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Nicole K. (Nikki) Baldwin  
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COMMISSIONERS

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THE FIRST PAGE

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Nicole K. (Nikki) Baldwin  
Boone County Recorder IN  
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**ORDINANCE 2017-13**

**AN ORDINANCE REPEALING AND REPLACING BOONE COUNTY CODE SECTIONS RELATING TO CONSTRUCTION AND PERMITTING IN COUNTY RIGHTS-OW-WAY**

WHEREAS, The Board of Commissioners of Boone County, Indiana ("Boone County"), may, pursuant to Indiana law [I.C. 36-1-3 (Home Rule)], enact ordinances for effective governance of the County and its Offices and Departments; and

WHEREAS, Boone County is responsible for maintaining the county roads and rights-of-way within its jurisdiction; and

WHEREAS, current Boone County Code Sections 150.15 – 150.36 relate to construction and permitting of construction and structures in county rights-of-way; and

WHEREAS, Boone County desires to repeal the existing Code Sections 150.15 – 150.36 and replace them with Code Sections 150.15 – 150.92 as attached in Exhibit "A"; and

WHEREAS, Boone County finds that is in the best interests of the County, its residents and taxpayers to repeal the existing Code sections cited above and replace them with the Code Sections as attached in Exhibit "A".

NOW, THEREFORE, BE IT ADOPTED AND ORDAINED by the Board of Commissioners of Boone County, State of Indiana, do hereby repeal the existing Boone County Code Sections 150.15 – 150.36 and replace them with Code Sections 150.15 – 150.92 as delineated in the Attached Exhibit "A".

Further, The Commissioners shall adopt schedules of permit fees and bond amounts for the various activities described in Codes Sections 150.15 – 150.92, which such schedules shall be adopted at a public meeting of the Commissioners and published in accordance with State law.

This Ordinance shall become effective on January 1, 2018. If any portion or provision of this Ordinance is subsequently deemed unconstitutional or otherwise declared void by a Court of competent jurisdiction, the remaining portions of the Ordinance will continue in full force and effect.

**CORRECTED FRONT PAGE**      **ORDINANCE 2017-13**

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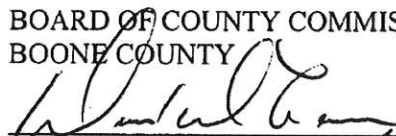
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**COPY**

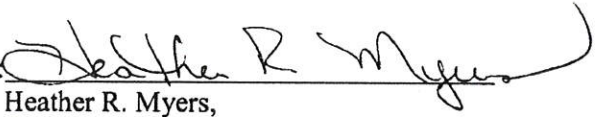
PASSED AND ADOPTED BY THE BOARD OF BOONE COUNTY COMMISSIONERS  
THIS 21<sup>st</sup> DAY OF AUGUST, 2017.

BOARD OF COUNTY COMMISSIONERS OF  
BOONE COUNTY

  
Donald Lawson, President

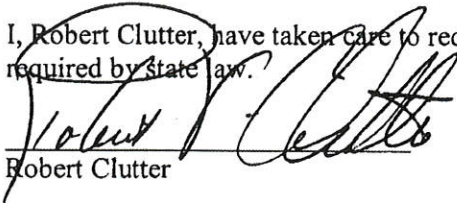
  
Marc Applegate

  
Jeff Wolfe

ATTEST:   
Heather R. Myers,  
Boone County Auditor

Prepared by Robert Clutter, Boone County Attorney  
117 West Main Street, Lebanon, IN 46052

I, Robert Clutter, have taken care to redact all Social Security Numbers from this document as  
required by state law.

  
Robert Clutter

**EXHIBIT "A"**

***CONSTRUCTION IN RIGHTS-OF-WAY***

**§ 150.15 NAME.**

This chapter shall be known as the Boone County Construction in Rights-of-Way Ordinance.

**§ 150.16 SCOPE.**

(A) The provisions of this chapter shall govern the construction, relocation, alteration, or change in the character or use of Improvements in the rights-of-way of the Boone County Highway System (which includes rights-of-way in the Rural Service District of the Town of Zionsville to the extent regulated by Boone County), and the maintenance of such Improvements, which are not otherwise governed under Title XV of the Boone County Ordinances.

(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.

(D) It shall be unlawful for any person, firm or corporation to construct Improvements in the rights-of-way of the Boone 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 Highway Engineer shall have the authority to issue Stop Work Orders for any violations of this chapter.

**§ 150.17 AUTHORITY.**

(A) The Boone County Highway Engineer, as defined by I.C. 8-17-5, is hereby authorized to approve and issue permits for all Improvements under this chapter except for the following Improvements, which shall be approved by the Boone County Commissioners:

- (1) public service utility infrastructure,
- (2) Improvements in the rights-of-way of Major Other Arterials as defined by the Boone County Thoroughfare Plan,
- (3) linear utility services,
- (4) open-trench road cuts, and
- (5) other requests as determined by the Highway Engineer.

(B) The Highway Engineer shall have the authority 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 and encroachment agreements,
- (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 Highway Engineer may delegate his authority under this section to other Boone County Highway Department employees as advisable to meet the intent of this chapter.

**§ 150.18 DEFINITIONS.**

The following definitions apply only to this chapter.

(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 accel and decel tapers, but not having or requiring associated auxiliary lanes except a mailbox approach.

(2) **Major Commercial Drive:** Any Commercial Drive having or requiring associated full-width auxiliary lanes with accel and decel tapers.

(B) **Construction Equipment:** 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:** A situation where there is an immediate need to perform 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 Boone County Highway Department.

(E) **Highway Engineer:** shall mean the Boone County Highway Engineer 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. 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) **Overhead Linear Project:** Overhead infrastructure and its related construction that is installed substantially parallel to the right-of-way.

(H) **Underground Linear Project:** Underground infrastructure and its related construction that is installed substantially parallel to the right-of-way, including open ditching, grading, trenching, excavation, directional drilling or boring.

(I) **Private Linear Utility:** Privately owned infrastructure providing a product or service to one or a small number of properties that is installed substantially parallel to the right-of-way.

(J) **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.

(K) **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.

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

**§ 150.19 COST, OWNERSHIP, AND MAINTENANCE OF IMPROVEMENTS.**

(A) Permittee shall own and be responsible for the cost of construction, materials, and installation of Improvements in the right-of-way.

(B) The maintenance of Improvements will remain the responsibility of the property owner and must be maintained in a manner which does not interfere with the use of the right-of-way for its dedicated purpose.

**§ 150.20 GENERAL RIGHT-OF-WAY STANDARDS FOR IMPROVEMENTS.**

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

(A) Driveways shall be placed in a location which, in the Highway Engineer's opinion, minimizes the opportunity for accidents, taking into consideration the following:

(1) Sight distances on the existing county highway, including curves, trees, brush and other obstructions, and topography;

(2) The distance to other driveways and intersections;

(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 Highway Engineer has determined that it is impractical for a property to access any abutting right-of-way due to terrain, floodways, or sightlines.

And, further provided that all property owners served by the driveway have entered into a recorded agreement acceptable to the Highway Engineer 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 or Boone 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) Improvements, such as public service utilities or developer-installed storm sewer pipes requiring a subsurface crossing of a county highway, shall be installed by boring or pushing the utility beneath the county highway. This requirement may be waived and the Improvement installed by open cut methods under the following conditions:

(1) Where the county highway surface is gravel;

(2) Where the county highway pavement is scheduled for rehabilitation within the following year; or

(3) Where the existing condition of the county highway surface upon restoration of such construction will be preserved or improved and that no long term deterioration will result from the construction.

(E) 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 Highway Engineer 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 Highway Engineer 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 Highway Engineer 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.

(F) Traffic will be maintained at all times during construction of Improvements unless a county highway closure and detour plan is approved by the Boone County Commissioners. 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.

(G) 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 Highway Engineer until a permanent patching is accomplished. Use of temporary patching shall not exceed 30 days, except from November 15 through April 15 when patching materials are not available. During this time period the permittee shall provide a temporary patch, and conduct routine inspections to insure the temporary patch is in good condition. An extension beyond the



30-day requirement may be granted by the Highway Engineer upon request with justification by the permittee.

(H) All pavement damaged by open cut installations shall be restored to a smooth permanent surface meeting Highway Department standards. Aggregate and chip-and-seal surfaces shall be restored in conformance with Highway Department standards.

(I) 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, as approved by the Highway Engineer. 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.

(J) 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 Boone County Surveyor.

#### **§ 150.21 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 under 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.

#### **§ 150.30 FORMS, SPECIFICATIONS, AND DETAILS.**

(A) The Highway Engineer 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.

#### **§ 150.31 APPLICATION FOR PERMIT.**

(A) Any person, firm, Public Utility, or corporation desiring to construct an Improvement, or to alter, change or modify an existing structure in the right-of-way of the Boone County Highway System shall make application for a permit to the Highway Engineer 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) The property owner of record shall accept an encroachment agreement for the requested Improvement as part of the application and permitting process.

(D) The Highway Engineer 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 Highway Engineer. Such revised application shall not be considered a new application for the purposes of this chapter.

(F) Any application for which a permit is not issued or which the Applicant is not actively pursuing resolution of review comments shall be considered abandoned by the Applicant 90 days after the date of the last interaction between the Applicant and the Highway Engineer related to the application.

#### **§ 150.40 CONVEYANCE OF RIGHT-OF-WAY.**

(A) Where application is for an entrance, driveway, or approach or for sidewalks, pathways, trails, or multi-use paths, or for any change in use of the property necessitating Improvement to structures in the right-of-way, applicant shall convey or cause to be conveyed right-of-way in accordance with the Boone County Thoroughfare Plan and the Boone County Comprehensive Plan.

(B) Conveyance shall be for right-of-way along the county highway to which the entrance, driveway, or approach is connecting or along the roadway parallel to the sidewalk, pathway, or multi-use path.

(C) Right-of-way conveyance shall be a pre-requisite for issuance of an applicable permit, except for Field Entrance permits

(D) If the conveyance creates a zoning non-conformity, applicant will need to seek a waiver from the Boone County Board of Zoning Appeals. The Highway Engineer will support this waiver request.

#### **§ 150. 50 PERMIT FEES.**

(A) Applicant shall pay a Permit Fee to the Highway Department with the application for permit for all Improvements in the Boone County Highway System rights-of-way. This Permit Fee shall provide for the review, permit issuance, and inspection of the Improvements.

(B) Permit fees shall be as set forth in §the Schedule of Fees for the Boone County Highway Department as approved by the Boone County Commissioners.

(C) When Underground Linear Projects exceed 1 mile in total continuous length of impact to County Rights-of-Ways, the Highway Engineer may choose to contract outside inspection services. If outside inspection services are hired, additional permit fees will be calculated based on the actual costs for said inspections and other services related to the encroachment and will be assessed in addition to the base fees outlined in the Schedule of fees.

(1) Highway Engineer shall estimate the costs of services related to the requested encroachment.

(2) Applicant shall deposit with the Highway Engineer the amount estimated by the Highway Engineer for the services requested plus ten percent (10%) prior to approval of the permit.

(3) Upon completion of the work and before final inspection, Highway Engineer shall cause to be prepared a summary of the expenses incurred for the requested service.

(a) The cost of the final inspection shall be estimated by Highway Engineer and shall be considered adequate for the service, whether the actual costs were more or less than estimated. If the final inspection does not result in approval of the work, a new summary and final inspection estimate will be prepared incorporating the costs of the failed final inspection and estimating the new final inspection.

(b) A copy of the summary shall be provided to the applicant.

(4) If the expenses were less than the deposit, Highway Engineer shall refund unused funds to applicant after approval of the final inspection.

(5) If the expenses exceeded the deposit, applicant shall deposit with the Highway Engineer additional funds to cover the costs of the requested services prior to approval of the project.

(D) 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.

(E) Permit fees shall be paid by check or money order or credit card made payable to the "Boone County Highway Department". Cash cannot be accepted.

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

(G) Permit fees are refundable only if the Highway Engineer determines that compliance with this Section is not necessary.

### **§ 150.51 BONDS.**

(A) Where, in the opinion of the Highway Engineer, the Improvements may impact county improvements in the right-of-way, a permit bond for the estimated cost of the impact shall be provided to the Highway Department. The bond shall be submitted and approved prior to issuance of a permit.

(B) The permit bond shall be obligated such that the applicant will well and faithfully do and perform the things to be done and performed according to the terms of the permit and to the satisfaction of the Highway Engineer, and shall pay all lawful claims of the contractor, vendors and laborers for labor performed and materials furnished, or other services rendered in the carrying forward, performing and completing of the permit.

(C) The standard bond amounts shall be as set forth in the Schedule of bonds for the Boone County Highway Department as approved by the Boone County Commissioners.

(D) The Highway Engineer may allow utilities intending to file for multiple permits to have an annual permit bond for utility work in the county right-of-way in an amount acceptable to the Highway Engineer. The minimum annual permit bond amount requirement is \$25,000. The annual permit bond shall be written so that it covers all contemplated projects within Boone County and automatically renews, unless the surety gives the Highway Engineer a written notice 60 days prior to the annual expiration date. An annual permit bond cannot be used for drive or public road approach permits.

(E) The Highway Engineer shall have the authority to develop bond forms and to approve bonds received for Improvements.

(F) Prior to the release of any permit bond, the Highway Engineer will require an inspection to determine the completion of construction according to the terms of the permit and to the satisfaction of the Highway Engineer.

(G) At the discretion of the Highway Engineer, a maintenance bond may be required from an applicant as a condition of approval or as a condition of releasing the permit bond. A utility

company having a certificate of authority or franchise issued by the Indiana Utility Regulatory Commissioner and who has a continuous bond on file with the Boone County Highway Department may be used in lieu of the maintenance bond when approved by the Highway Engineer.

(H) Prior to the release of a permit bond issued for the cutting of a road, the applicant shall post a three (3) year maintenance bond which cannot be canceled prior to three years from the completion of the road cut.

(I) If the bond company sends notice that the bond is being canceled at any time prior to completion of the conditions for which the bond is obligated, the total amount of the bond shall become immediately due and payable to the Boone County Board of Commissioners. If a maintenance bond is not submitted upon completion of the work, the total amount of the permit bond covering the work will become immediately due and payable to the Boone County Board of Commissioners and no additional permits will be issued to the applicant.

#### **§ 150.60 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 is not permitted to cross a limited access right-of-way or a non-access easement.

(2) The entire expense of constructing driveways, mailbox approaches, utilities, and other Improvements shall be borne by the landowner/permittee.

(3) No entrance shall be closer than five (5) feet to the adjacent property line or as indicated by the zoning buffer-yard requirements.

(4) No approach shall be constructed so that any part of it extends in front of the property belonging to a person other than the permittee.

(5) All driveways and approaches shall be so constructed that they shall 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.

(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 Highway Engineer'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 will not be permitted in the 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, it is the homeowner's responsibility to 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 permittee may not plant flowers, shrubs, or trees within the right of way. Existing plantings in the right-of-way shall be removed by permittee. Grasses shall be cut at and surrounding the Improvement by permittee if, in the Highway Engineer's opinion, a potentially dangerous situation is created by the grass height.

(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.

#### **§ 150.61 PERMIT REVIEW AND ISSUANCE.**

(A) The Highway Engineer shall review each application for compliance with the provisions of this chapter and the published details and specifications.

(B) The Highway Engineer shall conduct an inspection of the location of any proposed encroachment.

(C) Upon a finding by the Highway Engineer that the proposed Improvement substantially complies with the county's requirements, and any culvert will be appropriately sized, the Highway Engineer shall:

(1) for permits the Highway Engineer is so authorized, approve and issue a permit for the Improvements

(2) for other permits, present to the Boone County Commissioners the application and Highway Engineer's findings and recommendations for consideration and action, and where approved by the Commissioners, process and issue the permit..

(D) Permittee shall post the permit in a conspicuous location where the improvements are being constructed.

#### **§ 150. 62 PERMIT TERM AND EXTENSION.**

(A) The holder of a permit 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 Highway Engineer, or

(3) 60 days prior to the expiration of the permit bond covering the work.

(C) In the event permittee has not initiated the work prior to the end of the permit term, the permit shall expire and the encroachment agreement shall not go into effect.

(D) An extension of time for a period of one year may be granted upon receipt of a new Application and Permit Fee.

#### **§ 150. 70 INSTALLATION, INSPECTION, AND APPROVAL.**

(A) Permittee shall be responsible for the purchase, installation, and construction of all Improvements in the right-of-way according to the permit.

(B) The Highway Department shall inspect the Improvements to determine conformity with the permit and the applicable details and specifications.

(C) The Highway Department shall be notified at least 24 hours in advance of construction and when construction is complete in order to allow for inspections.

(D) The Highway Engineer shall have the authority to make final administrative determinations as to the acceptability of any work done in the right-of-way.

(1) a final determination by the Highway Engineer that the work is complete and complies with the applicable standards shall satisfy permittee's obligations under the permit and the permit bond, and the permit shall transition to an encroachment agreement.

#### **§ 150. 71 NON-COMPLIANCE.**

(A) The following conditions or events, as determined by the Highway Engineer, represent non-compliance with the permit:

(1) permittee's work is substantially completed but does not fully comply with the applicable standards following notification to permittee and providing thirty (30) days for correction,

(2) the term of the permit is expiring and permittee is not making continuing, diligent efforts to complete the work, or

(3) where a condition exists related to the permit work that, in the Highway Engineer's opinion, creates an unsafe condition or a hazard and permittee has not corrected the condition after being notified and provided the opportunity to resolve the condition.

(B) A permit time extension shall satisfy the non-compliant conditions or events represented under (1) or (2) above.

(C) The Highway Engineer is authorized to issue a Stop Work Order for work under any permit until any condition under (3) above is resolved.

(D) Upon a condition or event of non-compliance, the Highway Engineer may notify the permit bond holder that a claim is pending under the permit bond to complete the work. The Highway Engineer thereafter may take such actions as he considers prudent to cause the work to be completed.

#### **§ 150. 72 ENCROACHMENT AGREEMENT.**

(A) The permit document, upon approval of a final inspection of the Improvements and containing the appropriate approval signatures, shall represent an encroachment agreement



between Boone County, the permittee, and permittee's successors in ownership of the property to which the Improvements are intended to serve.

(B) As a condition of the encroachment agreement, Permittee shall agree to maintain that portion of the Improvement within the right-of-way, including the culvert pipe, end sections, and drainage ditches impacted by the permitted work, in good condition in substantial compliance with the standard details and specifications published at the time of the work and in such a manner as to prevent obstruction, interference, or degradation of the county highway, or negatively impact the traffic thereon or the flow of runoff water to or within any roadside ditch.

(C) In lieu of the provisions of (B) above, all public service utilities and private entities proposing construction of linear Improvements in the right-of-way shall enter a separate encroachment agreement with Boone County. This encroachment agreement may be site-specific or include portions or all of the county's rights-of-way.

#### **§ 150. 80 NON-CONFORMITY.**

(A) If any Improvements in the rights-of-way are found to be in violation with the encroachment agreement in a manner that, in the Highway Engineer's opinion does not represent a significant potential safety hazard, permittee or property owner shall be notified in writing by the Highway Engineer about the violation and shall be given 30 days to conform to this chapter.

(B) If any Improvements in the rights-of-way are found to be in violation with the encroachment agreement in a manner that, in the Highway Engineer's opinion, represents a significant potential safety hazard, the Highway Engineer 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 revoked.

(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 at permittee's expense by the Highway Department.

(D) Permittee will then have to file for a new permit, pay a new permit fee, and comply 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.

#### **§ 150. 90 VIOLATIONS.**

(A) A person who violates this chapter commits a class A infraction. When a violation occurs, the permit holder, the contractor, company or individual performing the work and the owner of

the facilities being installed or constructed shall be held in violation both jointly and separately. Each subsection violated and each day for which the violation remains shall be a separate violation. A fine in an amount not to exceed Two Thousand Five Hundred Dollars (\$2,500.00) shall be imposed for each violation of this Chapter. Additionally, the permittee, owner or contractor shall be responsible for the costs of restitution for any damages to any county right-of-way or Improvement thereon. The applicable fine and restitution cost shall be entered against a person who violates this chapter per violation for each day of the violation.

(B) Fee for enforcement of violations: Whenever any individual or corporation is found to be in violation of any subsection of this chapter, an inspection fee will be imposed to cover the costs of enforcement. This fee shall be \$250.00 per day per violation of each subsection of this chapter. This fee is due and payable by permittee upon notification by the Highway Department. Failure to pay the fee within 14 days of notification will result in the withholding of all future permits to the individual or corporation and immediate submittal of the violation to the Boone County Attorney for collection. At the discretion of the Highway Engineer, this fee may be waived for an initial violation of this chapter provided the violator immediately corrects his violation.

(C) Appeal of the levy of this fee may be made to the Boone County Commissioners. The fee amount due will not be required to be paid until the Boone County Commissioners have acted upon the appeal.

(D) In addition to the remedies set out in this section, any contractor, company, or individual who violates any provision in this chapter may be ineligible to obtain a permit under this chapter unless, or until all fines, damages, judgments, or restitution costs are paid in full by the violator.

(E) For any violation of this Chapter or for any Fine, Fee, or cost of restitution as provided for in this Chapter, Boone County may file an action for injunctive relief and for the imposition or collection of such fine, fee, or cost of restitution in the Boone County Circuit or Superior Courts. The person, company, corporation for contractor found to be in violation shall also be ordered to pay the costs of such action including reasonable attorney fees of Boone County.

#### **§ 150. 91 OTHER PERMITS.**

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

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

## *DUST CONTROL*

### **§ 150.92 DUST CONTROL APPLICATION.**

(A) Any person, firm, corporation or entity who desires to apply any form of dust control material on a county highway must first obtain a dust control permit from the Highway Engineer.

(B) Any and all dust control materials to be applied to the county highways must meet or exceed those contained on the dust control permit and shall be approved for such use by the Indiana Department of Environmental Management.

(C) The quantity of the dust control materials to be applied shall adhere strictly the dust control permit issued by the Highway Engineer. The area to be treated is the sole responsibility of the permittee to keep and maintain in a manner which is safe for those vehicles accessing county highways.

(D) The application of any dust control material may be made any time between May 1 to and including August 30 of each year. No dust control material can be applied after September 1 of each year without special permission from the Highway Engineer.

(E) The Boone County Commissioners reserve the right to request the Highway Department to prepare the treated roadbed for winter after October 1 of each year.

(Ord. 89-1, passed 4-24-1989)