

## CHAPTER 766

### STORMWATER SYSTEM FEE AND FUND

#### 766-1. Definitions.

For purposes of this Chapter, the following definitions shall apply:

Administrator -- The employee of Monroe County, Indiana, Government who has been assigned responsibility for administering the Stormwater System and Fee programs. This term shall be construed to include those County employees working under the direction of the Administrator.

Board - The Monroe County Storm Water Management Board, comprised of the three County Commissioners and the County Surveyor, which is charged with administering the County's stormwater management program pursuant to IC 8-1.5-5.

Developed Property – tracts of property that have at least one building or structure and tracts of property that are adjacent to and under common ownership with a tract that has at least one building or structure.

Equivalent Residential Unit (ERU) - The average amount of impervious surface area in square footage of a single family residential property in Monroe County based on analysis of parcel data using digital orthogonally-rectified aerial photography. This amount has been determined to be equal to 5,200 square feet. This is the unit to which the base rate for the stormwater user fee is applied.

Impervious Surface Area - Areas of land, that are not generally subject to water penetration from naturally-occurring precipitation events due to their coverage by buildings, structures or other man-made objects, or due to materials put on the surface of land by human activity, and which result in water movement to other land surface areas.

- (a) This shall include: the roofs or tops of all buildings, structures or other man-made objects; the surface areas of roadways, driveways, vehicle circulation, delivery and parking sites that are paved or comprised primarily of gravel, and of sidewalks; and

the surface areas of other materials put on land by human activity that make the underlying land resistant or not subject to water penetration.

- (b) This shall not include materials on the surface of land that are in their location where they were established by natural forces (i.e. have not been put there by human activity) that make the underlying land resistant or not subject to water penetration (e.g. solid rock in its natural location).

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

Public Roadways and Rights-of-way – All transportation routes that are available for public use; including federal, state and local roadways, and their associated rights-of-way, bike and pedestrian pathways, and airport runways and taxi-ways.

Residentially Developed Property – All tracts of real property 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) and residential units in condominiums that meet the requirements of IC 32-1-6. This shall include tracts of property that are used for agriculture, but that have a single-family residence on them. Tracts of property that are adjacent to and under common ownership with a tract of property meeting this definition are not subject to stormwater fee charges unless they have a home on them or have different uses that come within the definition of Non-residential Developed Property..

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.

**766-2. Purpose.**

This Ordinance establishes a Stormwater System User Fee to fund and support: the operation, construction and maintenance of Stormwater System facilities; Stormwater System planning; stormwater quality control operations; and, the review of development plans for compliance with stormwater management codes (collectively “the Stormwater System Program”). The fee is based, in part, on the amount of stormwater that is projected to discharge into the Stormwater System from each developed parcel of property located within the unincorporated areas of Monroe County, Indiana. The projected discharge amount is based on the amount of a parcel’s attributed or determined impervious surface area. The fee is intended and is designed to assess users their fair and equitable share of the cost of the Stormwater System Program in a way that is practical and reasonable to administer, relative to the County’s resources.

**766-3. Stormwater System User Fee and Fee Structure.**

- (A) Fee Established. All owners of Residentially Developed Property, and all owners of Non-Residential Developed Property, that is located in the unincorporated areas of Monroe County, Indiana, shall be charged an annual fee (“Stormwater System User Fee” or “Fee”) for the use of the Stormwater System Program.
- (B) Fee for Residentially Developed Property. The Stormwater System User Fee for a Residentially Developed Property is a flat rate fee of thirty five dollars and sixteen cents (\$35.16), which is the rate for one Equivalent Residential Unit (“ERU Rate”).
- (C) Fee for Non-Residential Developed Property. The Stormwater System User Fee for a Non-Residential

Developed Property shall be calculated by dividing the total impervious surface area of the property by one ERU (i.e., 5,200 square feet), and by multiplying the dividend by the ERU Rate (i.e., \$35.16). Calculations of the annual Fee for a Non-Residential Developed Property shall be made to the nearest cent, except the Fee shall not be less than the amount charged for Residentially Developed Property. If a Non-Residential Developed Property has less than 1,000 square feet of impervious surface area, it shall not be subject to this Fee. The Fee billing statement shall set forth the impervious surface area determination and shall constitute notice of that determination to the property owner.

- (D) Impervious Surface Determination. The impervious surface area of a Non-Residential Developed Property shall be determined by analysis of parcel data using digital orthogonally-rectified aerial photography based on the definition of “impervious surface area” in this Ordinance and in accordance with any policies, rules or standards adopted by the Board.
- (E) Property Transfers. In the event that a property title is transferred during the course of a billing year, the buyer and seller may arrange for each to pay a prorated Fee based on the recorded date of transfer. If arrangements have not been made with the County for a shared payment of the Fee on a prorated basis, the owner of the property at the time a Stormwater System User Fee payment is first due shall be responsible for that payment.
- (F) Contiguous Parcels. Through the long-term history of development and redevelopment in Monroe County, multiple contiguous parcels have been consolidated through use. Stormwater System User Fee charges for multiple parcels may be consolidated into a single 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; and,
  - (3) the parcels have the same owner who is also the Fee charge recipient.

- (G) Multiple User/Tenant Properties. Non-Residential Developed Properties that are utilized by two or more businesses, institutions, persons or other entities shall be subject to a single billing regardless of how the parcel may be divided among multiple occupants/tenants or by utility segregating mechanisms such as water meters. A single property that has multiple tenants or other segregations will be subject to a single billing unless the property has been subdivided and each parcel has a separate owner(s).
- (H) Condominium Properties. For condominium developments that are subject to primarily residential use, the impervious surface area of those parts of the property that are subject to common use or service, including but not limited to pools, outbuildings, private roads, recreation courts, and other related impervious surface area will be treated the same as that existing on tracts of property adjacent to and under common ownership with a tract developed for occupancy by a single family for residential purposes. As a result, those impervious surface areas will not be considered in the imposition of stormwater fee charges.
- (I) Mobile Home Parks. Mobile home parks shall be treated as Non-Residential Developed Properties with the Stormwater System User Fee billing sent to the property owner.
- (J) 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 System User Fee.
- (K) Assumption of Portion of Fee. On certain parcels of property, impervious surface 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 Fee that applies to the structure. An agreement must be made whereby the entity who built, owns, or maintains the structure agrees to pay the portion of the Stormwater System User Fee attributable to

the structure even though it is on the parcel owner's property.

- (L) Agricultural Properties. Agricultural properties that are subject to one or two family residential use shall be treated as Residentially Developed Properties.
- (M) Properties under Construction. The Stormwater System User Fee for properties under construction shall be billed to the parcel owner of record as of March 1 of the billing year. The builder or developer is responsible for the Fee 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.
- (N) Annexation. In the event that a property is annexed into an incorporated portion of Monroe County during the billing year, the property will be charged a prorated Stormwater System User Fee for the year based on the date of annexation.

**766-4. Fee Structure or ERU Rate Amendment.**

- (A) Any changes to the Fee Structure or to the ERU Rate must be: recommended by the Board, made the subject of at least one (1) public hearing held by the Board; and, established by County Commissioners' ordinance. Any ordinance that would result in an increase of the ERU Rate or in an increase in the amount of the Fee assessed to a parcel of property, must be adopted at least six (6) months prior to the due date of the first Fee installment that is subject to the amended ERU Rate or Fee Structure. No increase in the ERU Rate may be made recurring (e.g. set-up to automatically increase by a percentage each year) so as to avoid the requirements of this Section.
- (B) The Stormwater System User Fee Structure and the ERU Rate may not be amended in a manner that would generate revenues greater than that subject to collection during the first full year of Fee collection (i.e., 2012) until the fourth year after the Fee has been established, unless new state or federal stormwater management requirements are imposed on the County. Any amendment that would result in increased Fee revenues before the fourth year must be limited to that necessary to pay for the additional

expenditures required of the County as determined by a responsible state or federal official or an outside financial or engineering consultant engaged to analyze this by the County.

- (C) Beginning in the fourth year after the Fee has been established, the Stormwater System User Fee structure and the ERU Rate may be amended to generate additional revenues, but not by an amount that would exceed three (3) percent annually since the establishment of the Fee. If an amendment is adopted to address increased Stormwater System Program costs resulting from new state or federal stormwater management requirements, the increase in revenues attributable to the amendment shall not be considered in applying the three (3) percent annual increase limitation.

**766-5. Collection.**

- (A) The billing and collection of Stormwater System User Fees shall be administered by the Board. For purposes of the applicable billing period, the Stormwater System Program and services to be funded by the Fee shall begin on January 1, 2012.
- (B) 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 real property taxes generally. The monies collected under this section shall be used expressly for the benefit of the Stormwater System Program and may not be distributed to the general fund or other unrelated funds.
- (C) The Stormwater System User Fees 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 County's real property tax billing mechanism for those properties subject to property taxation. The bills will be sent to the owner of each property or person otherwise responsible for the property's real property taxes, as identified in the records of the County Assessor's Office. The Board shall determine a policy and procedure for billings and collections for those real properties that are not subject to property taxation. Arrangements may be made with the County for duplicate Stormwater System User Fee bills to be

sent out when a property is occupied by a person(s), business or institution that are not the same as, and independent of, the owner of those properties.

- (D) Stormwater fee bills distributed through the County's real property tax billing mechanism, including those for properties not subject to property taxation, if unpaid by the "Delinquent after" date indicated on the bill, shall be subject to the same late-payment penalties (i.e. at the rates) applicable to unpaid real property taxes. Pursuant to I.C. 8-1.5-5-29 through 31, the Board may collect unpaid Stormwater System User Fees and penalties as liens on properties. The Board shall provide notice of any liens filed subject to the provisions of applicable Indiana law. Removal of the property lien will only occur upon full payment of the Fees or other payment arrangements approved by the Board. In the alternative, the Board or the County Commissioners may take appropriate legal action to collect unpaid charges.

**766-6. Stormwater Advisory Council, Credits and Incentives.**

- (A) At least six (6) months prior to the County's initial collection of Stormwater System User Fees, the Board shall appoint a Stormwater Advisory Council ("Council"). The Council membership shall reflect a cross-section of the categories of Stormwater System users in the county, including but not limited to business, agriculture, education, religious, governmental and residential.
- (B) The Council shall advise the Board on ways to maintain the fairness and efficiency of the Stormwater System User Fee program, including without limitation, advice on the criteria for assessing fees, and advice on the appropriate fee rates.
- (C) In order to encourage efforts to mitigate stormwater impacts, the Board may, by resolution, establish a system of credits and incentives. The credits and incentives, if awarded, would reduce the Stormwater User Fee charged to qualifying properties. The Stormwater Advisory Council may initiate, and shall review and provide its recommendation to the Board regarding, proposed credits or incentives.

**766-7. Stormwater Fund and Revenue Administration.**



- (A)** A Stormwater Fund is hereby created. All revenues generated from Fees or otherwise received for purposes of the Stormwater System Program shall be deposited in a non-reverting Stormwater Fund.
- (B)** To the extent that the Stormwater System User Fees collected are insufficient to construct needed Stormwater System 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.
- (C)** The Stormwater Fund shall be used exclusively for Stormwater System Program purposes, including without limitation, the following purposes:

  - (1)** acquisition of property by gift, purchase, or condemnation necessary to construct, operate, and maintain stormwater management facilities;
  - (2)** costs of administration and implementation of the Stormwater System Program;
  - (3)** engineering and design, debt service and related financing expenses, planning, construction costs for new Stormwater System facilities, and enlargement or improvement of existing System facilities;
  - (4)** operation and maintenance of the Stormwater System, including the monitoring and inspection of stormwater control devices and facilities;
  - (5)** water quality monitoring and water quality programs;
  - (6)** inspection and enforcement activities;
  - (7)** elected official, appointed official, stakeholder, and general public education and outreach relating to stormwater;
  - (8)** billing, revenue collection, and associated administrative costs; and,
  - (9)** other activities that are reasonably required to manage and operate the Stormwater System.

**766-8. Enforcement.**

The Board and the County Commissioners may seek any legal or equitable remedy necessary to obtain compliance with this Ordinance.

**766-9. Appeal.**

- (A)** Any individual, firm, corporation or organization that is aggrieved by an impervious surface area determination made pursuant to this Chapter for Non-Residential Developed Property or determination to deny a credit sought for a specific property may appeal the determination to the Board. An appeal challenging the accuracy of the County's determination of a property's impervious surface area may be brought any time, but may not be used to change a Stormwater System User Fee that has already been billed, unless it is filed within one-hundred eighty (180) days of the initial mailing of that bill.
- (B)** The appeal must be filed in writing and, if it pertains to an impervious surface area determination, it must contain a proposed, alternative impervious surface area square footage figure based on one of the following information sources:

  - (1)** field survey utilizing total station or GPS data certified by a Land Surveyor licensed in the State of Indiana;
  - (2)** other survey using digital orthogonally-rectified aerial photography certified by a Land Surveyor licensed in the State of Indiana; or
  - (3)** 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 surface area on the property.

Construction design plans ARE NOT acceptable for this estimation.

- (C)** Upon receipt of an appeal, the Board shall request a report and recommendation from the Administrator and shall set the matter for administrative hearing at the earliest practicable date. If the appeal pertains to an impervious

surface area determination, the property owner and the Land Surveyor licensed in the State of Indiana who certified the calculations shall appear before the Board to argue the appeal. During the hearing, the Board may hear additional evidence, and may revoke, affirm or modify the earlier decision.

- (D)** If a proposed figure is accepted by the Board as demonstrating a more accurate estimate of the impervious surface area, then the figure will be applied to future billing. If a credit to the property owner is due, credit will be applied for the difference in the Fee for the LESSER of:

  - (1)** one-hundred eighty (180) days;
  - (2)** one (1) billing cycle; or,
  - (3)** the date of property ownership transfer.
- (E)** If the appeal is denied by the Board, the Board may not rehear the matter for a period of one (1) year, and only then if additional information is presented to support the proposed alternative impervious surface area square footage figure or the credit sought.
- (F)** The appellant may appeal the Board's decision to a court of competent jurisdiction. The appeal must be filed within thirty (30) days of the Board's decision.
- (G)** The existence of this process for appeals to the Board does not preclude property owners from requesting the Administrator to consider impervious surface information provided by the property owner. The Administrator may alter his/her initial impervious surface area determination based on additional, credible information received from a property owner, provided the nature of the information is consistent with the requirements of this Chapter and with any applicable rules of the Board. Changes made by the Administrator to his/her initial determination shall not alter a Stormwater System User Fee that has already been billed, unless the property owner requested the change within fifteen (15) days of the initial mailing of that bill.

- (H)** Any individual, firm, corporation or organization responsible for paying a Stormwater System User Fee for a property pursuant to the requirements of this Chapter may appeal the imposition of a penalty for the late payment of a stormwater fee. The Board, or the Administrator pursuant to the Board's authorization, may waive all or part of a late payment penalty if it determines any of the following conditions to exist:
- (1) The individual, firm, corporation or organization responsible for paying a Stormwater System User Fee for a property did not timely receive the stormwater fee billing for reasons beyond the reasonable control of that individual, firm, corporation or organization.
  - (2) The information provided by the County to the individual, firm, corporation or organization responsible for paying a Stormwater System User Fee was materially erroneous, incomplete or misleading.
  - (3) Circumstances particular to the individual, firm, corporation or organization responsible for paying a Stormwater System User Fee which make it unfair to require the imposition of the late payment penalty.

**[end of chapter]**