CUMBERLAND TOWN COUNCIL

ORDINANCE 2017-12

AN ORDINANCE AMENDING THE STORM WATER CODE

Whereas, the Cumberland Storm Water Utility Board (the Board) regularly reviews the Storm Water Code in order to determine whether changes are necessary for the proper administration of the code and whether changes are necessary in order to ensure that the code is conforms to Indiana law; and

Whereas, the Board has recently determined that certain changes are necessary in order to ensure the proper administration of the code; and

Whereas, on June 7, 2017, the Board approved Resolution 2017-1, approving certain changes to the code and recommending that the Town Council adopt an ordinance which amends the code; and

Whereas, the Town Council has reviewed the requested changes and now finds that it in the best interests of the utility and the citizens of Cumberland that the storm water code be amended as recommended by the Board.

IT IS, THEREFORE, ORDAINED that Section 00-05-51-101 of Chapter 51 of Title 5 of the Cumberland Town Code is hereby amended to read as follows:

“§ 00-05-51-101 STOP WORK ORDER.

(A) In addition to the penalties listed above, if land disturbance activities are conducted contrary to the provisions of this chapter or accepted final stormwater management plans, the Stormwater Board and/or the permitting officer may order the work stopped by notice in writing served on any person engaged in the doing or causing of such work to be done, and any such persons shall forthwith stop such work until authorized by the Stormwater Board and/or the permitting officer to proceed with the work. The Stormwater Board and/or the permitting officer may also undertake or cause to be undertaken, any necessary or advisable protective measures to prevent violations of this chapter or to avoid or reduce the effects of noncompliance herewith. The costs of any such
protective measures shall be the responsibility of the owner of the property upon which the work is being done and the responsibility of any person carrying out or participating in the work.

(B) Any person who neglects or fails to comply with a stop work order shall be subject to a fine of not less than $1,000, and such person shall also pay such attorney’s fees, filing fees and costs incurred by the Utility in the enforcement of this Chapter. In addition, the Utility has the right to obtain from a court of competent jurisdiction injunctive relief in order to enjoin the violator from violating the stop work order. A permit reinstatement fee may be assessed by the Stormwater Board and/or the permitting officer.

(Ord. 2004-12, passed 1-5-2005; Ord. 2017-12, adopted 7-5-17.)”

IT IS FURTHER ORDAINED that Section 00-05-51-105 of Chapter 51 of Title 5 of the Cumberland Town Code is hereby amended to read as follows:

“§ 00-05-51-105 APPEALS.

(A) Any person to whom any provision of this chapter has been applied may appeal in writing, not later than 30 days after the action or decision being appealed from, to the Stormwater Board the action or decision whereby any such provision was so applied. Such appeal shall identify the matter being appealed, and the basis for the appeal.

(B) Upon receipt of the appeal, the Stormwater Board will schedule a hearing on the appeal and provide to the person appealing notice of the hearing. This notice will be provided to the person appealing at least 10 days prior to the hearing. At the hearing, the Utility Director will present evidence supporting the action or decision, and the person appealing will present evidence which supports his or her appeal. Within 10 days of the hearing, the Stormwater Board will make written findings and conclusions and mail them to the person appealing. The Stormwater Board shall consider the appeal and make a decision whereby it affirms, rejects or modifies the action being appealed.

(C) In considering any such appeal, the Stormwater Board may grant a variance from the terms of this chapter to provide relief, in whole or in part, from the action being appealed, but only upon finding that the following requirements are satisfied:

(1) The application of the chapter provisions being appealed will present or cause practical difficulties for a development or development site; provided; however, that practical difficulties shall not include the need for the developer to incur additional reasonable expenses in order to comply with the chapter; and

(2) The granting of the relief requested will not substantially prevent the goals and purposes of this chapter, nor result in less effective management of stormwater runoff.
(D) If the person appealing disagrees with the decision of the Stormwater Board, the person may appeal the Board’s decision to a court of competent jurisdiction by petitioning the court for review of the decision, as provided for by Indiana law.

(Ord. 2004-12, passed 1-5-2005; Ord. 2017-12, adopted 7-5-17).”

IT IS FURTHER ORDAINED that Section 00-05-51-999 of Chapter 51 of Title 5 of the Cumberland Town Code is hereby amended to read as follows:

“§ 00-05-51-999 PENALTY.

(A) Any person found in violation of any provision of this chapter shall be responsible for a civil infraction and subject to a maximum fine of $500 for a first offense, $1,000 for a second offense, and a maximum of $2,500 for a subsequent offense. In addition to the fines, the violator is also responsible for all costs, damages, attorney’s fees and expenses incurred by the Utility in the enforcement of this Chapter. Each day such violation occurs or continues shall be deemed a separate offense and shall make the violator liable for the imposition of a fine for each day. The rights and remedies provided for in this section are cumulative and in addition to any other remedies provided by law. An admission or determination of responsibility shall not exempt the offender from compliance with the requirements of this chapter. The Utility Director shall have the discretion to waive or reduce any fines, costs, damages, attorney’s fees and expenses if the violator takes prompt action to remedy the violation. The Utility also has the right to obtain from a court of competent jurisdiction injunctive relief which enjoins the violator from violating this Chapter and to collect from the violator all costs, damages, attorney’s fees and expenses incurred by the Utility in the enforcement of this Chapter.

(B) Any person who aids or abets a person in violation of this chapter shall be subject to the penalties provided in this section.

(C) For purposes of this section, “subsequent offense” means a violation of the provisions of this chapter committed by the same person within 12 months of a previous violation of the same provision of this chapter for which said person admitted responsibility or was adjudicated to be responsible.

(Ord. 2004-12, passed 1-5-2005; Ord. 2017-12, adopted 7-5-17.)”

IT IS FURTHER ORDAINED that all other provisions of Chapter 51 of Title 5 of the Cumberland Town Code, which are not expressly amended by this ordinance, will remain in full force and effect.
IT IS FURTHER ORDAINED that if any provisions of this ordinance is determined to be illegal or invalid, all remaining provisions will remain in full force and effect.

IT IS FURTHER ORDAINED that this ordinance will be effective upon adoption.

Adopted this 5th day of July, 2017.

A MAJORITY OF THE CUMBERLAND TOWN COUNCIL

Anna Pea, President

Joe Siefker, Vice President

Nicole Bell, Member

Brian Gritter, Member

ATTEST:

Erica Salmon, Clerk-Treasurer