways, especially as it refers to utility companies or their agents.

SECTION II

Scope.

This Ordinance relates to work performed on County right-of-ways on behalf of a person other than the Board. Work that the Board has commissioned and approved as a primary party to an executed contract is beyond the scope of this Ordinance.

SECTION III

Delegation of Authority.

The Board hereby delegates to the Engineer all authority necessary to create, modify, and process applications; to issue, administrate, and revoke permits; to set bond amounts; to inspect work; and to serve initial notices of default; all subject to the constraints of this Ordinance. The Board retains its full powers to do the same, and reserves for its exclusive purview the decision to prosecute violations in a court of law.

SECTION IV

Permit required.

- (A) No person may work on a County right-of-way without first having obtained a permit to do so.
- (B) The permit is valid only for the area of the right-of-way(s) specified in the permit.
- (C) The Engineer may impose reasonable conditions upon the issuance of the permit.
- (D) The Engineer may limit the permit to certain days and/or a certain number of days.
- (E) The permittee shall keep a copy of the permit at the work site at all times.
- (F) If, before the permit expiration date, the permittee determines that the scope of the permit received is insufficient with regard to the time remaining, the permittee may make a written request to the Engineer for an appropriate extension of the scope of the work without completing a separate application. The Engineer may review the request and grant or deny the permit extension.
- (G) If, before the permit expiration date, the permittee determines that the scope of the permit received is insufficient with regard to area, the permittee may make a written request to the Engineer for an appropriate extension of the scope of the work without completing a separate application. The permittee shall supplement the request with an updated permit bond or another assurance of financial responsibility satisfactory to cover the risk of the proposed permit extension. The permittee shall also supplement the request with updated plans. The Engineer may review the request and grant or deny the permit extension.

SECTION V

Application process.

- (A) The Department shall create an application process in which those who would perform work on County right-of ways must submit an application and receive a permit from the Department prior to beginning work.
- (B) The Board and/or Engineer shall have the right to waive any irregularities in a particular application or the application process generally.
- (C) The Engineer may pass and administer a fee schedule to recoup some or all of the costs that he or she reasonably anticipates in the management and review of the permit process and of all costs reasonably associated with degradation of the work site as a result of the proposed work. Such management costs include, but are not limited to, costs associated with registering applicants; issuing, processing, and verifying permit applications; creating and maintaining information on a Geographical Information System ("GIS") mapping system; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user equipment during work on the right-of-ways; determining the adequacy of right-of-way restoration; restoring work inadequately performed; and revoking permits and performing all of the other tasks required, including legal fees and other costs the County may incur in managing the provisions of this Ordinance.
- (D) The Engineer may reject any application it deems unsuitable for structural, design, safety, or emergency reasons, for failure to deliver all required documents with appropriate responses, for applicant's perceived lack of professional or financial responsibility, for calendaring conflicts with other permittees or special events, for reasons related to the disruption of County affairs or limitations of County resources, or because of the applicant's past defaults related to previous permits concerning

- (E) which the applicant has not paid related fines or costs. If the Engineer should reject an application, he or she shall communicate to the applicant in writing the reason(s) for the rejection.
- (F) An applicant whose application has been rejected by the Engineer may resubmit the application with the deficiencies corrected. In such case, the applicant need not pay a subsequent application fee unless the Engineer determines that one or both of the applications was frivolous and communicates to the applicant in writing the reason(s) for that determination.

SECTION VI

Bonds.

- (A) An applicant shall submit to the Department a permit bond using a form approved by the Department as part of the application process.
- (B) The bond must name "LaGrange County, Indiana" as the exclusive owner or obligee. Failure to state the name in this manner shall not, per se, void the bond.
- (C) If the bond is executed by an attorney-in-fact on behalf of the surety, it shall have affixed thereto a certified, current copy of the power of attorney indicating the monetary limit of such power.
- (D) The bond must be acknowledged by the principal and surety in a notarized statement.
- (E) The bond must jointly and severally bind the principal and surety to ensure that the terms and conditions of the application and/or permit are fulfilled.
- (F) Whether called a permit bond, a performance bond, a maintenance bond, a utility bond, a construction bond, a right-of-way bond, or any other name, the bond must, whether by its own terms or in reference to this Ordinance or the terms and conditions of the application, contain a guarantee that the principal and/or surety shall return the work site to a condition substantially equal to or better than in all respects it had been immediately before the work had begun, and that the principal and/or surety shall also remedy all defects in materials or workmanship arising out of or relating to the principal's work in the two years that immediately follow the date of the principal's written notification to the Department that he or she has completed or abandoned the work. A court shall construe a provision of any such bond towards the finding of such a guarantee where possible.
- (G) At any time during the bond's effect, the principal and/or surety shall, upon written notice from the Engineer, conduct all restoration required by the Engineer.
- (H) If the principal and/or surety should fail to restore the right-of-way in the manner and to a condition satisfactory to the Engineer, or should fail to satisfactorily and timely complete all repairs required by the Engineer, the Engineer, at his or her option, may perform or cause to be performed such restoration. In that event, the principal and/or surety shall be jointly and severally liable to the County for the cost incurred by the Department in performing such restoration.
- (I) The bond must be interpreted in accord with the laws of the State of Indiana.
- (J) Any action in any way arising from or relating to the permit or its accompanying bond must be brought to the state courts located in LaGrange County or the United States District Court for the Northern District of Indiana, Fort Wayne Division. The court shall have exclusive jurisdiction over such matters.
- (K) Each separate application for work shall require a separate bond.

SECTION VII

Other requirements.

- (A) While work is in progress, the permittee must maintain in full force and effect general liability insurance from an Indiana-authorized insurer that names the Board as an additional insured. It must contain a single-occurrence limit of at least One Million Dollars (\$1,000,000) and a general aggregate limit of at least Two Million Dollars (\$2,000,000). As part of his or her application, an applicant shall furnish the Department with the certificates of insurance or other satisfactory evidence that such insurance is in full force and effect.
- (B) The permittee shall indemnify, hold harmless, and defend the County, the Board, the Department, and their agents from and against any and all actions or causes of action, claims, demands, liabilities, loss, damage, or expense, including attorneys' fees, or other casualties of whatever kind, or by whomsoever caused, to person or property of anyone on the right-of-way arising out of or relating to the issuance of a permit or the work connected therewith, or from the installation, existence, use, maintenance, conditions, repairs, alteration, or removal of any equipment or material due in whole or in part to any act, omission, or negligence of the permittee, including any claims arising out of the Worker's Compensation Act or any other law, ordinance, order, or decree. In the event the bodily injuries, including death, or damages to property are due to the sole negligence of the Department, then and only then shall the permittee not be liable.
- (C) The permittee shall bear any and all risks and costs relating to and in compliance with the work, including indemnifying other persons against damage or loss to their equipment; obtaining all other necessary permits, licenses, and authority; and paying all fees required by any other town, city, county, state, or federal rules, laws, or regulations.
- (D) The permittee shall notify the Department in writing at least seven (7) days before beginning any work or within seven (7) days after work has been completed.
- (E) The permittee shall comply with all applicable laws and codes, acquire all applicable permits or easements or rights-of-entry, adhere to all terms and conditions of the application and/or permit, and follow all instructions from the Engineer before, during, and after work related to the applicant's application.
- (F) Except in the case of an emergency, and with the approval of the Engineer, the permittee shall not perform work on any right-of-way when conditions are unreasonable for such work.

SECTION VIII

Emergencies.

- (A) The permittee, whether or not his or her permit has expired, shall immediately notify the Engineer of any event that it considers to be an emergency with regard to the permittee's equipment. The permittee may proceed to take whatever actions are necessary in order to respond to the emergency. Within three (3) days after the occurrence of the emergency, the permittee shall apply for a new permit, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this Ordinance for the actions it took in response to the emergency.
- (B) In the event that the Engineer becomes aware of an emergency regarding a person's equipment, the Engineer may attempt to contact the person affected, or potentially affected, by the emergency. In any event, the Engineer may take whatever action he or she deems necessary in order to respond to the emergency, the cost of which shall be borne by the person whose equipment occasioned the emergency.

SECTION IX

Violations.

- (A) A permit issued under this Ordinance is a privilege and not a right. The Board, on its own or through its Engineer, reserves the right to revoke any permit, without fee refund, in the event of a material violation of the terms and conditions of any statute, ordinance, rule, or regulation, direction, or any condition of the permit or application.
- (B) It is a violation for any person to:
 - a. except in case of emergency, perform work on County right-of-ways without a valid written permit from the Engineer approving such work;
 - b. contravene any lawful order of the Board and/or Engineer relating to work described in this Ordinance;
 - c. or otherwise act not in accord with this Ordinance.
- (C) When the Engineer observes a violation, the Engineer may submit written notice of default to the violator regarding the date and nature of the violation, and that further violations shall be cause to revoke that person's permit, if he or she should hold any.
- (D) When the Engineer observes a violation, the Engineer may give to the violator a written cease-and-desist order detailing the conditions that must be satisfied prior to resuming work.
- (E) Except in the case of an emergency, any person who works on a right-of-way without a permit, and/or the principal of that person if that person should be acting in the capacity of an agent, must subsequently obtain a permit and pay double the application fee and any other fees required before being allowed to resume work.
- (F) The County prosecutor, a County attorney, or an agency so appointed by the Board may prosecute violations of this Ordinance.
- (G) A person who violates this Ordinance is liable for all costs and fees incurred, and fines assessed, as a result of the violation. The court may find a separate violation for each day in which a violation has occurred as well as each individual violation of a different section of this Ordinance within a given day.
- (H) When the court finds that a person has violated this Ordinance, that person shall be fined as follows:
 - 1. Up to One Thousand Dollars (\$1000.00) for the first offense.
 - 2. Two Thousand Five Hundred Dollars (\$2,500.00) for the second offense.
 - 3. Five Thousand Dollars (\$5,000.00) for the third offense.
 - 4. Seven Thousand Five Hundred Dollars (\$7500.00) for the fourth offense and each offense thereafter.
- (I) Each violation of this Ordinance shall be cause for a separate and subsequently higher fine as described above.
- (J) If a person has not paid an assessed fine within the prescribed time to do so, the Board may order the removal of that person's equipment.

SECTION X

Money deposits.

- (A) All fees collected under this Ordinance shall be deposited within a reasonable time in the Motor Vehicle Highway Fund.
- (B) All fines collected under this Ordinance shall be deposited within a reasonable time in the County's general fund.

SECTION XI

Miscellaneous.

- (A) The remedies provided in this Ordinance are not exclusive or in lieu of other rights and remedies that the Board may have at law or in equity. The Board members are hereby authorized to seek legal and equitable relief for actual or threatened injury to persons or damage to the public right-of-ways.
- (B) The express or implied repeal or amendment by this Ordinance of any other ordinance or part of any other ordinance does not affect any rights or liabilities accrued, penalties incurred, or procedures begun prior to the effective date of this Ordinance. Those rights, liabilities, and proceedings are continued, and penalties shall be imposed and enforced under the repealed or amended ordinance as if this Ordinance had not been adopted.
- (C) No part of this Ordinance shall be interpreted to conflict with any local, state or federal laws, and all reasonable efforts should be made to harmonize same. Should any section or part thereof of this Ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the Ordinance as a whole, or any other portion thereof other than that portion so declared to be invalid, and for this purpose the provisions of this Ordinance are hereby declared to be severable.

SECTION XII

Promulgation.

This Ordinance shall be effective upon promulgation according to law.

MARCH 20, 2017

REGULAR SESSION

Mr. Terry Martin made a motion to approve the Ordinance effectively immediately. Mr. Dennis Kratz seconded the motion and it carried unanimously. Mr. Terry Martin made a motion to waive the requirement for second reading. Mr. Dennis Kratz seconded the motion and it carried unanimously.

2017 TAX SALE

Mrs. Kay Myers, County Auditor, presented an addendum to the contract with Government Utilities Technology (GUTS) for the 2017 tax sale. Mr. Terry Martin made a motion to approve and sign the addendum. Mr. Dennis Kratz seconded the motion and it carried unanimously.

CONFLICT OF INTEREST STATEMENT DISCLOSURE STATEMENTS

A Uniform Conflict of Interest Disclosure Statement was presented from Freeman Miller, Plan Commission member for work he is doing for the County. Mr. Terry Martin made a motion to accept. Mr. Dennis Kratz seconded the motion and it carried unanimously.

A Uniform Conflict of Interest Disclosure Statement was presented from Larry Miller, County Commissioner member for work he is doing for the County. Mr. Terry Martin made a motion to accept. Mr. Dennis Kratz seconded the motion and it carried with Mr. Larry Miller abstaining.

COUNCIL ON AGING – PUBLIC FACILITIES PROGRAM GRANT

At 9:00 a.m. Mr. Matt Brinkman, Region III-A, requested consent to conduct a public hearing on the LaGrange County Council on Aging public facilities program grant. Mr. Terry Martin made a motion to grant consent to hold a public hearing. Mr. Dennis Kratz seconded the motion and it carried unanimously. Mr. Brinkman opened the public hearing and explained that April 7, 2017 is the submission date for the \$500,000 grant. Numerous individuals spoke in favor of the project. There being no further comment from the public, Mr. Terry Martin made a motion to close the public hearing. Mr. Dennis Kratz seconded the motion and it carried unanimously.

Mr. Terry Martin made a motion to deobligate the funds from the previous grant. Mr. Dennis Kratz seconded the motion and it carried unanimously.

COUNTY ROAD 760 S FROM COUNTY ROAD 795 E TO STATE ROAD 3, SOUTH MILFORD

Ms. Sarah Farlow, County Engineer, reported that she has reviewed the bids that were opened on March 6, 2017 for County Road 760 S from County Road 795 E to State Road 3. She recommends awarding the bid to API Construction Corp. for \$380,814.08. Mr. Terry Martin made a motion to award the bid to API Construction Corp. and to approve the Agreement. Mr. Dennis Kratz seconded the motion and it carried unanimously.

WOODRUFF ROAD MICROSURFACE REPAVING PROJECT

Ms. Sarah Farlow, County Engineer, reported that she has reviewed the bids that were opened on March 6, 2017 for the Woodruff Road Microsurface repaving project. She recommends awarding the bid to Pavement Maintenance Systems, LLC for \$332,495.68. Mr. Terry Martin made a motion to award the bid to Pavement Maintenance Systems, LLC and to approve the Agreement. Mr. Dennis Kratz seconded the motion and it carried unanimously.

SUBDIVISION PLATS

The following subdivision plats were presented for approval:

Rocky Ridge Acres

There is one lot in this subdivision, in Eden Township, located at 4480 S 1125 W, Millersburg. Section 18, Township 36N, Range 8E. The owners are Marvin and Esther Miller. Mr. Terry Martin made a motion to approve the plat. Mr. Dennis Kratz seconded the motion and it carried unanimously.

Ted's and Jo's Subdivision

There is one lot in this subdivision, in Springfield Township, located at 0755 N 925 E, LaGrange. Section 19, Township 37N, Range 11E. The owners are Theodore and Georgetta Gunthorp. Mr. Dennis Kratz made a motion to approve the plat. Mr. Terry Martin seconded the motion and it carried unanimously.

Bontrager's Creekside Addition

There is one lot in this subdivision, in Clay Township, located south of County Road 300 North on the west side of County Road 450 West, LaGrange. Section 08, Township 37N, Range 9E. The owners are David and Irene Bontrager. Mr. Dennis Kratz made a motion to approve the plat. Mr. Terry Martin made a motion to approve the plat. Mr. Dennis Kratz seconded the motion and it carried unanimously.

Mahlon's Property

There are two lots in this subdivision, in Clearspring Township, located at 2285 W 350 S, LaGrange. Section 10, Township 36N, Range 9E. The owners are Mahlon and Naomi Yoder/ Tri-County Land Trust. Mr. Terry Martin made a motion to approve the plat. Mr. Dennis Kratz seconded the motion and it carried unanimously.

MARCH 20, 2017

REGULAR SESSION

COMMITTEE REPORTS

Mr. Dennis Kratz reported on the Region III A, Redevelopment Commission

Mr. Terry Martin reported on the LaGrange County Regional Utility District and on the County wide paging system. He will hold a Town Hall meeting in Howe on March 22, 2017

ACCOUNTS PAYABLE VOUCHERS

Mrs. Kay Myers, County Auditor, presented the Accounts Payable Vouchers. Mr. Terry Martin made a motion to approve the vouchers. Mr. Dennis Kratz seconded the motion and it carried unanimously.

MEMORANDUM

Mr. Terry Martin made a motion to approve the memorandum for the March 15, 2017 meeting. Mr. Dennis Kratz seconded the motion and it carried unanimously.

CORRESPONDENCE

Indiana Department of Environmental Management – Notice of sanitary sewer permit application, LaGrange County Regional Utility District

Indiana Department of Environmental Management – Notice of sanitary sewer permit application, LaGwana Printing, Inc.

Indiana Department of Environmental Management – Notice of Public Comment, A & M Woodworking

Indiana Department of Environmental Management – Notice of Approval, Permit 087-38224-00683, F & N Woodworking, 2105 W 450 S, LaGrange, IN 46761

ADJOURNMENT

There being nothing further to come before the Board at this time, Mr. Terry Martin made a motion to adjourn and meet on any subsequent day necessary to carry on the business of the Board. Mr. Dennis Kratz seconded the motion and it carried unanimously.

Larry N. Miller

Terry A. Martin

Dennis H. Kratz

ATTEST:

Kay M. Myers
LaGrange County Auditor