

2-6-01

SUGAR CREEK ORDINANCE

AN ORDINANCE FOR THE CONTROL OF LAND USE IN AND ADJACENT TO THE SUGAR CREEK CORRIDOR IN MONTGOMERY COUNTY, INDIANA.

PREAMBLE

WHEREAS, Sugar Creek, as it flows through Montgomery County, Indiana, stands as one of the few relatively natural streams still existing in Indiana, and

WHEREAS, the citizens of the area desire and wish to protect, preserve and maintain Sugar Creek in a state as close to its natural state as is reasonably possible, and

WHEREAS, the areas along Sugar Creek are substantially located in a floodway, and

WHEREAS, the citizens of the area believe that they are best able to exercise the necessary control of the stream, stream bank, and stream corridor, and

WHEREAS, this ordinance shall be considered supplemental to the Montgomery County Flood Ordinance.

NOW THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Montgomery County, Indiana, under authority of IC 22-13-2 (Building Code), IC 36-1-3-5 (Home Rule Law), IC 36-8-2-4 (Regulation of Property), IC 16-20-1-25 (Local Health Departments), IC 34-1-52 (Nuisance Law), IC 14-28-4 (Flood Plain Law) and IC 14-29-1 (Navigable Waterway Law) and all acts supplemental and amendatory thereto:

TITLE I - GENERAL PROVISIONS

ARTICLE 1 TITLE: The official title of this Ordinance is "Sugar Creek Ordinance of Montgomery County, Indiana."

ARTICLE 2 EFFECTIVE DATE: This Ordinance shall take effect after publication as by law provided.

ARTICLE 3 COMPLIANCE: No use shall be made, no structure shall be located, constructed, reconstructed, converted, altered, expanded, enlarged and/or moved on land adjoining Sugar Creek in Montgomery County, and no creek crossings established, as set forth in Article 5 below, except in full compliance with all of the provisions of this Ordinance.

ARTICLE 4 SEVERABILITY: If any provision of this Ordinance or application of any provision to particular circumstances is held invalid, the remainder of the Ordinance or the application of such provision to other circumstances shall not be affected.

ARTICLE 5 JURISDICTIONAL AREA: The following area in Montgomery County, Indiana is under the jurisdiction of the Sugar Creek Ordinance: Sugar Creek from creek mile 56.2 to creek mile 22.3 including all of Sugar Creek in Montgomery County and the strip of land along each side of the creek which is defined by the ordinary high water mark and a line paralleling the ordinary high water mark; the line paralleling the top of the ordinary high water mark is determined by measuring horizontally (parallel to the creek's surface) 75 feet from the Ordinary High Water Mark as defined by state law under 312IAC 1-1-26 and away from the creek. Provided however, any town or city may adopt a more restrictive ordinance within their respective jurisdictions. If the jurisdictional area is held invalid then the jurisdictional area shall be the area defined in IC 14-28-4.

ARTICLE 6 APPLICATION AND INTERPRETATION: In applying and interpreting the provisions of this Ordinance, they shall be construed as the minimum requirement for the promotion of the public health, safety, comfort, convenience and general welfare, as well as natural qualities of the creek, esthetic, scenic and to promote flood and erosion control.

It is not intended that this Ordinance shall interfere with or abrogate or annul any ordinances, rules, regulations or permits previously adopted or issued, not in conflict with the provisions of this Ordinance, except, that where this Ordinance imposes a greater restriction upon land use or structure than is required by such easements, covenants or agreements between parties, or by such ordinances, rules, regulations or permits, the provisions of this Ordinance shall control.

TITLE II - DEFINITIONS

ARTICLE 1 BUILDING ADMINISTRATOR: That person designated by the Board of County Commissioners as the Montgomery County Building Administrator working under the authority of the Montgomery County Surveyor.

ARTICLE 2 ADVISORY BOARD: A Board of six (6) members appointed by the Commissioners of Montgomery County, Indiana and one (1) member appointed by the Director of the Department of Natural Resources to advise the Montgomery County Commissioners as to the means of protecting and preserving the stream in a scenic and natural state. A majority of the members shall be owners of land abutting Sugar Creek in Montgomery County, Indiana. Also included on the board serving in advisory (non-voting) roles are the following: The Montgomery County Sheriff, the Montgomery County Building Administrator, an Indiana Department of Natural Resources Conservation Officer and the Montgomery County Sanitarian. The term of the six (6) Commissioner members shall be for three (3) years. No member may serve more than two (2) consecutive terms except for the DNR appointee who shall serve at the pleasure of the Director. The terms shall be staggered so that no more than two (2) appointments are made in any year (unless resignations occur).

At its first meeting each year the Board shall elect from its members a President, Vice President and Secretary who shall serve for one year or until the next election of officers. The Board shall meet at least quarterly and at such other times as may be necessary to conduct its business.

ARTICLE 3 CERTIFICATE OF OCCUPANCY: A certificate stating that the occupancy improvement and use of land or a building or structure referred to therein complies with the provisions of this Ordinance.

ARTICLE 4 IMPROVEMENT LOCATION PERMIT: A permit stating that the proposed timber cutting, logging; erection, construction, alteration, enlargement and/or moving of a building or structure referred to therein, including but not limited to, dams, levies, wells, septic systems, water systems, complies with the provisions of the Ordinance.

ARTICLE 5 USE, NON-CONFORMING: An existing use of land or structure which fails to comply with the requirements set forth in this Ordinance applicable to the District in which such use is located.

ARTICLE 6 VARIANCE: A modification of the specific requirements of this Ordinance granted by the Appeals Board in accordance with the terms of this Ordinance for the purpose of assuring that no property, because of special circumstances applicable to it, shall be deprived of privileges commonly enjoyed by other riparian properties in the same vicinity and District.

ARTICLE 7 BUILDING OR STRUCTURE: The term building or structure includes any building of all types and descriptions including but not limited to dwellings, trailers, campers, garages, barns, sheds, pole buildings, out buildings, any roofed structure whether enclosed or open, bridges, culverts, decks, steps or docks or any other permanent improvement or structure but does not include tents (pitched for temporary recreational use).

ARTICLE 8 PERSON OR INDIVIDUAL: The term person or individual includes any private individual, corporation, partnership, or limited liability company.

TITLE III - NATURAL SCENIC DISTRICT

ARTICLE 1 DISTRICTS: The entire geographic area covered by this Ordinance shall be designated as a Natural Scenic District and is limited to agricultural and recreational use. It is the purpose of this district to limit and eliminate further development in the Sugar Creek corridor which would tend to reduce or destroy the natural scenic value of this unique area without great economic or environmental benefit to the public as a whole as well as to protect the citizens of the county from the adverse affects of flooding.

ARTICLE 2 CONSTRUCTION: All construction, enlargement, or moving of structures into the district will require a location improvement permit, which will only be issued after approval by the Building Administrator and a formal recommendation of the Advisory Board. If the Building Administrator does not approve the Location Improvement Permit, then no permit shall be issued and the Advisory Board will not be contacted.

No construction is permitted within 50 feet of the Ordinary High Water Mark as defined by IAC 1-1-26. It is possible to obtain a building permit for that regulated area landward of the 50 foot line up to the 75 foot line by maintaining or establishing a forested cover to that area from the Ordinary High Water Mark to the 50 foot line. By definition, forested cover means the

following: For trees greater than 2 inch basal diameter, 40 square feet of basal area per acre; for trees less than 2 inches in basal diameter, forested would mean a minimum of 300 stems per acre (allowing for credit for young planted seedling trees). Provided however, that nothing in this Ordinance shall be construed to authorize the Building Administrator or the Appeals Board to order the removal of any existing structure which existed on the effective date of this Ordinance.

ARTICLE 3 CLEARING: A permit is required prior to any logging activity within the zoned area. Logging and clearing activities must leave no less than 40 square feet of basal area per acre of trees over 2 inches in diameter. There shall be no clear cutting of timber or substantial removal of vegetation in the district. Timber may be cut in accordance with best forest management practices after written approval by the Building Administrator. The Building Administrator is encouraged to consult with the State Forester before issuing his written approval. Vegetation in the district may be thinned and trimmed but not completely removed. Unique species of vegetation, designated as such by the Advisory Board, shall not be thinned or trimmed in such a manner as to limit or jeopardize its proliferation.

TITLE IV - NON-CONFORMING USES

ARTICLE 1 NON-CONFORMING USES: The following provisions shall apply to all non-conforming uses:

A. A non-conforming use may be continued but may not be extended, expanded, moved or changed unless to a conforming use, except as permitted by the Appeals Board in accordance with the provisions of this Ordinance.

B. Any non-conforming structure damaged by fire, flood, explosion or other casualty may be reconstructed and used as before if such reconstruction is performed within twelve (12) months of such casualty, and if the restored area has no greater coverage and contains no greater cubic content than before such casualty.

C. In the event that any non-conforming use, conducted in a structure or otherwise, ceases, or is abandoned, for whatever reason, for any period of one year, such non-conforming use shall not be resumed, except with the approval of the Appeals Board.

TITLE V - ADMINISTRATION

ARTICLE 1 ADMINISTRATOR: The duly appointed and acting Montgomery County Building Administrator is hereby designated and authorized to enforce this Ordinance under the authority of the Montgomery County Surveyor's Office.

ARTICLE 2 PERMITS: Any person, persons, firms or corporations which shall make application for an Improvement Location Permit shall furnish the Building Administrator with the documents required to obtain that permit and a site plan of the real estate upon which said application for an Improvement Location Permit is made. Said site plan shall include the following items:

- A. Legal or site description of the real estate involved.
- B. Location and size of all buildings and structures.
- C. Width and length of all entrances and exits to and from said real estate.
- D. All adjacent and adjoining roads or highways.
- E. Building Information Sheets to obtain Location Improvement Permits.
- F. Erosion Control Plan.
- G. Any other information required by the Building Administrator.

The Building Administrator shall establish a permit and fee schedule necessary to administer this ordinance. The schedule of fees shall be approved by the Advisory Board. The fees shall be paid and collected in the same manner as county building code fees are paid and collected.

ARTICLE 3 RECORDS: Information so furnished to the Building Administrator shall be filed by the Building Administrator and maintained as other records are kept in his office

ARTICLE 4 CHANGES: The Building Administrator may require the relocation of any proposed building or structure or property exit or entrance shown on said site plan and/or the location of new exits or entrances not shown on said site plan before issuing an Improvement Location Permit, when such action is necessary to carry out the purpose and intent of this Ordinance.

ARTICLE 5 COMMENCEMENT AND COMPLETION: Any permit holder must accomplish the following:

- A. Commence construction within ninety (90) days of the permit being issued or as stated in the permit.
- B. Complete all work required by the permit within twelve (12) months of the permit being issued or as stated in the permit.

Failure to perform either A or B shall cause the permit to lapse and a new permit must be obtained.

ARTICLE 6 COMPLIANCE: No reconstruction, construction or change in use shall be made in any improvement or building, or part thereof, now or hereafter erected, reconstructed or structurally altered, without an Improvement Location Permit having been issued by the Building Administrator and no such permit shall be issued to make such change unless it is in conformity with the provisions of this Ordinance.

ARTICLE 7 OCCUPANCY: No improvement shall be occupied or used after being erected, reconstructed or structurally altered, in whole or in part, for any purpose whatsoever, until a Certificate of Occupancy shall have been issued by the Building Administrator stating that, the improvement and its use comply with all of the provisions of this Ordinance applicable to the building or premises or the use comply with all of the provisions of this Ordinance applicable to the building or premises (or the use comply with all of the provisions of this Ordinance applicable to the building or premises) or the use in the area in which it is located.

A record of all Certificates of Occupancy shall be kept on file in the office of the Building Administrator and copies shall be furnished upon request to any person having a proprietary or tenancy interest in the building or land affected.

TITLE VI - BOARD OF APPEALS

The Montgomery County Flood Plain Commission shall comprise the Appeals Board. No member may serve on both the Appeals Board and the Advisory Board concurrently.

ARTICLE 1 RULES: The Board shall adopt rules and regulations as it may deem necessary to effectuate the provisions of this Ordinance.

ARTICLE 2 MEETINGS: All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, keep records of its examinations and other official actions, prepare findings, and record the vote of each member voting upon each question. All minutes and records shall be filed in the office of the Board and shall be a public record.

ARTICLE 3 APPEALS: Any decision of the Building Administrator in the enforcement of this Ordinance shall be appealed to the Board by any person claiming to be adversely affected by such decision by filing an appeal in writing and specifying the reasons the Appellant believes the action of the Building Administrator does not comply with this ordinance. An appeal must be commenced within thirty (30) days of the Building Administrator's decision or the right to appeal is forfeited.

ARTICLE 4 DUTIES: The Board shall have the following powers and it shall be its duty to:

A. Hear and determine appeals from and review any order, requirement, decision or determination made by the Building Administrator in the enforcement of this Ordinance.

B. Hear and decide on permits for Special Exceptions, or other uses upon which the Board is required to act under this Ordinance.

C. Authorize upon appeal in specific cases such variances from the terms of this Ordinance as will not be contrary to the public interest. Such variances shall be issued only where owing to special conditions, fully demonstrated on the basis of the facts presented, a literal enforcement of the provisions of this Ordinance shall result in unnecessary hardship and where such issuance shall not violate the spirit of this Ordinance. The findings of facts relative to the issuance of a variance will be based upon evidence presented and on personal knowledge of the members of the Board relative to the areas and requirements in question.

ARTICLE 5 AUTHORITY: In exercising its appeal powers, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from as in its opinion ought to be done for the situation at hand, and to that end shall have all the powers of the parties from whom the appeal is taken. A simple majority of the entire Board may uphold the decision or act appealed from, or modify or reverse the act appealed from.

ARTICLE 6 APPEALS: Only the decision of the Appeals Board is subject to review by the Montgomery Circuit Court.

ARTICLE 7 VARIANCES: No variance in the application of the provisions of this Ordinance shall be made by the Appeals Board relating to buildings, land or premises now existing or to be constructed, unless after a public hearing, the Appeals Board shall find:

A. That there are exceptional or extraordinary circumstances or conditions applicable to the property or to the need of the use intended that do not apply generally to the other riparian property or class or use in the same vicinity and area, or are necessary for the general public good of the area.

B. That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other riparian property in the same vicinity and area but which is denied to the property in question.

C. That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in such vicinity and area in which the property is located.

D. That the granting of such variance will not materially alter the land use characteristics of the vicinity and area, diminish the marketable value of adjacent land and improvements or increase the congestion in the public streets to a detrimental degree to the neighborhood.

ARTICLE 8 HEARINGS: Prior to the determination of an Appeal, the Board shall fix a reasonable time for the hearing which will be at a regular Board meeting. Public notice shall be given at least ten (10) days prior to the date set for the hearing by publishing a notice thereof in a newspaper of general circulation in the county setting forth the time and place of the hearing and by giving due notice to the interested persons in accordance with the rules of the Board.

ARTICLE 9 COSTS: The party taking the Appeal or requesting the Special Exception or Variance, shall assume the cost of public notice and due notice to interested persons. Interested persons are those property owners within 400' of the property involved in the Appeal or in the Special Exception, or any other Montgomery County property owner who files a written statement with the Building Administrator of their claim of interest.

ARTICLE 10 FINDINGS OF FACT: Prior to the determination of a Special Exception or Variance, the Board shall fix a reasonable time for a hearing and public notice given as indicated in Article 9 above. At the hearing the Board will establish findings of fact after which the Board may at the public hearing act on the Special Exception, or, if lacking a quorum, or for any other reason, fails to act, may make their decision at a later public meeting of the Board without further notice being issued prior to their decision. After the decision, the interested parties will be notified by ordinary mail.

ARTICLE 11 CERTIORARI: A petition for certiorari must specify the grounds upon which the petition alleges the illegality of the Building Administrator's action. The petition must be filed in the Montgomery Circuit Court within thirty (30) days after the Appeals Board's decision or judicial review is forfeited.

TITLE VII - PENALTIES

ARTICLE 1 FINES: Any individual or corporation or any other entity who affirmatively or passively allows violations of any of the provisions of this Ordinance shall be fined an amount of One Hundred Dollars (\$100.00). Each day that a violation of this Ordinance occurs, or continues to occur, shall constitute a separate violation thereof. In addition to the personal liability involved for violations, the amounts shall be treated as though a Mechanic's Lien against the property involved and may be collected by foreclosure as a Mechanic's Lien.

ARTICLE 2 VIOLATIONS: If the Building Administrator finds that real or personal property is in violation of this Ordinance, he may require the owners of the property to take appropriate actions in order to bring the property into compliance with this Ordinance. Non-compliance with the order is a separate violation of the Ordinance in addition to the violation complained of.

ARTICLE 3 ACTIONS: The Building Administrator, the Advisory Board, the Montgomery County Flood Plain Commission or Montgomery County Commissioners may bring enforcement proceedings to enforce this Ordinance; and should there be a court finding to uphold the charges, then costs and fees will be charged to the offending party and property in question.

ARTICLE 4 OTHER VIOLATIONS: Any party, contractor, engineer, architect who is instrumental in providing services to a property owner in Montgomery County, the use of which services by the owner results in a violation of this Ordinance, will be personally chargeable as a violation of the Ordinance along with the owner. For any changes in use or improvements, calling for an Improvement Location Permit, the party constructing is jointly liable for any violations of the Ordinance along with the owner requesting the service construction or change. Contractors as well as owners are responsible for complying with Permit and paperwork requirements for improvements they are accomplishing in Montgomery County.

TITLE VIII - REMEDIES

ARTICLE 1 RESTRAINING ORDER: The Building Administrator, the Montgomery County Flood Plain Commission or the Board of Commissioners may institute a suit for injunction in the Circuit or Superior Court of the County to restrain an individual from violating the provisions of this Ordinance or may institute suit to enforce any provision of this Ordinance.

ARTICLE 2 INJUNCTION: The Building Administrator, the Montgomery County Flood Plain Commission or Board of Commissioners may also institute a suit for mandatory injunction directing any individual, a corporation, or a governmental unit to remove a structure erected in violation of the provisions of this Ordinance.

ARTICLE 3 NUISANCE: Any building erected, raised or converted, or land or premises used in violation of any provisions of this Ordinance or the requirements thereof, is hereby declared to be common nuisance and as such may be abated in such manner as nuisances are now or may hereafter be abated under applicable statutes.

ARTICLE 4 WHO MAY PROSECUTE ACTIONS: Actions under this Ordinance may be brought by the Prosecutor or County Attorney of Montgomery County. Any injured party or governmental unit may also bring an action under this Ordinance in the Circuit or Superior Courts of Montgomery County, Indiana.

TITLE IX - ANNUAL REPORT

ARTICLE 1 ANNUAL REPORT: An annual report will be prepared by the Sugar Creek Advisory Committee to be submitted to the County Commissioners each year.

This report will include but not be limited to the following:

1. Number of permits.
2. Number of violations.
3. Changes in land use along the riparian corridor, i.e. building, tree planting, tree harvest, bank stabilization, signage, etc.
4. Any other matter that the Advisory Board deems significant.

TITLE X - GENERAL MATTERS

ARTICLE 1 SEVERABILITY: Each section, article, title, sentence, clause, and phrase of this Ordinance is declared to be an independent section, article, title, sentence, clause and phrase, and the finding or holding of any of them to be unconstitutional, void, unlawful, or ineffective for any reason shall not affect any other section, article, title, sentence, clause or phrase of the Ordinance.

ARTICLE 2 GOVERNMENTAL UNITS: All governmental units are subject to the provisions of this Ordinance provided however, this Ordinance shall not be construed to impose any restrictions or additional requirements for the construction or reconstruction or repair of any public road or bridge, all public roads and bridges are hereby excepted from the provisions of this Ordinance.

ARTICLE 3 APPLICABILITY: This Ordinance shall apply to the entirety of Montgomery County and it shall continue in full force and effect until amended or rescinded by the Board of Commissioners; all portions of the former "Sugar Creek Ordinance" enacted in 1978 is hereby repealed and superceded.

MONTGOMERY COUNTY BOARD OF
COMMISSIONERS

DATED: MAY 14, 2002

Ken Caudrey
Cindy G. Johnson
William D. Williams

ATTEST:

Melba Nester
Auditor, Montgomery County