

PONDS

A. Definitions.

For purposes of this section, the following terms shall have the following meanings:

1. “Application” means all documents, forms and other information that the Department may require an Owner to complete or provide in order to assist the Department in determining whether a proposed pond complies with the terms of this Ordinance or otherwise to assist the Department in the enforcement of this Ordinance.
2. “Department” means the Noble County Surveyor’s Office.
3. “Outlet” means a catch basin, pipe, weir, tile, channel or other appurtenant structure whereby the water level of the pond is maintained at a specified elevation and excess water in the pond is conveyed away from the site on which the pond is located. “Outlet” shall also mean a private, mutual or regulated drain to which the pond outlet is directly connected.
4. “Owner” means the owner(s) of the tract or parcel of land on which the pond is located or is to be located.
5. “Pond” An artificially created body of water that may or may not be used for stormwater detention, but whose primary use will be for aesthetics, geothermal heating and/or recreational purposes including but not limited to: boating, water-skiing, swimming, fishing, hunting and trapping.
6. “Public Drain” means regulated and mutual drains as specified under IAC 36-9-27. Public drain shall also mean a municipal storm sewer, tile or channel.
7. “Site Plan” means all drawings, descriptions, plans and/or specifications for the proposed pond and the tract or property on which it is located that are requested by the Department in order to assist the Department in determining whether a proposed pond complies with the terms of this Ordinance.

B. Permit Required.

In any zoning district, no new pond shall be constructed and no existing pond shall have its surface area increased by more than 10,000 square feet without a permit issued by the Department. The Department shall issue a permit in accordance with the provisions of this Ordinance only if:

1. The Owner (or its authorized agent) signs and files with the department an Application, including a Site Plan, and pays a fee of twenty-five dollars (\$25.00) to the Department.
2. The department determines that the pond will comply with the terms of this Ordinance based on the completed Application and Site Plan, any inspections, and any other information available to the Department.

C. Expiration; Extension; Revocation of Permit.

A permit shall be valid for one (1) year after the date of issuance. If no work has occurred in connection with the permit within one (1) year, the permit shall be null and void and

the Owner shall be required to apply for and obtain a new permit. If work has started but is not completed, an extension can be requested. The Department may (but shall never be required to) grant an extension. A permit shall be subject to revocation by the department as follows:

1. In the event of a violation of this Ordinance as hereinafter provided.
2. If the applicant makes any material misrepresentation in connection with the application and the issuance of the permit. and
3. If,
 - i. the permit was issued as the result of an error or an oversight by the Department or the Department determines for any reason that, under the terms of this Ordinance, the permit should not have been issued and,
 - ii. no substantial work has occurred in connection with the permit.

D. Minimum Standards.

All ponds, and all activity in connection with the construction, expansion, and maintenance of any pond, shall comply with the following minimum standards and requirements:

1. All ponds shall be constructed and maintained in compliance with the following set back requirements:
 - a) No portion of the water constituting the pond shall encroach upon any area within eighty-five (85) feet from the centerline of any public road.
 - b) No portion of the water constituting the pond shall encroach upon any area within twenty (25) feet from any boundary line of the Owner's property; provided, however, that this set back requirement shall not prevent a pond from being constructed on two or more tracts of property if:
 - (1) the permit Application is signed by the owner(s) of all the tracts of property on which the pond will be constructed or
 - (2) the location of the pond, as shown on a subdivision plat, is approved by the Plan Commission having jurisdiction as part of their approval of a subdivision under the requirements of the Subdivision Control Ordinance for that jurisdiction.
 - c) No fill shall be placed within the right-of-way of any public road. Within ten (10) feet of the right-of-way of any public road, no fill shall be placed above an elevation six (6) inches below the elevation at the edge of the road surface without written permission from the Highway Department. The Owner shall be responsible for verifying the right-of-way width with the State or local government agency having jurisdiction over said public road.
2. No excavation shall occur and no fill shall be placed within seventy-five (75) feet of any regulated drain unless authorized by the Noble County Drainage Board in accordance with the Indiana Drainage Code.
3. If the pond has an outlet, the outlet shall be subject to the following requirements:

- a) If the outlet opens onto the Owner's property, the outlet opening must be located at least fifteen (15) feet from the Owner's property boundary line and at least twenty (20) feet from the right-of-way of any public road. Compliance with this provision shall not relieve the Owner from any additional duties under Indiana law with respect to the discharge of such water onto an adjoining property.
 - b) If the outlet opens into or connects to a county drain, the owner must obtain the prior approval of the Noble County Surveyor and/or the Noble County Drainage Board in accordance with the Indiana Drainage Code.
 - c) If the outlet opens into or connects to an outlet on another tract or parcel, the Owner must prove to the satisfaction of the Department that the Owner has all easement rights necessary to access such outlet.
4. The pond shall be constructed so as not to increase the volume of water that exits the tract under normal conditions. Fill area shall not obstruct the flow of surface water onto the Owner's property from adjacent properties. The Owner shall be responsible for the repair, replacement, or relocation of any tiles, open ditches or other drainage facilities to the extent necessary to maintain the amount of drainage through the parcel or tract that existed prior to the construction of the pond.
 5. For parcels that are less than 5 acres in area and that have or will have a residence on them, the Department may require the Owner, as part of the permit application to provide an alternate septic system location.
 6. All ponds shall be constructed and maintained so as to prevent any soil erosion or other condition that obstructs or damages or threatens to obstruct or damage any public drain or drainage related improvements. The Owner shall remove spoil and resurface and re-seed degraded open ditch banks.
 7. Compliance with Rule 5 (IAC 327 15-5) shall be required if the total area of land disturbed while constructing the pond is one acre or more. Compliance with the Noble County Erosion Control Ordinance may be required for ponds whose total area of land disturbed is greater than 10,000 square feet and less than one acre.
 8. Signs marked "Private Pond" shall be installed in appropriate locations to notify the public that the pond is under private ownership and maintenance. Said signs shall be permanently installed at a minimum height of 48 inches above the finished grade on either a 4x4 (nominal size) pressure treated wood post or a metal sign post. The sign shall be white with red letters and shall be no smaller than 18 inches by 18 inches.

E. Exemptions

Water gardens and/or ponds used for landscaping purposes shall be exempt from the requirements of this ordinance provided they have a surface area less than 500 square feet, use a plastic or PVC liner to contain the water in the pond, are filled using well or city water and outlets into the residence's drain system.

F. Variances.

The Noble County Drainage Board may (but shall never be required to) grant a variance from the setback requirements set forth in Section 4(a) in accordance with and subject to the following limitations:

1. A variance may only be granted with respect to the setback requirements set forth in D.1.(a) and (b). No other standard set forth in this ordinance may be the subject of a variance.
2. The Noble County Drainage Board shall approve a variance only if it finds:
 - (i) The approval will not be injurious to the public health, safety or general welfare of the community;
 - (ii) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
 - (iii) The proposed pond cannot comply with the setback requirements due to unique feature(s) existing on the property and either natural or man-made features exist or could be provided which would allow the pond to achieve the purposes of the setback requirements.

F. Right of Entry.

The Owner shall notify the Department within 48 hours of when work commences on the construction of the pond. The Department (including any person acting on its behalf) may enter onto the property at any reasonable time for the purposes of inspecting the property and determining or enforcing compliance with the provisions of this Ordinance, provided that if premises are occupied, that credentials are presented to the occupant and entry requested. If the premises be unoccupied, the Department shall first make a reasonable effort to locate the owner or other person having charge or control of the premises and request entry. If entry is refused, the Department shall have recourse to the remedies provided by law to secure entry. By applying for a permit as provided in this Ordinance, an Owner consents to such entry.

G. Enforcement Official.

The County Surveyor is hereby designated as the official authorized to make decisions and take action on behalf of the department in connection with the enforcement of this Ordinance.

H. Complaints.

Any person who believes a violation of this Ordinance has occurred may file a written complaint with the Department. The complaint shall describe the alleged violation sufficiently so that the Department can investigate the matter. The department shall investigate and may take action upon such complaint as provided in this Ordinance.

I. Common Nuisance.

A violation of this Ordinance is declared to be a common nuisance.

J. Notice of Violation.

In the event of a violation of this Ordinance, the Department shall send written notice to the Owner describing the nature of the violation and the action required to correct the violation (“Violation Notice”). The notice requirement shall be satisfied if the Department mails the Violation Notice by U.S. Certified Mail, Return Receipt Requested, to the address of the Owner as shown in the records of the office of the Noble County Auditor. The Violation Notice shall set a date on or before which the violation must be corrected, which date shall not be earlier than ten (10) days from the date the notice is mailed.

K. Stop Work Orders.

At the time of giving the Violation Notice, or at any time thereafter, the Department may issue a stop work order requiring the immediate cessation of all work in connection with the pond. The stop work order shall be mailed to the owner in the same manner as the Violation Notice and may be included with the Violation Notice. Upon the issuance of a stop work order, all work in connection with the pond shall cease immediately (except any corrective work required in the Violation Notice) until the Department gives notice that the violation has been corrected and the stop work order is released. If the owner fails to comply with the stop work order, the Department may proceed immediately with any enforcement remedy and the Owner shall be deemed to have waived any right to cure or correct the defect within the time stated in the Violation Notice.

L. Remedies and Penalties.

If the Owner fails to correct the violation within the time stated in the Violation Notice, or if the Owner fails to comply with a stop work order, the Department shall have the following remedies and may take one or more of the following actions:

1. Revocation of Permits.

The department may revoke any permit issued for work on the property, including the permit for the pond. If a pond permit is revoked under this section, the Owner shall forfeit the right to obtain a pond permit for a period of five (5) years from the date of the revocation of the permit.

2. Civil Lawsuit.

The Department may refer the matter to its attorney to file a lawsuit and to invoke any legal, equitable or special remedy for the enforcement of this ordinance, including the right to enjoin a person or entity from violating, or continuing to violate any provision of this ordinance and/or maintaining a common nuisance and the right to have the violation removed or abated.

3. Civil Penalty.

The County shall have the right to recover from the Owner, in a civil action, a penalty in the amount of \$2,500.00 for each violation.

4. Other Remedies.

The department may pursue any other applicable remedy or penalty provided by the ordinances of Noble County, or by Indiana law, for the enforcement of this Ordinance or the prosecution of the violation.

M. Disclaimer of Liability

The degree of protection required by this Ordinance is considered reasonable for regulatory purposes. This Ordinance does not imply that land uses permitted will be free from damage. This Ordinance shall not create liability on the part of the Noble County Commissioners, Noble County Drainage Board, Noble County Plan Commission, or any City Plan Commission, the Noble County Surveyor or any officer, representative, or employee thereof, for any damage which may result from reliance on this Ordinance or on any administrative decision lawfully made there under.

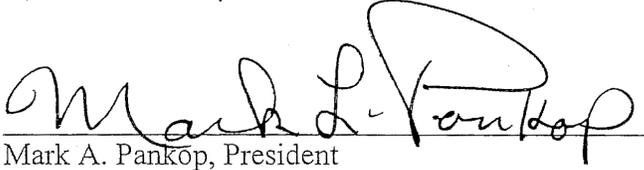
Conflicting Ordinances Repealed.

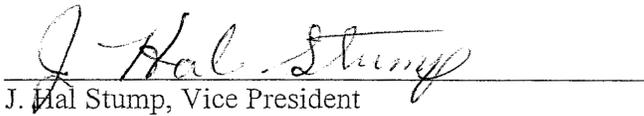
All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Effectiveness.

This Ordinance shall be in full force and effect from and after its passage and approval by the Board of Commissioners on the date shown below.

The foregoing was passed by the Board of Noble County Commissioners this 16th day of April, 2007.


Mark A. Pankop, President


J. Hal Stump, Vice President


Jack Herendeen, Member

Attested: 
Jacqueline L. Knafel, Auditor