

Date: October 9, 2018

Resolution No. 18-875

Title: Adoption of Part X of the Lucas County Building Regulations: Grading and Drainage Rules

Department/Agency: Lucas County Engineer's Office

Contact: Keith Earley, P.E., P.S., Lucas County Engineer

Summary/Background: Pursuant to Ohio Revised Code Section 307.37, the Lucas County Commissioners are permitted to enact regulations for rules to require review of developments which could impact existing surface and subsurface drainage that are not subject to authority of the Lucas County Plan Commission.

Based on feedback received from township officials, the Office of the County Engineer proposed to establish rules which will require review of grading and drainage plans for acreage development sites. Townships and the Office of the County Engineer are experiencing a higher level of concern from residents regarding disruption of existing drainage and subsurface drainage paths as well as increasing runoff from new developments onto existing properties. The proposed rules will require parties who wish to develop residential parcels not located in a platted subdivision subject to the authority of the Lucas County Planning Commission to prepare and submit a grading and drainage plan to the Office of the County Engineer for approval. The Grading and Drainage Plan will outline the existing and proposed drainage patterns on the site prior to issuance of a building permit. In addition, the Office of the Lucas County Engineer will inspect the completed grading prior to issuance of a Certificate of Occupancy for the site. Residential sites in platted subdivisions and commercial site plans are currently required to submit a grading and drainage plan and are inspected based on the authority of the Lucas County Plan Commission.

The Board of Lucas County Commissioners held two public hearings in accordance with *Ohio Revised Code*, Chapter 307.37 during their regular meeting on October 2, 2018 and October 9, 2018, both at 11:00 am. The Grading and Drainage Rules shall take effect 31 days from the date of adoption on November 9, 2018.

Budget Impact: N/A

Statutory Authority/ORC: *Ohio Revised Code*, Chapter 307.37

Commissioner Gerken offered the following resolution:

WHEREAS, in consideration of the above, NOW, THEREFORE BE IT RESOLVED by the Board of County Commissioners, Lucas County, Ohio, that:

Section 1. This Board adopts Part X of the Lucas County Building Regulations: Grading and Drainage Rules in accordance with Chapter 307.37 of the *Ohio Revised Code*.

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Section 2. This Board designates the Lucas County Engineer to serve as Administrator and to administer the Grading and Drainage Rules in accordance with Chapter 307.37 of the *Ohio Revised Code*.

Section 3. This Board designates the Stormwater Appeals Board to hear appeals of the Grading and Drainage Rules as outlined in Section 14 of the Grading and Drainage Rules.

Section 4. This Board designates the Stormwater Appeals Board to hear appeals of the Grading and Drainage Rules as outlined in Section 14 of the Grading and Drainage Rules.

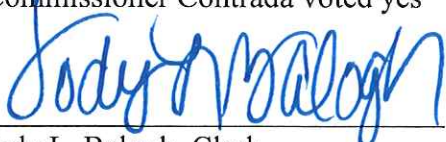
Section 5. This Board adopts the proposed fee schedule for administration of the Grading and Drainage Rules. The fees collected by the County Engineer for these Rules shall be placed into the Storm Water Utility.

Section 6. This Board finds and determines that all formal actions of this Board concerning and relating to the adoption of this resolution were taken in an open meeting of this Board and that all deliberations of this Board that resulted in those formal actions were in a meeting open to the public in compliance with the law.

Section 7. This resolution shall be in full force and effect from and immediately upon its adoption.

Action Taken:

Commissioner Gerken voted yes
Commissioner Skeldon Wozniak voted yes
Commissioner Contrada voted yes



Jody L. Balogh, Clerk

FEE SCHEDULE

LUCAS COUNTY ENGINEER

PART X – Grading and Drainage Review

Application

Application – Initial Review
Each Subsequent Review

Fee

\$200
\$100

Inspection

Site Inspection

\$75/each

PART X
LUCAS COUNTY BUILDING REGULATIONS
GRADING AND DRAINAGE REVIEW

1. Purpose and Scope

- 1.1 The Board of Lucas County Commissioners adopts Part X of the Lucas County Building Regulations which pertain to Grading and Drainage Review, pursuant to Ohio Revised Code Section 307.37(B)(3), to protect existing surface and subsurface drainage from development activities as well to promote positive drainage for new developments, to prevent or correct any adverse effects that proposed construction may have on existing surface or subsurface drainage, to establish criteria to maintain existing surface and subsurface drainage, as well as promote positive drainage in order to promote and protect the health, safety, and well-being of the residents of Lucas County.
- 1.2 These Rules apply to new construction on parcels which could impact existing surface or subsurface drainage on other parcels in unincorporated Lucas County, including but not limited to individual or multiple residential lots, multi-family developments, commercial and industrial developments, recreational projects, general clearing and grading projects, underground utilities, highways, building activities on farms, redevelopment of urban areas and all other uses unless expressly excluded as follows:
 - 1.2.1 These rules shall not apply to any property that has been approved by a process developed under the authority of Ohio Revised Code Sections 711.05, 711.09, and/or 711.10.

2. Terms Defined

2.1 Interpretation of Terms and Words

- 2.1.1 Words used in the present tense include the future tense and the singular include the plural, unless the context clearly indicates the contrary.
- 2.1.2 The term "shall" is always mandatory and not discretionary. The word "may" is permissive. The term "should" is permissive but indicates strong suggestion.
- 2.1.3 The words or terms not interpreted or defined by this section shall be construed according to the rules of grammar and common usage so as to give these Rules their most reasonable application.

2.2 Definitions

Administrator: The person or entity having the responsibility and duty of administering and ensuring compliance with these Rules. The Administrator shall be the Lucas County Engineer.

Applicant: The individual developer, owner, or operator who is responsible for the implementation of grading and drainage on the development site.

Channel: A natural bed that conveys water or a ditch excavated for the flow of water.

Ditch: An excavated channel for the purpose of drainage or irrigation. It may or may not be maintained by a public entity.

Drainage: The removal of excess surface water or groundwater from land by surface or subsurface drains.

Drainage Improvement: An improvement as defined in O.R.C. 6131.01(C), and/or conservation works of improvement as defined in O.R.C. 1511 and 1515.

Drainage Way: A natural or manmade channel, ditch, or waterway that conveys surface water in a concentrated manner by gravity. See also watercourse, channel, or stream.

Earth Material: The soil, sediment, rock, sand, gravel and organic material or residue associated with or attached to the soil.

Grading: The excavating, filling, or stockpiling of earth material, or any combination thereof, includes the land in its excavated or filled condition.

Legal Holiday: Holiday as established by the Administrator and is a time when business is not conducted.

Multi-family Development: Apartments, condominiums, duplexes or other similar buildings housing more than one family.

Natural Waterway: A waterway that is part of the natural topography which usually maintains a continuous or seasonal flow during the year and is characterized as being irregular in cross-section with a meandering course.

Person: An individual, corporation, firm, trust, commission, board, public or private partnership, joint venture, agency, unincorporated association, municipal corporation, county or state agency, federal government or any combination thereof.

Runoff: The portion of rainfall, melted snow, or irrigation water that flows across the ground surface and is eventually returned to water resources or wetlands.

Storm Drain: Is a conduit, pipe or structure, which serves to transport storm water runoff.

Storm Water Runoff: The direct response of a watershed to precipitation, which includes the surface and subsurface runoff that enters a stream, ditch, storm sewer or other concentrated flow during and following the precipitation.

Stream: A body of water running or flowing on the earth's surface in which flow may be perennial and/or seasonally intermittent.

Subsurface Drainage: A conduit installed beneath the ground surface to collect and/or convey excess water. This does not include elements of a household sewage treatment system as defined in Section 3709.091 of the Ohio Revised Code.

Watercourse: A definite channel with bed and banks within which concentrated water flows, either continuously or intermittently.

3. Disclaimer of Liability

Compliance with the provisions of this regulation shall not relieve any person from responsibility for damage to any person otherwise imposed by law. The provisions of this regulation are promulgated to promote the health, safety, and welfare of the public and are not designed for the benefit of any individual or for the benefit of any particular parcel of property.

4. Conflicts, Severability, Nuisances, and Responsibility

- 4.1 Where this regulation is in conflict with other provisions of law or ordinance, the most restrictive provisions shall prevail.
- 4.2 If any clause, section, or provision of this regulation is declared invalid or unconstitutional by a court of competent jurisdiction, the validity of the remainder shall not be affected thereby.
- 4.3 This regulation shall not be construed as authorizing any person to maintain a private or public nuisance on their property, and compliance with the provisions of this regulation shall not be a defense in any action to abate such a nuisance.
- 4.4 Failure of the County of Lucas to observe or recognize hazardous or unsightly conditions or to recommend corrective measures shall not relieve the site owner from the responsibility for the condition or damage resulting there from, and shall not result in the Community, its officers, employees, or agents being responsible for any condition or damage resulting there from.

5. Grading and Drainage Plan Review

- 5.1 A Grading and Drainage Plan shall be developed and implemented for all parcels under the jurisdiction of these regulations as outlined in Section 1.2 of these Rules.
- 5.2 No building permit shall be issued until a Grading and Drainage Approval is issued by the Administrator.

6. Application and Review Procedures

- 6.1 The applicant for a Grading and Drainage Review shall submit an application, accompanied by a Grading and Drainage Plan, to the Administrator for review of the specific effects of the proposed new construction on existing surface or subsurface drainage. The application package shall include at a minimum the following:
 - 6.1.1 – Complete Application Form
 - 6.1.2 – Grading and Drainage Plan as outlined in Section 8 of these Rules.
 - 6.1.3 – Application Fee as outlined in Section 11 of these Rules.
- 6.2 No later than five (5) working days after a complete application is filed, a meeting with the applicant shall be scheduled by the Administrator. Written notice of the date, time, and place of the meeting with the applicant shall be sent by regular mail to the applicant within seven calendar days before the scheduled meeting date. The meeting shall be held within thirty (30) days of the date in which a complete application is filed, unless the applicant agrees in writing to extend the time period for the meeting, or to postpone the meeting to

another date, time, or place. The meeting shall be for the purpose of examining the proposed new construction for effects on existing surface or subsurface drainage.

- 6.3 The review of the grading and drainage plan shall be completed no later than thirty (30) days after the date a complete application was filed, unless the applicant agrees in writing to extend that time period or to postpone the meeting to another date, time, or place, in which case the review shall be completed not later than two (2) working days after the date of the meeting.

If the review of the grading and drainage plan is not completed within thirty (30) days after the date in which a complete application is filed or within an extended or postponed period of time as agreed by the applicant, the proposed new construction shall be deemed to have no adverse effects on existing surface and/or subsurface drainage, and those reasons shall not be a valid reason for the denial of a building permit.

- 6.4 Upon completion of the review, the applicant will be provided a written report of the review, to be mailed or hand delivered to the applicant within seven (7) working days of the meeting, but no more than thirty (30) days after a completed application is filed. The report shall indicate either the proposed new construction will have no adverse effect on existing surface and/or subsurface drainage or shall include required revisions regarding the necessary reasonable drainage mitigation and necessary reasonable alterations to the proposed new construction to prevent or correct any adverse effects on existing surface and/or subsurface drainage.

- 6.5 The Grading and Drainage Plan shall be revised by the applicant and resubmitted to the Administrator reflecting all necessary drainage mitigation and/or alterations required by the Administrator as outlined in the report. After receipt and approval of the revised Grading and Drainage Plan, the Administrator shall issue an approval notice which must be provided to Lucas County Building Regulations prior to issuance of a Building Permit.

7. Compliance with State and Federal Regulations

- 7.1 Approvals issued in accordance with this regulation do not relieve the applicant of responsibility for obtaining all other necessary permits and/or approvals from Lucas County, Ohio EPA, the US Army Corps of Engineers, and other federal, state, and/or county agencies. If requirements vary, the most restrictive requirement shall prevail. These permits may include, but are not limited to, those listed below.

7.1.1 Ohio EPA NPDES Permits authorizing storm water discharges associated with construction activity or the most current version thereof: Proof of compliance with these requirements shall be the applicant's Facility ID number from Ohio EPA, a copy of the Ohio EPA Director's Authorization Letter for the NPDES Permit, or a letter from the site owner certifying and explaining why the NPDES Permit is not applicable.

7.1.2 Section 401 of the Clean Water Act: Proof of compliance shall be a copy of the Ohio EPA Water Quality Certification application tracking number, public notice, project approval, or a letter from the site owner certifying that a qualified professional has surveyed the site and determined that Section 401 of the Clean Water Act is not applicable. Wetlands and other waters of the United States

shall be delineated by protocols accepted by the U.S. Army Corps of Engineers at the time of application of this regulation.

- 7.1.3 Ohio EPA Isolated Wetland Permit: Proof of compliance shall be a copy of Ohio EPA's Isolated Wetland Permit application tracking number, public notice, project approval, or a letter from the site owner certifying that a qualified professional has surveyed the site and determined that Ohio EPA's Isolated Wetlands Permit is not applicable. Isolated wetlands shall be delineated by protocols accepted by the U.S. Army Corps of Engineers at the time of application of this regulation.
- 7.1.4 Section 404 of the Clean Water Act: Proof of compliance shall be a copy of the U.S. Army Corps of Engineers Individual Permit application, public notice, or project approval, if an Individual Permit is required for the development project. If an Individual Permit is not required, the site owner shall submit proof of compliance with the U.S. Army Corps of Engineer's Nationwide Program. This shall include one of the following:
 - 7.1.4.1 A letter from the site owner certifying that a qualified professional has surveyed the site and determined that Section 404 of the Clean Water Act is not applicable.
 - 7.1.4.2 A site plan showing that any proposed fill of waters of the United States conforms to the general and special conditions specified in the applicable Nationwide Permit. Wetlands and other waters of the United States shall be delineated by protocols accepted by the U.S. Army Corps of Engineers at the time of application of this regulation.
- 7.1.5 Lucas County Soil Erosion and Sedimentation Control Rules: Storm Water Pollution Prevention Plan approval from the Office of the Lucas County Engineer.
- 7.1.6 Lucas County Office of the County Engineer Permits: Shall include Access Management Permit, Enclosure Permit, and Permission to Connect into Public Storm Drain.
- 7.1.7 Floodplain Hazard Development Permit: Permit issued to develop in the regulated FEMA Special Flood Hazard Area.

8. Grading and Drainage Plans

- 8.1 An applicant performing new construction subject to this regulation shall submit a Grading and Drainage Plan with the application outlined in Section 6 of these regulations.
- 8.2 The Grading and Drainage Plan and other documents submitted under these regulations may be prepared and submitted by a person registered under Section 4703 or 4733 of the Ohio Revised Code, provided that the person is authorized to prepare the plans and other documents pursuant to the person's registration.

8.3 The Grading and Drainage Plan shall be prepared such that the impacts from the proposed new construction on the existing surface and/or subsurface drainage can be determined and shall include the following information:

- North Arrow and Scale
- Location and Dimension of all property lines (include parcel area)
- Delineation of public right-of-way
- Area of Earth Disturbance
- Location and Dimension of all easements
- Location of existing and proposed structures (delineate proposed construction from existing)
- Existing, proposed and total square feet under roof
- Proposed building finished floor elevation(s)
- Existing and Proposed Spot Grades at lot corners and every 50 feet along property/right-of-way lines
- Proposed drainage measures with adequate information for evaluation (i.e. diameter, dimensions, slopes, invert/cover elevations, material properties, etc.)
- Proposed Spot Grades adequately delineating grading of driveways, patios, and sidewalks
- Drainage arrows which delineate existing and proposed drainage patterns
- Floodplain Delineation (if applicable)
- Riparian Setback (if applicable)

9. Inspections

9.1 All necessary measures outlined in the approved Grading and Drainage Plan must be completed as outlined.

9.2 The applicant shall notify the Administrator when the work delineated in the Grading and Drainage Plan is ready for inspection. Such notice shall be given two (2) business days prior to the desired inspection time. The Administrator shall inspect such work as soon as reasonably practical. Inspections shall not be performed on Saturday, Sunday, or a legal holiday as defined by the Administrator. It shall be the responsibility of the applicant to provide adequate access to all areas for inspection and to provide protection for areas subject to damage or disturbance while the inspector is performing an inspection.

Failure of the Administrator to make a prompt inspection shall not be deemed justification for covering or burying work without inspection where such inspection is required under the requirements of the Grading and Drainage Plan. It shall be a violation of these Rules to cover or bury, prior to inspection, any work required to be inspected under the provisions of the Grading and Drainage Plan. The applicant shall be required to uncover any such work for inspection, and the cost of uncovering such work and of replacing the cover after the work has been inspected and found satisfactory shall be borne by the applicant.

9.3 After inspection, the Administrator shall provide a written record of inspection to the applicant within two (2) working days. The written report shall provide an approval

indicating the work has been performed in accordance with the approved Grading and Drainage Plan or shall deny approval indicating the work inspected was not performed in accordance with the Grading and Drainage Plan, outline the deficiencies to be corrected, and require additional inspection until approval is achieved.

10. Unanticipated Conditions

- 10.1 It shall be the responsibility of the applicant to notify the Administrator if unanticipated conditions are encountered during construction which could materially impact the conditions of the original approval of the Grading and Drainage Plan. Such conditions could include the discovery of subsurface drainage that was not identified in the original approval. When such unanticipated conditions are encountered, the Administrator shall notified and an inspection shall be scheduled as soon as reasonably practical, but shall not be performed on a Saturday, Sunday, or legal holiday. Additional mitigation and/or alterations as a result of a newly discovered condition may be necessary at the applicant's expense. However, no additional inspection and/or application fee will be required.

11. Fees

- 11.1 Fees in accordance with the current fee schedule approved by Resolution of the Board of Lucas County Commissioners shall be charged at the time of submittal. Grading and Drainage Plan applications shall not be reviewed until the initial review and filing fee has been paid. Penalty fees may be assessed if work on a development site is performed before approval of a Grading and Drainage Plan.

The fee schedule shall include an initial review and filing fee, fees for additional review of the application package, and for project inspection. The Administrator may require the Applicant to submit a deposit for an estimated inspection fee prior to plan approval. All fees must be paid in full before the grading and drainage approval will be issued.

12. Prohibited Conduct

- 12.1 Pursuant to Ohio Revised Code Section 307.40, no person shall violate any rule adopted or order issued pursuant to this regulation.

13. Enforcement

- 13.1 If the Administrator determines that a violation of the rules adopted under this code exists or is about to exist in any respect, or that any order or direction made in pursuance of the enforcement of these Rules has not been complied with, or is being disregarded, Lucas County or its representative may issue an immediate stop work order or apply to the Lucas County Prosecutor to institute civil proceedings. However, nothing in these Rules and no action taken thereunder shall be held to exclude such criminal proceedings as may be authorized under the Ohio Revised Code.
- 13.2 Pursuant to Section 307.99(C) of the Ohio Revised Code, whoever violates these Rules shall be fined not more than \$300 per offense. Each day during which an illegal location,

erection, construction, flood proofing, repair, alteration, development, redevelopment, or maintenance continues may be considered a separate offense.

- 13.3 The person to whom a stop work order is issued under this section may appeal the order to the Court of Common Pleas of Lucas County, seeking any equitable or other appropriate relief from that order.

14. Appeals

- 14.1 An Applicant receiving a denial of approval of the Grading and Drainage Plan may appeal the determination of the Administrator to the Board of Lucas County Commissioners, or their designee. A Notice of Appeal must be filed to the Administrator within 14 days of the Notice of Denial. A hearing shall take place within 30 days of filing of the appeal. Written notice of the hearing will be provided to the Applicant.
- 14.2 A variance from these Rules can only be granted when the application demonstrates the following:
- (1) The variance request is consistent with the general purpose and intent of these Rules and will not cause damage to other properties or the surrounding environment or endanger the public health, safety or welfare.
 - (2) The variance request indicates special or unusual conditions that exist on the development site or project area.
 - (3) Strict application of these Rules would cause undue hardship for the applicant or deprive the applicant of reasonable use of the development site. Increased cost or inconvenience of meeting the requirements of these Rules does not constitute an exceptional hardship to the applicant.
 - (4) A determination that the public water courses, storm drains, or adjacent properties is protected by methods to minimize adverse drainage.
 - (5) A determination that the variance is the minimum necessary, considering the hazard to public water courses, storm drains, or adjacent properties, to afford relief.
 - (6) A determination that the granting of a variance will not result in increased drainage beyond that which is allowed in these regulations; additional threats to public safety; extraordinary public expense, nuisances, fraud on or victimization of the public, or conflict with existing local, State, or Federal laws and regulations.

Upon consideration of the above factors and the purposes of these Rules, the Board of Lucas County Commissioners, or their designee, may attach such conditions to the granting of variances, as it deems necessary to further the purposes of these Rules.

- 14.3 An Applicant shall be given notice of their rights to appeal a decision resulting from the process outlined in Section 14 of these rules to the Court of Common Pleas by filing a petition in accordance Section 2506 of the Ohio Revised Code.