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RESOLUTION NUMBER 2013-312

CITY OF MARTINSVILLE, INDIANA
BOARD OF PUBLIC WORKS AND SAFETY
RESOLUTION ESTABLISHING A STORMWATER RATE BASED UPON EQUIVALENT RESIDENTIAL UNITS (ERUs) AND POLICY FOR IMPLEMENTATION, ADMINISTRATION AND COLLECTION OF STORMWATER USER FEES

Proposed Introduction

A Resolution of the City of Martinsville Board of Public Works and Safety, establishing a stormwater rate based upon Equivalent Residential Units (ERU);

WHEREAS, the City of Martinsville Stormwater Board, under Resolution Number 2013-001 established a fixed monthly stormwater fee for every residential, commercial and industrial user of the sewage works, and said fee was approved by the City of Martinsville Common Council under Resolution Number 2013-305; and

WHEREAS, Ordinance Number 2013-1680 placed the City of Martinsville Stormwater Department under the control and authority of the Board of Public Works and Safety, who under the authority of IC 8-1.5-5-7(d), now wishes to replace the fixed monthly stormwater fee with a fee based upon Equivalent Residential Units (ERUs); and

WHEREAS, the Board engaged Holloway Engineering to prepare a study of single-family residential property within the corporate limits of the City of Martinsville for the purpose of determining the average impervious area of developed single-family lots which will be the basis for one (1) ERU and Holloway Engineering has reported that said average impervious area is 3,300 square feet.

WHEREAS, The Board has engaged Umbaugh & Associates (the Financial Advisors) to conduct a rate study for establishment for Stormwater Fee based on ERU; and

WHEREAS, the Financial Advisor has delivered its report, dated October 3, 2013 (the "Rate Report"), providing its study and proposed rates based on ERU; and

WHEREAS, Notice of public hearing was advertised on October 8, 2013 pursuant to statute and said hearing has been held on October 21, 2013 at 6:30 p.m., at which all interested parties were given the opportunity to testify or comment; and

WHEREAS, all procedures necessary for the Board to act on a resolution establishing a stormwater fee based upon ERU, have been taken and completed by the City.

NOW, THEREFORE, BE IT RESOLVED BY THE Board of Public Works and Safety of the City of Martinsville, Indiana:

DIVISION 1

These regulations shall hereafter be known and cited as the "Stormwater Department Rules and Regulations" of the City of Martinsville, Indiana.

The purpose of this chapter is to establish policies and procedures for the Martinsville Stormwater Department for determining impervious surface area, establishing the Equivalent Residential Unit (ERU) and multiplier for stormwater users, and for billing and collection.

The City of Martinsville Board of Public Works and Safety intends to operate its Stormwater Department under provisions of IC 8-1.5-5. The Stormwater Department will be responsible for the management of the Martinsville Stormwater System and will fund stormwater management activities by charging user fees to the owner of each property containing impervious surface area within the municipal limits of the City of Martinsville. The owner shall be billed monthly by the Martinsville Utility Office for the stormwater user fee. However, the Board may find under certain circumstances that it is in the best interest of the City and Department to allow a renter of property to pay the fee. Allowing a renter to pay the stormwater fee in no way alleviates the responsibility of the property owner from paying the fee should the renter fail to do so.

All "Residential Property", as defined in Division 2 below, will be charged a uniform monthly user fee equivalent to one (1) ERU. User fees for "Non-residential Property", as defined in Division 2 below, will be based upon the amount of impervious surface area contained within the property. The amount of impervious surface area for each property has been determined based upon measurements using aerial photography, submitted construction plans and by field measurements. Public street and road right-of-way is exempt from the user fee.

User fees do not relieve any property owner from compliance with applicable rules, regulations, ordinances and laws of local, state or federal government.

DIVISION 2

As used in this policy, the following terms shall have meanings attributed to them as follows:

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Developed Property: Shall be defined as any land that has been altered, modified or improved so as to cover the earth with an impervious material, including but not limited to:

buildings, private streets or roads, parking lots, driveways, sidewalks, patios, porches, garages, carports or accessory buildings. Gravel or crushed stone pavements are considered an impervious material.

Equivalent Residential Unit (ERU): Is defined as the average amount of impervious surface area for a single family residential property located within the municipal limits of the City of Martinsville. The ERU for the City of Martinsville is 3,300 square feet, and shall be used in calculating user fees for "Non-residential Properties".

Impervious Surface Area: Is defined as the horizontal surface area of property covered with materials that include, but are not limited to , concrete, asphalt, rooftop, blacktop and gravel, such that the infiltration of stormwater is prevented or impeded. The total amount of impervious surface area located on a property, without regard to topographic features, is included. Driveways, roadways, parking lots and other areas used for vehicular traffic are considered impervious surface areas. Not considered impervious surface areas are: undisturbed land; forested land; tilled agricultural land; agricultural ponds; lawns; fields; and retention ponds or lake designed, permitted and constructed for the purpose of reducing stormwater runoff.

Infiltration: Is defined as the process of allowing runoff to penetrate the ground surface and flow through the upper soil surface.

Non-residential Property: Is defined as, all property not designated herein as "Residential Properties". "Non-residential Properties" include, but are not limited to the following:

- Agricultural property
- Businesses
- Churches and other places of religious affiliation
- Colleges
- Commercial property
- Community centers
- Federal, state and local government property
- Hospitals, medical centers and medical offices
- Industrial property
- Multi-family property which contain four or more units
- Mobile home parks
- Retirement centers
- Schools
- Property on which and of the uses described above are combined with a residential use, such as residence on church property or a residence on the second floor of a business building, etc.
- Business/Industrial Use operating in a Residentially zoned district by grant of a Use Variance by the Board of Zoning Appeals

- Common areas of residential developments including, but not limited to, private streets and parking lots, recreational areas, office areas, maintenance areas and all other areas not occupied by residential units.
- Any other developed property that is not "Residential Property" as defined herein.

Private Stormwater Facilities: Is defined as facilities designed to transport, move or regulate stormwater that are not subject to the direct control or ownership of the local, state or federal government.

Property: Shall be defined as land having a separate and distinct "Parcel Number" as shown in the records of the Auditor of Morgan County, Indiana. Where several "Properties" have been improved under one plan of development are congruent and are titled under a single owner then the "Properties" may be combined, at the desecration of the Board, for the purpose of calculating the number of ERUs.

Public Stormwater Facilities: Is defined as facilities designed to transport, move or regulate stormwater that are subject to the control or ownership of the local, state or federal government. This shall include facilities in the public road or street right-of-way.

Residential Property: Is land on which a building is located in which a single family resides, Also, included under this definition are: multi-family developments that contain three or fewer residential units on a single property; residential customary home occupations; and single or multi-family dwellings, of three or fewer units, that are located on agricultural zoned property.

Stormwater User: Is defined as the owner of a "Residential" or "Non-residential" property, within the municipal limits of the City of Martinsville, where the owner's land has been developed, altered or changed so as to cover the earth with an impervious surface thereby preventing or limiting infiltration into the earth.

Martinsville Stormwater System: Is defined as all facilities and conveyances subject to the direct control of, or is owned by, the City of Martinsville and used for collecting and conveying stormwater to, through and from drainage areas to the point of final outlet, including, but not limited to, inlets, conduits and appurtenant features, pipes, pumping stations, manholes, structures, channels, outlets, catch basins, ditches, culverts, retention or detention basins and other structural components and equipment that transport, move or regulates stormwater. The system includes public streets, roads, alleyways and highways.

DIVISION 3

The monthly user fee is uniform for all "Residential Property", which are assigned one (1) ERU. The user fee for one (1) ERU may be changed by the Board of Public Works and Safety by resolution after a public hearing and approval of the new user fee by resolution of the Common Council.

The monthly user fee for a "Non-residential Property" is determined using an ERU multiplier, which is calculated by dividing the total impervious surface area within the property by the base ERU of 3,300 square feet. This method allows for the "Non-residential Property" user fees to be based upon the amount of impervious surface area within the property as compared to the amount of impervious surface area of the average residential property. For example, a "Non-residential Property" with 30,000 square feet of impervious surface area receives an ERU multiplier of 9.1 (30,000/3,300). The ERU multiplier shall be rounded to one decimal place and the minimum ERU shall be one (1). The ERU multiplier is then multiplied by the current fee for one (1) ERU to determine the actual user fee in dollars.

The Board may routinely review property from time to time, but not more than once per year, to determine changes in impervious surface and adjust the area used as the basis of ERU calculation for the property. However, if the change in impervious area is due to an improvement that has been made by the owner or renter for which an improvement location permit has been issued by the City or the City has knowledge of an improvement then a new ERU will be calculated based on any changes to the impervious surface area. The adjustments to the ERU and user fee will be reflected in the next monthly billing after the improvements are substantially complete as determined by the City Engineer.

DIVISION 4

For "Non-residential Property" owners, a database has been developed consisting of the "Non-residential Property" owner's name, property address, property's square footage of impervious surface area, user fee multiplier, and monthly user fee. This database is the basis for billing of the stormwater user fee for "Non-residential Property". If the Board has allowed a renter to pay the monthly stormwater fee then the renter's name and address will also be included.

Charges for stormwater service shall be billed by and through the City of Martinsville Utility Office on a monthly utility bill. Where the property, having a delinquent user fees of sixty (60) day for charges for stormwater service, is served by the City's Water Utility, said Utility, after notice to the owner and renter, if applicable, said notice being not more than twenty (20) days after the sixty (60) day delinquent notice, may shut off the water service to the property. This includes shutting of service to each customer of multi-residential units located on the same property. Water service may not be restored until the delinquent account and associated costs, including water service reconnection fees, have been paid. In addition to disconnection of water service the City may take action to collect delinquent user fees as stated below.

Stormwater user fees per IC 8-1.5-5-29 are hereby made a lien upon the applicable property at or upon which such fees are incurred. Stormwater user fees shall be the obligation of the property owner. In the event the stormwater user fee for any particular property is billed to the renter of such property the fee shall be an obligation of the renter

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in addition to the ultimate obligation of the property owner. Stormwater user fees shall be billed to the property owner unless the Board has specifically allowed for the user fee to be paid by a renter. If the Board has allowed a renter to pay the user fee and either the renter or owner allow the fees to become sixty (60) days delinquent then the owner and renter, if applicable, shall be notified within twenty (20) day after the sixty (60) day delinquency date that a lien will attach to the property. The Board may proceed with recording and collection of liens and fees under IC 8-1.5-5-30.

If the owner fails to pay within thirty (30) days after the first notification of the delinquent user fees the City may take action to collect delinquent fees. Delinquent fees may be collected in either or both of the following ways (and also in any other way allowed by law);

1. A civil action may be brought against the property owner and if applicable the renter.

2. The fees may be recorded in the Office of the Morgan County Recorder and certified to the Auditor of Morgan County, who shall place the same on the tax duplicate of the county with the interest and penalties allowed by law to be collected as ad valorem property taxes are collected.

DIVISION 5

"Non-residential" stormwater users may petition the Martinsville Board of Public Works and Safety for an adjustment if sufficient cause exists to believe the ERUs were determined erroneously, or if alteration to the property has been made. Only one appeal will be allowed per property per owner in any 12-month period. The petitioner must not be delinquent in the stormwater user fees and must file the petition within ninety (90) days of receiving the stormwater user fee billing in question. The petitioner shall state in writing why it is believed an adjustment is justified and shall include any supporting evidence, clearly defined, with the petition. If the Board determines the petition warrants review the Board will direct the City Engineer to examine the petition and any submitted documentation, make a determination as to whether the petitioner is entitled to an adjustment of the ERU determination and notify the petitioner in writing of the decision and the basis of the decision within sixty (60) days. The Engineer may grant, deny or modify the adjustment requested in the petition. If it is determined that the petitioner is entitled to an adjustment of the ERU determination, the adjustments will be made in the form of a credit against future stormwater user fees.

The petitioner may appeal the Engineer's decision to the Board provided the Board has received written notice of the appeal from the petitioner within thirty (30) days of the Engineer's determination. The Board shall notify the petitioner of the time and place of the hearing on the appeal. The hearing shall be recorded. The Board will make a determination as to whether the petitioner is entitled to an adjustment of the ERU determination and notify the petitioner in writing within thirty (30) days of the appeal hearing. The Board may grant, deny or modify the adjustment requested in the petition.

NOW, THEREFORE, BE IT RESOLVED THAT THE BOARD OF PUBLIC WORKS AND SAFETY OF THE CITY OF MARTINSVILLE, INDIANA:

Section 1. Finds the report from the Engineer for determination of one (1) ERU, based on the average impervious area for a single family property, and the Rate Report from the Financial Advisor are both just and equitable and the that stormwater rates based on ERUs, are fair and reasonable.

Section 2. The monthly stormwater user fee based on ERU is hereby adopted and shall be charged to all "Residential" and "Non-residential" stormwater users, as defined herein, within the municipal boundaries of the City.

Section 3. The Clerk-Treasurer is directed to file a copy of this Resolution with the Common Council of the City of Martinsville, Indiana for their review and approval pursuant to IC 8-1.5-5-7.

Section 4. The Stormwater User Fee Rate shall be effective on the first billing cycle designated by the Mayor after approval by the Common Council.

Adopted this 21st day of October, 2013.

CITY OF MARTINSVILLE,
BOARD OF PUBLIC WORKS AND SAFETY

Phil R. Deckard

Phil R. Deckard, Mayor

Eric Bowlen

Eric Bowlen, Member

Gary Lester

Gary Lester, Member

ATTEST:

Valerie Huguet

~~Mary Lou Peden~~, Clerk/Treasurer
VALERIE HUGUET DEP CLERK

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