

STARKE COUNTY COMMISSIONERS RESOLUTION 2021-001
AN ORDINANCE PROVIDING FOR PERMITTING OF
PRIVATE DRIVE CONNECTIONS
TO COUNTY RIGHTS-OF-WAY

WHEREAS, the Board of Commissioners of Starke County, Indiana (the "Commissioners") is the duly elected executive representative of the County of Starke, a unit of government of the State of Indiana, and possesses primary authority over County Highways, including all public roads as well as certain other public rights-of-way located in the unincorporated portions of Starke County, Indiana,

WHEREAS, the Commissioners are responsible for maintaining the County Highways and rights-of-way within in its jurisdiction; and,

WHEREAS, the Commissioners have determined that the interface county highways interface with numerous private driveways and other private roads or trails, and that supervision of these points of access is in the public interest for public safety and convenience, to ensure proper drainage of stormwater and meltwater, and to help protect the public roads from damage and reduce public maintenance costs; and,

WHEREAS, the Commissioners have reviewed policies in other Indiana counties in light of experiences in Starke County and have determined that it is lawful, appropriate and in the public interest to adopt a permitting system for private access to the public county roads (called "Driveway Permits") to be administered under the primary authority of the County Highway Superintendent in cooperation with the County Surveyor, the Plan Commission, the Building Commissioner and other county and municipal offices; and,

NOW, THEREFORE, BE IT ADOPTED AND ORDAINED by the Commissioners that:

The Commissioners hereby authorize the establishment of a system of Driveway Permits under the primary supervision of the County Highway Superintendent, in consultation with the County Surveyor and the Plan Commission as set forth below:

SECTION 1. SCOPE

(A) The provisions of this ordinance shall govern the construction, relocation, alteration, or change in the character or use of access point such as private driveways, private roads or trails within the rights-of-way of the Starke County Highway System, and the maintenance of such Improvements.

(B) Improvements, for the purposes of this chapter, include, but are not limited to:

- (1) entrances, driveways, or drive approaches,
- (2) mailbox approaches,
- (3) culvert or roadside ditch modifications necessitated for other Improvements,
- (4) sidewalks, pathways, trails, or multi-use paths, and
- (5) public service utility infrastructure.

(C) Improvements, as defined by this chapter, shall not include:

- (1) infrastructure made under contract with or by order of the Board of Commissioners or other governmental agency through its proper officials.
- (2) surfacing or resurfacing of a paved improvement provided it does not change drainage flows and does not expand the width of the existing improvement.
- (3) road cuts. (Note that road cuts are also subject to the authority and approval of the Superintendent but are outside the scope of this ordinance.)

(D) It is unlawful for any person, entity, organization, or corporation to construct Improvements in a right-of-way of the Starke County Highway System without first obtaining a permit in accordance with this chapter.

(E) Any work completed as Emergency work which does not meet the definition of Emergency as set out in this section is a violation of this Chapter.

(F) The Starke County Highway Superintendent (the "Superintendent") shall have the authority to issue Stop Work Orders for any violations of this chapter.

SECTION 2. AUTHORITY

(B) The Superintendent is authorized to:

- (1) execute permits and encroachment agreement documents, including permits, agreements and other documents approved by the Board of Commissioners,
- (2) perform inspections,
- (3) administer the terms of permits,
- (4) order or otherwise compel correction of violations of this chapter, including issuance of Stop Work Orders,
- (5) approve the completion and acceptability of work under a permit, and
- (6) perform all other actions necessary for the administration and enforcement of this chapter.

(C) The Superintendent may delegate his authority under this section to other Starke County Highway Department employees in his discretion.

SECTION 3. DEFINITIONS

The following definitions apply in this ordinance.

(A) **Commercial Drive:** Any driveway serving a property zoned commercial, serving a business or place otherwise open to the public, or providing access to an occupied utility facility. Commercial Drives are categorized as follows:

- (1) **Minor Commercial Drive:** Any Commercial Drive having or requiring acceleration and deceleration tapers, but neither having nor requiring associated auxiliary lanes except a mailbox approach.
- (2) **Major Commercial Drive:** Any Commercial Drive having or requiring associated full-width auxiliary lanes with acceleration and deceleration tapers.

(B) **Construction Equipment:** Includes backhoes, loaders, bulldozers, graders, excavators, trenchers, dump trucks, compactors, cranes, forklifts, pavers, milling machines, boring machines, heavy equipment transport trucks, and related heavy construction equipment. Construction Equipment does not include agricultural equipment or construction-type equipment typically used in agricultural activities.

(C) **Emergency:** An unforeseen situation causing an immediate need for repair work on an existing utility infrastructure that has been interrupted or damaged and where the failure to perform such work would result in an immediate danger to life or property or cause environmental damage.

(D) **Highway Department:** means any employee or designated subcontractor of the Starke County Highway Department.

(E) **Superintendent:** The Superintendent of the Starke County Highway Department or his designee.

(F) **Field Entrance:** A drive (paved, gravel or dirt) which is installed only for access to an agricultural field or solely for farm use. However, any drive installed to serve an agricultural or farm business which is open to the public shall be considered and permitted as a Commercial Drive.

(G) **Public Utility:** A business organization providing a product or service regarded as a utility (often termed a public utility regardless of ownership) and managed as a private enterprise or utility cooperative.

(H) **Residential Drive:** A driveway serving a private property zoned residential and serving one or two single-family dwellings or one two-family dwelling unit on a single property.

(I) **Utility Pull Off Drive:** A drive serving only as access to a normally unmanned utility facility where occasional maintenance or facility observation is required.

SECTION 4. RIGHT-OF-WAY IMPROVEMENTS, GENERAL STANDARDS

The following General Right-of-Way Standards shall be applicable for all Improvements in Starke County Highway System rights-of-way:

(A) Driveways shall be placed in a location which, in the Superintendent's opinion minimizes accident risk, taking into consideration the following:

- (1) Sight lines and distances on the existing county highway, including hills, curves, trees, vegetation and other obstructions, and topography; and,
- (2) The distance to other driveways, and intersections; and,
- (3) Drainage; and
- (4) Planned Improvements to the county highway, or surrounding properties or thoroughfares.

(B) Multiple Residential Drives serving a single parcel must meet minimum separation between drives based on the county highway classification and prudent design standards.

(C) A Residential Drive permit may be issued for a single drive serving more than one property provided either:

- (1) only one property abuts a right-of-way, or
- (2) the Superintendent has determined that it is impractical for a property to access any abutting right-of-way due to terrain, floodways, or sightlines.

Further provided that all property owners served by the driveway have executed a recorded agreement acceptable to the Superintendent providing for a mutual easement for ingress and egress; maintenance and repair of the drive; and a waiver to petition or covenant provision that neither the Highway Department nor Starke County will be responsible for the maintenance of the mutual driveway, and the mutual drive will never be considered a public road necessitating maintenance by any unit of government.

(D) Permittee shall provide traffic control devices and flaggers as set out in the Indiana Manual on Uniform Traffic Control Devices and as required by the Superintendent to regulate traffic safety if construction affects the flow of traffic or the safety of the public. Such devices shall be provided in paved right-of-way and on other county highways as determined by the Superintendent prior to work in the right-of-way until completion of the work. In general, traffic control devices shall be provided during the times required by the Superintendent where:

- (1) pavement is being removed or installed,
- (2) temporary pavement or surface patches exist,
- (3) Construction Equipment is conducting construction activities in the right-of-way,
- (4) excavations are occurring within the right-of-way or are less than five feet (5') away from the edge of pavement, or
- (5) the number or width of travel lanes is reduced, the travel lane(s) jog, or travel lane(s) switch.

(E) The affected public highway or right-of-way shall be kept open to traffic during construction of Improvements unless a county highway closure and detour plan is approved by the Superintendent. The detour will be marked at least one week prior to the closure and maintained by permittee throughout the period of the closure. Permittee shall provide 48 hours prior notification to all appropriate public safety agencies of the time and location of the closure.

(F) Where open trench construction occurs, temporary patches shall be constructed and

maintained by the permit holder in a smooth and safe condition acceptable to the Superintendent until a permanent patching is accomplished. Use of temporary patching shall not exceed 30 days, except during winter (from November 15 through April 15) when patching materials are not available. During winter the permittee shall provide a temporary patch and conduct routine inspections to ensure the temporary patch is in good condition. An extension beyond the 30-day requirement may be granted by discretion of the Superintendent upon request with adequate justification by the permittee.

(G) All pavement damaged by any construction activities under the jurisdiction of the ordinance shall be restored by permittee and at permittee's sole expense to a smooth permanent surface meeting Highway Department standards. Aggregate and chip-and-seal surfaces shall be restored in conformance with Highway Department standards.

(H) All sod, swale, side ditches, shoulders, culverts, and other Improvements within the right-of-way which are disturbed by any work or construction within the right-of-way shall be repaired or replaced in a condition equal to or better than they were prior to the work or construction by permittee and at permittee's sole expense, subject to the approval of the Superintendent. Materials used in the repair of any disturbed area and the method used to make the repairs shall be approved by the Highway Department and shall generally meet INDOT standards and specifications. Permittee shall be responsible for providing evidence of existing conditions prior to the work in any dispute related to those conditions.

(I) Anyone who cuts or damages an underdrain tile, storm sewer pipe or culvert pipe in the right-of-way, whether it appears abandoned or not, shall notify the Highway Department immediately upon discovery of the damage. The person cutting the tile or pipe shall repair the damaged tile or pipe to the satisfaction of the Highway Department and, if the tile or pipe is a regulated drain, to the satisfaction of the Starke County Surveyor.

SECTION 5. EMERGENCIES

(A) In the event of an Emergency, utility repairs may be undertaken without first receiving a permit. However, in a utility emergency, the utility must notify the Highway Department as soon as possible, but in no case later than 24 hours after initiation of such repairs in the right-of-way.

Notification during non-work hours may be made by fax or e-mail.

(B) All repairs conducted with a permit due to an Emergency shall be done in a safe manner generally meeting Highway Department and INDOT maintenance of traffic standards. Final repairs shall comply with Highway Department standards.

(C) A regular permit and fee must be filed with the Highway Department within 72 hours of the time the work is begun under an Emergency.

SECTION 6. FORMS SPECIFICATIONS AND DETAILS

(A) The Superintendent is hereby authorized to adopt and revise standard permit and other forms, construction details, and technical specifications applicable to the construction of Improvements in the rights-of-way.

(B) The Highway Engineer shall cause the currently applicable construction details and technical specifications to be published on the county website.

SECTION 7. PERMIT APPLICATIONS

(A) Any person, firm, Public Utility, or corporation desiring to construct an Improvement under the jurisdiction of this ordinance, or to alter, change or modify an existing such structure in the right-of-way of the Starke County Highway System shall make application for a permit to the Superintendent on the forms provided, accompanied by the required information and fees.

(B) The owner of record of the property to be served by an Improvement shall certify as to ownership and, if not the applicant, authorize the application.

(C) If requested, the property owner of record shall accept an encroachment agreement for the requested Improvement as part of the application and permitting process.

(D) The Superintendent shall not accept incomplete applications, or applications not accompanied by the required fees.

(E) An application accepted as complete may be revised by Applicant to address review comments by the Superintendent. Such revised application will not be considered a new application.

(F) Any application for which a permit is not issued or which the Applicant is not actively pursuing resolution of review comments may be considered abandoned by the

Applicant ninety days after the date of the last interaction between the Applicant and the Superintendent related to the application.

SECTION 8. PERMIT FEES

(A) Applicant shall pay a Permit Fee (if required by the schedule of fees) to the Highway Department with the application for permit for all Improvements in the Starke County Highway System rights-of-way. The Permit Fee shall provide for the review, permit issuance, and inspection of the Improvements.

(B) Permit fees shall be as specified the Schedule of Fees for the Starke County Highway Department as approved by the Starke County Commissioners.

(C) The provisions of this chapter pertaining to the fee shall not apply to work done as part of a project owned by any city, town, municipal corporation, or any other county, or by any agency of the state provided that these entities shall comply with all other applicable provisions of this chapter.

(D) Permit fees shall be paid by check or money order or credit card made payable to the 'Starke County Highway Department'.

(E) Permit fees shall be deposited in the Highway Department's general operating fund for the costs of administering the department.

(F) Permit fees are refundable only if the Superintendent determines that compliance with this Section is not necessary.

SECTION 9. GENERAL PERMIT CONDITIONS

(A) Permits for work in the right-of-way shall include the following general conditions as applicable to the permit type and work being done:

- (1) A drive may not cross a limited access right-of-way or a non-access easement.
- (2) All costs of the construction are the sole responsibility of the landowner/permittee.
- (3) No entrance may be closer than five (5) feet to any adjacent property line or such greater set back as may be indicated by the zoning buffer-yard requirements.
- (4) No approach shall be constructed so that any part of it extends in front of property belonging to any person other than the permittee.
- (5) All driveways and approaches shall be so constructed and maintained so that they will not interfere with drainage of or cause damage to the county highway.

- (6) All water must be directed away from the roadway to side ditches or other swales to the satisfaction of the County Surveyor.
- (7) All disturbed areas shall be seeded or sodded within 30 days of completion to prevent erosion. This work may be deferred until growing season upon installation of erosion control measures at the Superintendent's discretion.
- (8) The construction of such driveways and approaches shall not interfere with any existing structure or any county highway right-of-way without specific written permission from the Highway Department and any owner of the structure.
- (9) Concrete headwalls or any other concrete, brick or other solid structures are not permitted in the public right-of-way.
- (10) All entrances and approaches shall be constructed with adequate sight distance in both directions along the county highway to allow safe access to the county highway without interfering with traffic.
- (11) No entrance or approach shall be constructed where it will interfere with or prevent the proper location of county highway signs.
- (12) The permittee assumes responsibility for all maintenance of the driveway(s). If the driveway has a loose aggregate surface, the permittee shall keep the county highway pavement free from the loose aggregate at all times.
- (13) Alterations of any drive or change of use of the property will require a new permit.
- (14) Permitted work must be completed within one (1) year after the permit is issued; otherwise the permit will expire and a new permit will be required.
- (15) Permittees and property owners shall bear all expenses of keeping approaches, culverts, and drainage at the Improvement in proper and adequate repair.
- (16) The right-of-way area adjacent to or between two approaches may be graded at the permittee's expense, subject to the drainage requirements of the Highway Department.
- (17) The right-of-way is subject to mowing by the Highway Department and therefore permittees may not install trees, shrubs or ornamental plantings on the right-of-way.
- (18) During construction of any drive, the approach must have sufficient aggregate during construction to prevent damage to the edge of existing pavement.
- (19) Permittee will be held responsible for costs incurred by the Highway Department to repair the existing county highway or public improvements if damaged.

SECTION 10. PERMIT TERM AND EXTENSION

- (A) The permittee shall complete the work within one year of the date of issuance of the permit.
- (B) A permit will expire the earlier of:
- (1) one year from the date of issuance,
 - (2) upon final approval of the work covered by the permit as determined by the Superintendent, or
 - (3) 60 days prior to the expiration of the permit bond covering the work.
- (C) If permittee has not initiated the work prior to the end of the permit term, the permit expires. However, the permittee may apply for a new permit.
- (D) An extension of time for a period of one year may be granted upon receipt of a new Application and Permit Fee.

SECTION 11. NON-CONFORMITY

- (A) If any Improvements in a right-of-way are found to be in violation with the encroachment agreement in a manner that, in the Superintendent's opinion does not represent a significant potential safety hazard, permittee or property owner shall be notified in writing by the Superintendent about the violation and shall be given thirty days to bring the Improvement into conformity with the terms of this chapter.
- (B) If any Improvement in a right-of-way are found to be in violation with the encroachment agreement in a manner that, in the Superintendent's opinion, represents a significant potential safety hazard, the Superintendent may issue a Stop Work Order for use of the Improvements and direct permittee to immediately rectify the violation to the extent the safety hazard is resolved, after which the Stop Work Order shall be rescinded.
- (C) Continued violation of this chapter may result in revocation of the permit or encroachment agreement and may result in the removal of existing Improvements by the Highway Department at the permittee's expense.
- (D) After revocation of a permit as described above, the permittee may file for a new permit, pay a new permit fee, subject to permittee's compliance with the current standard details and specifications.
- (E) Nothing in this chapter shall limit the county's rights to seek and obtain injunctive relief for any non-conformance.

SECTION 12. OTHER PERMITS

For permits issued for Improvements in the right-of-way necessitated by or related to building construction or remodeling projects, the Starke County Plan Commission shall:

- (A) not issue a building permit until a permit is issued under this chapter, and
- (B) not issue a certificate of occupancy until approval of the Improvements in the right-of-way work.

This Ordinance hereby APPROVED this 4th day of ~~December 2020~~, by the
January, 2021

following vote:


COMMISSIONERS OF STARKE COUNTY

VOTE

Yes


Charles Chesak, President

YES


~~Kathryn Norem~~, Commissioner, Mark Gaurley

YES


Bryan Cavender, Commissioner

ATTEST:


Rachel Oesterreich, Auditor
Of Starke County Indiana