

FLOYD COUNTY ORDINANCE 2003- XV
AN ORDINANCE AMENDING FLOYD COUNTY ORDINANCE 68-1

WHEREAS, on the 25th day of August, 1968, the Floyd County, Indiana, Subdivision Regulations, being Floyd County Ordinance 68-1, were duly adopted by the Board of Commissioners of the County of Floyd (Board), which said regulations have been modified and amended from time to time; and

WHEREAS, the Board is desirous of further amending Ordinance 68-1 in the particulars as hereinafter set forth.

NOW THEREFORE:

BE IT ORDAINED that the Floyd County, Indiana, Subdivision Regulations, being Floyd County Ordinance 68-1, be, and said ordinance hereby is, amended and modified in the particulars as hereinafter set forth:

1. Section I, DEFINITIONS, is amended by the addition of subsection C, as follows;

C. SEWAGE DISPOSAL. The following definitions shall applicable to subsection F of SECTION III of this ordinance and elsewhere as appropriate:

WASTEWATER TREATMENT PLANT (hereinafter referred to as Plant) - A mechanical facility, whether prefabricated or site-built, used by a sewage disposal company in providing a sewage disposal service, as permitted under a certificate of territorial authority (CTA) issued by the Indiana Utility Regulatory Commission pursuant to Title 8 of the Indiana Code or other applicable law or regulation. For purposes of this definition, the term "facility" shall include all sewage treatment plants, main sewers, submain sewers, force mains, pumping stations, ejector stations, and all other equipment and appurtenances necessary or useful and convenient for rendering a sewage disposal service. The term "Wastewater Treatment Plant" shall not include those facilities owned or operated by a municipal corporation, as defined by I.C. 36-1-2-10, or those which process sewage exclusively from one or more public or private schools located in Floyd County. For purposes of this Ordinance, a wastewater treatment plant shall not be deemed a residential or agricultural use; an accessory thereto under Section 2.03; or, a contingent use under Section 2.04.

SEWAGE DISPOSAL SERVICE - (hereinafter referred to as Services) Any public utility service performed by a sewage disposal company whereby liquid and solid waste, sewage, night soil, and industrial waste (hereinafter "Sewage") of any single territorial area is collected, treated, purified, and disposed of in a sanitary manner.

SEWAGE DISPOSAL COMPANY - (hereinafter the Company) Any natural person, firm, association, corporation, or partnership, owning, leasing, or operating and sewage disposal service within Floyd County, Indiana, pursuant to a CTA issued by the Indiana Utility Regulatory Commission

2. SECTION III, DESIGN STANDARDS, is amended by the addition of Subsection F:

F. SEWAGE DISPOSAL:

1. An application for subdivision approval which proposes the use of a wastewater treatment plant (Plant) shall not be eligible for secondary (final) approval unless the Commission finds that the following stipulations, requirements, and conditions have been satisfied or adequately assured:

- a. The Company owning, leasing, and/or operating the plant has been issued a CTA by the IURC, and is in possession of all federal, state, and local permits, licenses, and franchises, if any be required, permitting the construction and operation of the plant and the rendering of Services to the proposed subdivision, and that all rates, fees and charges to be assessed by the Company for Services provided the proposed subdivision have been, likewise, so approved. Copies of the certificate, all required permits, and a schedule of rates and charges shall be furnished the Commission.
- b. If the plant is to be first constructed, expanded, or substantially modified after the 1st day of May, 2003 (a "newly constructed plant"), the Company owning, leasing, and/or operating the plant has obtained a conditional use permit pursuant to the terms and provisions of the Floyd County, Indiana, Zoning Ordinance, being Floyd County Ordinance A67-4.
- c. If the proposed subdivision is to be served by a newly constructed plant, such facility shall be of the latest design generally accepted and approved by those governmental entities having jurisdiction (appropriate authority), as of commencement of construction, and shall include such available technology as shall assure its continuous and efficient operation with the highest degree treatment and the least degradation of the receiving stream and the environment. All components of the plant shall be new and unused unless otherwise approved by appropriate authority. The useful life of the plant and each of its major components shall be certified by the manufacturer or by a qualified design engineer, with copies thereof to be furnished the Commission.
- d. The plant shall have adequate capacity to serve all lands encompassed by the applicable Certificate of Territorial Authority, and shall have a minimum capacity of not less than 40,000 gallons per day. Sewer mains running from the treatment

wastewater plant to a subdivision shall support a capacity of not less than 100,000 gallons per day.

- e. The plant and all disposal equipment shall be constructed and installed in accordance with the plans and specification approved by those governmental entities having jurisdiction, and certification of such compliance, together with "as built" plans and specifications and a complete and detailed maintenance and replacement schedule shall be furnished to the Commission. No occupancy permit for any structure utilizing the plant shall be issued until the plant is fully operational within the parameters of its operating permits.
- f. The plant shall incorporate such available technology as will permit its continuous and uninterrupted operation, within the limits of applicable discharge permits, notwithstanding anticipated or foreseeable equipment obsolescence or failure. A self starting generator of sufficient capacity to support the plant shall be provided.
- g. The restrictions and protective covenants pertaining to the proposed subdivision shall make provision for the establishment of an incorporated lot owners association, membership in which shall be automatic for all lot owners (hereinafter, the "Association").

2. An application for subdivision approval which proposes the use of a wastewater treatment plant (Plant) shall not be eligible for secondary (final) approval unless the Board of Commissioners of the County of Floyd (Board) has approved, upon recommendation of the Commission, the form and substance of a sewage disposal agreement to be concluded by and between the sewage disposal company and the owner of the real estate to be subdivided, which agreement shall include terms and provisions substantially consistent with the following;

- a. **PARTIES:** The parties to the agreement shall be the sewage disposal company (Company) and the owner(s) of the real estate which is the subject of the application for subdivision approval (Owner).
- b. **TERM:** The term of the agreement shall be indefinite, or if a term of years is specified, the agreement shall provide for automatic renewal for like terms.
- c. **DESCRIPTION OF PROPERTY TO BE SERVED:** The agreement shall include a legal description of the land to be encompassed by the proposed subdivision, and if this description differs from that set forth within the CTA issued the Company, the latter description shall also be included.

- d. **DESCRIPTION OF PLANT SITE:** The agreement shall include the legal description of the real estate upon which the treatment plant is constructed or is to be constructed, as well as any other real property owned by the Company and to be used in the provision of Services to the proposed subdivision (the Real Estate).
- e. **OWNERSHIP OF FACILITIES:** The agreement shall provide that, for and during the term of the agreement, the wastewater treatment plant shall be free and clear of all liens and encumbrances with the exception of the lien for the current property taxes; and that no conveyance, lease, mortgage, or other alienation of an interest in the Plant shall occur except upon the prior approval of the Owner, Association, Commission and the Board. This limitation on alienation shall extend to and include the Real Estate.
- f. **CONSTRUCTION OF FACILITIES:** The agreement shall include the covenant of the Company that the Plant has been or will be constructed in accordance with the plans, specifications, licenses, and permits approved and issued by those governmental entities having jurisdiction; that such construction has been or shall be completed in accordance with the conditional use permit issued pursuant to Floyd County Ordinance A67-4, if the Plant is newly constructed; and, that such construction conforms with the minimum requirements of this Ordinance so as to permit approval of the proposed subdivision by the Commission.
- g. **REQUIRED IMPROVEMENTS:** The agreement shall provide that (1), at the end of the useful life of a Plant or (2) , the earlier increase in its capacity, or (3) the expansion of the territory served by the Plant under the CTA issued by the IURC, the Company shall be obligated to modernize and up-grade the design and technology of the treatment plant and equipment, to the end that its then design attributes will equal or exceed those then required by appropriate authority for a new plant, all costs and expenses incurred in any required modernization to be paid by the Company.
- h. **OPERATION OF THE PLANT:** The agreement shall stipulate and require that the Company provide for each residence located and constructed in the proposed subdivision sewage disposal services which are adequate for the safe and sanitary collection, treatment, and disposal of all domestic sewage generated by each such residence; that the Plant shall at all times be operated and maintained in a manner so as not to pollute the ground, air, or water with improperly or inadequately treated sewage or with noxious or offensive gases or odors; and, that the Plant shall at all times be operated and maintained in accordance with all of the rules, regulations, directives, and orders of any and all federal, state, and local

governmental entities having jurisdiction. Further, and in fulfillment of these operational covenants and requirements, the agreement shall provide that the Plant be under the control of a licensed operator at all times; that major plant systems shall be monitored daily by the operator or his qualified designee; and, that notice of Plant failure, to include any failure to operate within the parameters of applicable permits, shall be given immediately to and as required by proper authority.

- i. **INSPECTION OF FACILITIES:** The agreement will provide that Plant may be inspected and tested at all reasonable times by the Board, Commission, Owner's Association, the Floyd County Health Department and any other federal, state, or local governmental entity or agency having jurisdiction, or their authorized agents and shall further provide that all plans, specifications, documents, and papers (records) pertaining to or affecting the construction, operation, maintenance of the Plant or the provision of Services by the Company shall be, likewise, available for inspection at all reasonable times. The agreement may provide for reasonable prior notice of inspection not to exceed four (4) hours, and for the confidentiality of Company records, which are not otherwise public records.

- j. **RATES AND CHARGES:** The agreement shall set forth tap-in fees and similar connection charges, sewer use fees and assessments, late fees, interest and any other monetary charges to be levied upon the owners of lots in the proposed subdivision by the Company; the manner of calculation of fees and charges shall be specified, and such matters as the collection procedures for delinquent accounts and the acquisition and foreclosure of liens shall be addressed; and, the procedure for securing rate increases shall be disclosed. The instrument shall further set forth the covenant of the Company that the total of all user charges and assessments shall at all times be set and established so that the operational revenue derived therefrom will be not less than that necessary to pay and discharge all financing costs associated with the plant and related infrastructure; all costs, expenses, and fees to be incurred in the operation of same, to include depreciation; the expense of all reasonable and necessary repairs and maintenance; such sums as may be anticipated as necessary for the replacement of plant and equipment at the end of its useful life or the earlier modernization and improvement thereof; and, such profit as may be allowed by proper authority. The agreement shall dictate when fees and charges will first become due and payable; will make provision for the payment by the Owner of minimum monthly user fees prior to the sale of all lots within the proposed subdivision; and will require that all rates and charges shall be established and set in accordance with

the rules, regulations, and orders of the IURC or other governmental entity having jurisdiction.

- k. **ACCOUNTING:** The agreement shall require the Company to account to the Owner and the Association, at least annually, disclosing, as a minimum, the gross revenues derived from operations; all expenses incurred and paid, to include wages, salaries, fees to directors, and distributions to partners, principals, or shareholders; all long term and short term debt obligations, unpaid judgments, contingent liabilities and pending litigation, if any; and, any matter which the Company, its accountant, or a reasonable person would deem to adversely affect the financial condition of the Company, The annual accounting will be prepared in accordance with commonly accepted accounting practices, with copies to be provided the Board and the Commission. The agreement may provide for the confidentiality of these disclosures.

- l. **INSURANCE:** The agreement shall include standard indemnity provisions and require the Company to insure the Plant for its full insurable value as against loss from recognized casualties; to procure and maintain general public liability insurance with minimum single limit of \$1,000,000 for personal injury and property damage; and, shall require the Company to insure as against loss or damage to the environmental with minimum limits of \$1,000,000. With respect to all coverages, the policies shall provide for notice to the Owner, Association, and the Commission before termination and, shall name the Owner and the Association as additional insureds, as appropriate.

- m. **FINANCIAL ASSURANCES;** The instrument shall provide that the obligations and responsibilities of the Company under and pursuant to the agreement, to include, but not necessarily limited to, the obligation to maintain, repair, upgrade, and replace the plant and equipment upon its obsolescence or at the end of its useful life shall be assured through one or more of the following vehicles as approved by the Commission with consultation from the County engineer;
 - (1). A performance Bond.
 - (2). Personal Guarantees with adequate collateral. The Guarantor shall provide a net worth statement to the Commission on an annual basis.
 - (3). An escrow arrangement with an institutional escrow agent.

- (4). A letter of Credit.
- (5). A pledge or mortgage of property.

The agreement may specify a maximum dollar amount (to be adjusted for inflation) related to plant and equipment, which shall not be less than 110 percent of the estimated replacement cost of the facility (not including land); a separate amount for operations, which shall not be less than 110 percent of the estimated annual operating expense incurred by the Company in providing Services to the proposed subdivision; and, may specify the procedure by which an escrow fund (if created by the Company) may be utilized for necessary expenditures and thereafter replenished. The agreement may provide that the cost of providing assurances be included in the rates to be charged owners of lots in the proposed subdivision; shall set forth the procedure by which the Owner or Beneficiary may obtain financial relief in the event of default by the Company; and, shall require that the status of assurance funding be disclosed in the annual accounting by the Company to the Owner and the Association.

- n. **THIRD PARTY BENEFICIARIES:** The agreement shall acknowledge that, (1) while the Owner is a named party to the agreement, the duties and obligations of the Company thereunder shall primarily inure to the benefit of the owners of individual lots within the proposed subdivision, (2) that while a failure by the Company to provide adequate Services pursuant to the agreement would result in damage to said lot owners, damage to the environment beyond the confines of the proposed subdivision would likely attend such failure, and (3) that the individual lot owners, acting by and through the Association, and the public, represented by the Commission, are third-party beneficiaries (Beneficiaries) under the agreement with the following rights and powers:
1. To consent or withhold consent to any sale, assignment, amendment, or termination of the agreement.
 2. To initiate an action at law or in equity for the enforcement of the agreement or the recovery of damages as provided therein.
 3. To demand payment or satisfaction under a financial assurance arrangement in the event of default by the Company
 4. To demand and receive notice and access to the property of the Company and its records.

- o. **ASSIGNMENT/AMENDMENT/ TERMINATION:** The instrument shall provide that (1), no interest of the Company under the agreement will be assigned, sold, conveyed, or otherwise alienated, (2) that no provision will be modified, deleted, or amended, and (3) that the agreement shall not be canceled or terminated without the prior written consent of the Owner, the Association, and the Board, upon recommendation of the Commission. Protection of the Owner and the Association shall be addressed by the agreement in the event of an involuntary assignment for the benefit of creditors or the bankruptcy of the Company.
- p. **DEFAULT:** The instrument shall (1), provide that in the event of default an action may be brought in a court of competent jurisdiction, at law or in equity, for specific performance, injunctive relief, and/or the recovery of damages, (2) acknowledge that the anticipation of the prompt and faithful rendering by the Company of Services thereunder was a condition precedent to the approval by the Commission of the proposed subdivision, (3) provide that a failure of such condition, as by the Company's failure to render Services as required by the agreement, shall be deemed and constitute a continuing violation of Floyd County Ordinance 68-1, and (4) stipulate that a recovery by the Commission for such an ordinance violation shall be in addition to any other remedy available to a party or beneficiary.
- q. **RESTRICTIONS AND PROTECTIVE COVENANTS:** The agreement shall obligate the Owner to include in the restrictions and protective covenants pertaining to the proposed subdivision a covenant addressing, as a minimum, the existence, date, and recording information pertaining to the sewage disposal agreement and providing that said agreement constitutes a covenant running with the land.
- r. **RECORDATION:** The agreement will provide that when duly executed and acknowledged by the parties, and endorsed with the approval of the Board, same will be placed of record in the office of the Recorder of Floyd County, Indiana.
- s. **MISCELLANEOUS PROVISIONS:** The agreement will address choice of law, binding effect, interpretation, and such other matters as the Board may find reasonably necessary for the protection of the public health and safety.

SO ORDAINED, this 15th day of April, 2003.

BOARD OF COMMISSIONERS
OF THE COUNTY OF FLOYD

John C. Reese

MEMBER

Mike Mills

MEMBER

Charles Q. Leibinger

MEMBER

ATTEST:

Teresa A. Plaiss
FLOYD COUNTY AUDITOR