

ORDINANCE NO. 022425

**AN ORDINANCE ESTABLISHING AN EQUITABLE IMPACT FEE FOR THE
PURPOSE OF PLANNING AND FINANCING ROAD INFRASTRUCTURE TO SERVE
NEW DEVELOPMENT IN THE TOWN OF INGALLS, INDIANA**

WHEREAS, it has been determined that it is reasonable and necessary to promote and accommodate orderly growth and development and to promote the general public health, safety, and general welfare of the citizens of the Town of Ingalls ("the Town") by providing for an equitable program to fund the capital costs of new road infrastructure necessary to serve newly developing areas of the Town; and

WHEREAS, it has further been determined that it is reasonable and necessary to promote the orderly development of the Town by establishing standards by which the Town may require that new development shall pay an Impact Fee representing the development's proportionate share of the cost of capital costs of new road infrastructure necessary to serve the new development; and

WHEREAS, it is determined that new development should not be required to pay a fee for the capital costs of such new road infrastructure greater than the development's proportionate share of the capital costs of such infrastructure which is needed to serve such development; and

WHEREAS, the Town has caused to be prepared an Zone Improvement Plan for Roadways ("the Plan") by A & F Engineering Co., LLC, which plan is attached hereto as "Exhibit A" to this Ordinance and made a part hereof; and

WHEREAS, the cost of implementing the road recommendations of said Plan in their entirety exceeds:

- (1) the income capacity of the Town through its ad valorem property tax receipts or other tax distributions allocated to road improvements relative to the chronological needs of the Town for said improvements;
- (2) the general obligation bond capacity of the Town based upon net assessed valuation; and
- (3) the revenue bond potential of the Town based upon any existing means of acquiring revenue related to such improvements; and

WHEREAS, because of the size of the Town, considering both its population and geographic area, as well as the distribution of public and private institutions, services, and other facilities through the Town, any road improvement benefits all citizens of the Town equally; and

WHEREAS, it has been the objective of the Town that the Plan should result in the determination of an impact fee which meets the rational nexus test as that test is understood by current applicable statutory law and case law; and

WHEREAS, the Town of Ingalls Advisory Plan Commission having conducted a public hearing upon, and given due deliberation to, the Zone Improvement Plan encompassed by the Plan, has recommended its adoption by 7 ayes and 0 nays to the Town Council of the Town of Ingalls; and

WHEREAS, the executive of the Unit, pursuant to Ind. Code § 36-7-4-1312(b)(1), has previously appointed the Ingalls Impact Fee Advisory Committee to advise the Town Council pursuant to Ind. Code § 36-7-4-1312; and

WHEREAS, the purpose of this Ordinance is declared not to deter growth, remedy existing infrastructure deficiencies, or pay for maintenance or other "non-capital costs"; and

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF INGALLS, INDIANA, THAT:

SECTION 1. Limitation on Imposition of Impact Fee. This Ordinance shall expire five (5) years after its effective date as required by Ind. Code § 36-7-4-1340, unless action is undertaken to extend this Ordinance consistent with Indiana law.

SECTION 2. Establishment of Impact Zone. There is hereby established one Road Infrastructure Impact Zone (the "Impact Zone"), the boundaries of which are co-terminus with the boundary as identified in the Comprehensive Plan, as such boundaries may be extended from time to time through annexation, and over which boundaries the Town exercises planning and zoning jurisdiction. In this regard, the Town Council specifically finds that there is a functional relationship between the components of the Plan and that the Plan provides a reasonable uniform benefit to all citizens throughout the Impact Zone as of the adoption of this Ordinance. The Town Council further finds that all areas within the Impact Zone are contiguous as required by Ind. Code § 36-7-4-1316. Except as provided herein, this Ordinance shall apply uniformly to all residential developments within the Impact Zone. This Ordinance shall not apply to:

- a. Development meeting the requirements set forth in Ind. Code § 36-7-4-1322(g);
- b. Improvements which do not require a building permit;
- c. Improvements which do not create a need for new and additional infrastructure, including the erection of a sign, construction of accessory buildings, structures or fences or the alteration, renovation or expansion of an improvement where the use, or intensity thereof, has not changed; and
- d. The replacement of a destroyed or partially destroyed improvement provided that the replacement improvement does not create a need for new and additional

infrastructure over and above the infrastructure needed by the original improvement prior to the destruction or partial destruction thereof; and

SECTION 3. Zone Improvement Plan. As a precondition to the adoption of this Ordinance, the Town Council undertook a comprehensive and detailed road impact analysis through the employment for that purpose of A & F Engineering Co., LLC. The Town Council now finds that the resulting study and data base constitute a sufficient study to constitute a “Zone Improvement Plan” as contemplated by Ind. Code § 36-7-4-1318. The Town Council does hereby adopt the Plan prepared by A & F Engineering Co., LLC, dated January 2025 as its Zone Improvement Plan and specifically finds that said Zone Improvement Plan contains the following elements:

- a. Reasonable estimates relating to the nature and location of development that is expected within the Impact Zone during the planning period, which, for purposes of this Ordinance is defined to be a period of ten (10) years commencing with the date of adoption hereof.
- b. A reasonable determination of the community level of service for the Impact Zone.
- c. A reasonable determination of the current level of service provided within the Impact Zone.
- d. A reasonable estimate of the nature, location, sequencing, and timing of the road requirements and costs necessary to provide the community level of service for the developments contemplated in Sub-paragraph (a) hereof.
- e. A reasonable estimate of the share of the road costs identified in Sub-Paragraph (b) hereof that will be used to:
 1. Raise the current level of service for existing development or provide service to existing development; OR
 2. Provide service to new development.
- f. A reasonable estimate of revenues that:
 1. Are from sources other than impact fees; AND
 2. Will be used to finance the cost identified in Sub-Paragraph (e)(1) above.
- g. A description of the nature and location of existing infrastructure in the Impact Zone.

- h. A general description of the sources and amounts of money used to pay for infrastructure during the previous five years.

Additionally, the town Council hereby specifically adopts the Zone Improvement Plan as an official part of the Comprehensive Plan of the Town of Ingalls, pursuant to Ind. Code § 36-7-4-500 *et seq.*

SECTION 4. Establishment of Road Impact Fee. Based upon the Plan, it is determined that each development hereafter constructed in the Town of Ingalls, not specifically excepted hereunder, shall pay the sum outlined below as the Fee/Trip which includes the 5% annual inflation factor as approved by the Plan Commission.

<u>Impact Fee Schedule (Fee per Trip)</u>			
2025	\$438.83	2030	\$560.07
2026	\$460.77	2031	\$588.07
2027	\$483.81	2032	\$617.47
2028	\$508.00	2033	\$648.34
2029	\$533.40	2034	\$680.76

The Town Council hereby makes as part of the record of these proceedings, all the data collected, calculations made, and conclusions reached by the Town's consultant, A & F Engineering Co., LLC, in the process of developing the Zone Improvement Plan, and specifically instructs the employees of the Town to make such data available to the public for review during regular business hours, along with any other information that is part of the public record created as a result of the process involved in enacting this Ordinance.

SECTION 5. Credit in Lieu of Payment: Exemptions. Ind. Code § 36-7-4-1335 authorizes a fee payer to receive a credit against the Fee under certain circumstances. Any person or entity obligated to pay a fee pursuant to the terms of this Ordinance may have the option of financing, constructing, and dedicating road infrastructure to be owned and operated by the Town of right public benefit, all as described and defined in the Plan, instead of making all or part of any impact fee payment which may be due, so long as such financing, construction, and dedication are accomplished pursuant to the Plan of the Town, and in accordance with the Town specifications for such road infrastructure to be improved in force with the Town's jurisdiction at the time. Such fee payer, or other person or entity providing the infrastructure or improvement(s), shall be given credit for the actual costs of planning, financing, and constructing such road infrastructure dedicated to the Town. Such request for credit shall be presented prior to the issuance of the structural building permit. In the event the actual cost of such planning, financing, and construction do not equal the amount of the impact fee pursuant to the calculation

provided for in the schedule set forth in Section four (4) above, the remaining balance shall be due in accordance with the provisions stated hereafter.

Credits against impact fees otherwise due shall be allowed pursuant to this Section for all infrastructure improvements constructed or furnished in accordance with Ind. Code § 36-7-4-1313 and Ind. Code § 36-7-4-1335 since January 1, 1989. In addition, a fee payer or other person or entity responsible for installing infrastructure or improvements may designate in writing a method of allocating its credits to future fee payers who may be successors in interest to the credits earned by the fee payer or others, as part of the certification provided for above.

Any person or entity otherwise obligated to pay the fee established by this Ordinance whose property was totally or partially destroyed by fire, storm, or other casualty beyond his/her/its control, shall be exempt from said fee if he/she/it repairs or replaces the destroyed structure without creating a burden on infrastructure great than the burden imposed by the destroyed infrastructure. In the event of such additional burden, the fee shall be calculated based only on the increased burden created by the structure.

SECTION 6. Impact Fee Due Upon Issuance of a Building Permit. The Fee imposed pursuant to the terms of this Ordinance shall be due and payable upon the issuance of a building permit by the Town. It is understood that the term "building permit" is synonymous with the term "structural building permit" as that term is used in Ind. Code § 36-7-4-1323, in that the issuance of a building permit authorizes the applicant to commence construction activities, structural or otherwise. The Fee which is calculated pursuant to the terms of this Ordinance shall be due at said time unless the amount of the fee upon calculation is greater than Five Thousand Dollars (\$5,000.00), in which case an installment plan may be requested by the applicant in accordance with the terms set forth in Ind. Code § 36-7-4-1324(a) through (d). The Greenfield Impact Fee Review Board shall establish specific rules consistent with said code provisions for installment payments. The penalty for late payments, if any, shall be established at the discretion of the Impact Fee Review Board.

If a fee payer requests, the amount of the Fee shall be assessed upon the voluntary submission of a development plan or upon the issuance of the building permit whichever is earlier. For purposes of this section, assessment means the act of calculating the amount of the Fee which shall be due. The Town shall make such assessment within thirty (30) days of the date of such voluntary request or at the issuance of the building permit with or without the request.

SECTION 7. Lien Rights Established. Pursuant to Ind. Code § 36-7-4-1325, the Town acquires a lien against the real estate which is the subject of the Fee on the date a building permit is issued. Upon adoption, this Ordinance shall be recorded, and thereafter, it shall continue constructive notice of the lien rights of the Town with respect to a parcel of real estate which is the subject of an installment payment of the Fee. The Town may, in its discretion, file a specific instrument setting forth its lien rights with respect to a parcel of real estate which is the subject of an installment payment of the Fee, and such instrument shall constitute actual notice in addition to the constructive notice provided for by the recording of this Ordinance.

SECTION 8. Form of Receipt. The Ingalls Clerk-Treasurer shall issue a receipt for all Fees collected and the form of such receipt shall be as follows:

Received of _____ (fee payer) this _____ day of _____ the sum of \$ _____ in (full) (partial) satisfaction of Road Impact Fees due pursuant to Ingalls Town Council Ordinance No. 022425 relating to improvements to be constructed on the real estate located at _____ made part hereof, and subject to lien rights in favor of the Town of Ingalls in the event of partial payment with payments remaining due. The remaining balance due (if any) is in the following amount: \$ _____

Ingalls Clerk-Treasurer

SECTION 9. Establishment of Ingalls Impact Fee Review Board. The Ingalls Town Council hereby establishes, pursuant to Ind. Code § 36-7-4-1338, an Ingalls Impact Fee Review Board which shall consist of three (3) citizen members appointed by the executive of the unit and who shall qualify as follows:

- One (1) member shall be a real estate broker licensed in Indiana;
- One (1) member shall be an engineer licensed in Indiana; and
- One (1) member shall be a certified public accountant.

A Board member shall not be a member of the Ingalls Advisory Plan Commission.

- a. The term of office of the members of the Ingalls Impact Fee Review Board shall commence from the date of their appointment and expire two (2) years from the date of appointment.
- b. At the expiration of the respective terms of each of the Ingalls Impact Fee Review Board members originally appointed, their respective successors shall be appointed in the same manner as the original appointee, and each such succeeding member shall serve for a term of two (2) years. Each member shall continue to serve until his/her successor is appointed and qualified.
- c. In the event any person appointed as an Ingalls Impact Fee Review Board member shall fail to qualify as provided within ten (10) days after the mailing to him/her of notice of his/her appointment, or if any member after qualifying shall die, resign, vacate office, or in the event a member is unable to hear a petition due to a conflict of interest, the Council President shall fill such vacancy with a new or temporary (in the event of a conflict of interest) member meeting the qualifications of the member being replaced. A new member shall serve out the

remainder of the vacated term, while a temporary member shall serve for the period necessary to dispose of the petition giving rise to the conflict.

- d. Such board members shall receive no salaries but shall be entitled to reimbursement for any expenses necessarily incurred in the performance of their duties.
- e. The Board shall elect one of its members as President, one as Vice-President, each of which officers shall serve from the day of his/her election until the 31st day of January next following his/her election and until his successor is elected and qualified.
- f. The Board is authorized to adopt by-laws, rules, regulations, and procedures as it may deem necessary for the proper conduct of its proceedings, and the carrying out of its duties. Meetings and hearings shall be held at such time as it may determine and upon such notice as it may fix, in accordance with the provisions of the by-laws, rules, and regulations adopted and Indiana law.
- g. A majority of the Board shall constitute a quorum and the concurrence of a majority shall be necessary to authorize any action.
- h. The Board shall conduct its review of the amount of an impact fee assessed, the amount of a refund, and the amount of a credit using the procedures established in Ind. Code § 36-7-4-1338(c).
- i. The Greenfield Impact Fee Review Board shall be governed by Ind. Code § 36-7-4-1338 and all other applicable provisions of the Impact Fee Statute.

SECTION 10. Appeals. Any fee payer who believes itself to be aggrieved by the calculation of the Fee may appeal from such calculation to the Ingalls Impact Fee Review Board, and the Ingalls Impact Fee Review Board shall conduct a hearing with regard thereto. At such hearing, the fee payer shall bear the burden of going forward with the evidence and shall present evidence addressing either of the following propositions:

- a. A fact assumption used in determining the amount of the Fee is incorrect; or
- b. The amount of the Fee is greater than the amount allowed under Ind. Code § 36-74-1320, 1321 and 1322.

Upon conclusion of the hearing at which the matter is first presented, or at the conclusion of the hearing if the matter is continued, the Ingalls Impact Fee Review Board shall make a determination based upon the facts presented and may reverse, affirm, modify, or make such adjustments in the Fee, as it believes are appropriate under the circumstances, if any, including establishing the amount of an impact fee, a credit, a refund, or any combination of fees, credit, or refunds.

The Ingalls Impact Fee Review Board shall provide a copy of its decision to the Town Council and the fee payer involved in the appeal within five (5) days after making its decision, and shall make written findings of fact to support its decision.

An appeal under this Section must be filed no later than thirty (30) days after the issuance of the building permit. The appeal shall be initiated with the filing of a Petition for Review with the Ingalls Clerk-Treasurer's Office together with a filing fee in the amount of One Hundred Dollars (\$100.00). The filing fee shall be refunded in full if:

1. The Petition for Review is granted and the Fee is eliminated, reduced or adjusted by the Ingalls Impact Fee Review Board, by independent action of the Town, or by a court having jurisdiction; and
2. The reviewing body determines that the amount of the Fee, reductions, or credits were arbitrary or capricious.

The Petition for Review shall be in a form calculated to inform the Ingalls Impact Fee Review Board of the nature of complaint, the parties to the action, and relief requested. In addition, the petition shall describe the new development on which the Fee has been assessed, all facts related to the assessment of the Fee, and the reasons the petitioner believes that the amount of the Fee assessed is erroneous or is greater than the amount allowed by the Fee limitation set forth in the enabling statute.

The Town shall not deny the issuance of a building permit on the basis that the Fee has not been paid or condition issuance of the permit on the payment of the Fee while the Fee is the subject of a Petition For Review properly filed with the Ingalls Impact Review Board. Notwithstanding the provisions of this Section, if the Fee totals One Thousand Five Hundred Dollars (\$1,500.00) or less, the Town may require the fee payer to pay the Fee or initiate an appeal under this section before the building permit is issued.

SECTION 11. Establishment of Road Infrastructure Improvement Fund. There is hereby established the Ingalls Road Infrastructure Improvement Fund ("the Fund") of the Town. The Fund shall be a non-reverting fund and shall receive any and all sums collected pursuant to this Ordinance to be utilized in connection with the purposes set forth herein. The Fund shall consist initially of one account based upon the current existence of one impact zone. In the event, and only in the event, that an additional impact zone is created hereafter, a separate account shall be maintained for each separate impact zone established within the Town. Interest earned on the Fund or on any account with the Fund, shall be deposited and maintained within the Fund or the separate account. The Ingalls Clerk-Treasurer shall maintain records of the status of the Fund or any account which may be established therein, and shall make an annual report of said Fund and accounts which shall be available to the public in general and fee payers, upon request.

Pursuant to Ind. Code § 36-7-4-1332, the Clerk-Treasurer is designated as the Town official responsible for acting on refund requests. In order to facilitate refunds when they may be

due, the Clerk-Treasurer is directed to identify the purpose of any Fee paid in order that a refund, if any, may be paid from the Fund or account into which the Fee was originally deposited.

SECTION 12. Use of Impact Fees Collected Pursuant to this Ordinance. Any and all Fees collected pursuant to the provisions of this Ordinance may be utilized for the following purposes only by the Town, acting by and through its Town Council, which for the purposes of this Ordinance is identified as the infrastructure agency contemplated by Ind. Code § 36-7-4-1317:

- a. Providing funds to be utilized by the Town for the purpose of paying the capital costs of new road infrastructure that is needed to serve the new development within the corporate limits of the Town as the same may be amended from time to time and any area over which the Town may exercise any of its authority;
- b. An amount not to exceed Five Percent (5%) of the annual collections of the fee to be utilized for expenses incurred by the Town for the consulting services used to establish this Ordinance;
- c. To pay any refund due pursuant to the terms of this Ordinance; and
- d. To pay the debt service cost of an obligation issued to provide new road infrastructure described in sub-paragraph (a) above.

SECTION 13. Indiana Impact Fee Law. The Town Council specifically acknowledges the existence of the “1300 series impact fees” adopted by General Assembly of the State of Indiana which regulates the imposition of impact fee by municipal corporations within the State of Indiana. The substantive and procedural requirements of Ind. Code § 36-7-4-1300 *et seq.* shall control in the events of conflicts with this Ordinance which are unintended by the Town Council.

SECTION 14. Amendment and Review. The Fee provided for herein is based upon data which, in large part, is subject to inflation and other economic and market forces over which the Town has no control. The Town Council may cause a review to be made by Town staff or consultants as may be required, to determine the continuing validity of the impact fee, the Impact Fee Zone, and the Plan. The Town Council shall consider and adopt such amendments as are necessary to cause a substantive compliance with all constitutional and statutory requirements. To the extent required by the facts and circumstances, this process shall include the steps necessary to update the Plan and the Comprehensive Plan.

SECTION 15. Effective Date. This Ordinance shall be effective _____, which is not earlier than six (6) months after its adoption by the Town Council in accordance with Ind. Code § 36-7-4-1340.

SECTION 16. Construction of Clause Headings. The clause headings appearing herein have been provided for convenience and reference and do not purport and shall not be deemed to define, limit or extend the scope or intent of the clause to which they pertain.

SECTION 17. Severability. If any part of this Ordinance shall be held invalid, such part shall be deemed severable and the invalidity thereof shall not affect the remainder of this Ordinance.

Introduced and filed on the ____ day of _____, 2024. A motion to consider on first reading on the day of introduction was offered and sustained by a vote of ____ in favor and ____ opposed pursuant to I.C. 36-5-2-9.8.

Duly ordained and passed this ____ day of _____, 2024 by the Town Council of the Town of Ingalls, Madison County, Indiana, having been passed by a vote of ____ in favor and ____ opposed.

TOWN OF INGALLS, INDIANA, BY ITS TOWN COUNCIL

Voting Affirmative:

Voting Opposed:

Melanie Johnson

Melanie Johnson

Crystal Everhart

Crystal Everhart

Georgia Parker

Georgia Parker

Teresa Egerton

Teresa Egerton

Alison Head-Burton

Alison Head-Burton

ATTEST:

Justin Gardner, Clerk-Treasurer

This instrument was prepared by Gregg H. Morelock, BRAND & MORELOCK, 6 West South Street, Greenfield, IN 46140.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Gregg H. Morelock.