

CLAY COUNTY ORDINANCE #94-5

AN ORDINANCE AMENDING THE DRAINAGE PERMIT ORDINANCE.

BE IT ORDAINED by the governing body of Clay County:

SECTION 101. DEFINITIONS. For the purpose of this Ordinance, certain terms and words are hereby defined, unless the context otherwise requires. The word "shall" is mandatory and not discretionary.

1. "Board", the Clay County Board of Commissioners.
2. "County Highway", any road or highway in Clay County.
3. "Landowner", any individual, firm or corporation, public or private, or public agency, who has legal title to real property as shown by the records of the Register of Deeds of the county in which the real property is situated. If the real property is sold under a contract for deed and the contract is of record in the office of the Register of Deeds for the respective county, both the recorded owner of the real property and the purchaser as named in the contract for deed are deemed owners of the real property.
4. "Person", a person, firm, partnership, association, corporation, or any type of private legal relationship, and any governmental organization, which includes, but is not limited to, any agency of the United States, a State agency, and any political subdivision of the State.

SECTION 102. COUNTY COMMISSION AS BOARD OF RESOLUTION. In accordance with SDCL 46A-10A-34, the Board shall constitute itself as the Board of Resolution. The Board shall only be responsible for drainage involving (into, on, or from) all highway right-of-ways within the county and permit applications as specified in this Ordinance. Any other drainage dispute which is not within the jurisdiction of the Board of Resolution shall be taken to circuit court if it cannot be settled by negotiation, arbitration, or other means.

SECTION 103. PERMITS REQUIRED. It shall be unlawful to commence the excavation for or begin the construction or installation of drainage works until a drainage permit has been issued by the Board for such work. A permit shall be required before any person may construct, cause to be constructed, modify, repair, or improve any drainage or drainage ditch into a county highway right-of-way. Permits shall be required for drains along or across any county highway and for construction of open ditches along any right-of-way. A permit shall also be required before any person may modify the drainage authorized in an original permit issued by the Board. Modification of drainage shall include deepening and widening of a drain, or the extension or the altering of a drain from the original plans or specifications. The term "modification", "repair", or "improvement" of drainage or drainage ditches shall not include the cleaning or removal of debris from drainage or drainage ditches provided such

cleaning does not deepen or widen or extend or alter said drain from its original plans or specification. A permit, therefore, is not required for such cleaning if notice is given as provided in Section 103A below.

SECTION 103A. NOTICE. It shall be unlawful to clean or remove debris from a drainage or a drainage ditch without issuing notice to the affected township and the Clay County Highway Supervisor at least four (4) days prior to such cleaning so that the same may be inspected both before and after said cleaning if either the township or highway supervisor so desires. Notice shall be in writing and delivered to the respective township and Clay County Highway Supervisor.

SECTION 104. FILING APPLICATION. Any person desiring a drainage permit shall file an application with the County Auditor on a form approved by the Board. The applicant, if requested by the Board, shall provide an analysis showing the impacts of the proposed drainage. The analysis, at the discretion of the Board, may include a determination of the capacity of the drain and the capacity of the receiving watercourse and a comparison of volume and timing of predrainage and postdrainage flows. If the application is incomplete, or if the information contained therein is insufficient to enable the Board to make an informed decision on the application, the application shall be returned to the applicant for additional information. The cost for filing all drainage permits shall be twenty-five dollars (\$25.00).

SECTION 105. EMERGENCY DRAINAGE. The requirement for a hearing and notice thereon may be waived by a unanimous vote of the Board in order to process applications for temporary emergency drainage. However, a hearing shall be conducted at the earliest opportunity if the emergency drainage is to be permanent.

SECTION 106. NOTICE OF PERMIT HEARING. For all hearings required pursuant to this article, the Board shall, at the applicant's expense, publish one time, notice in a newspaper of general circulation in the area of the proposed drainage. The notice shall be published not more than fifteen days, nor less than five days, before the date set for the hearing. The Board shall also, at the applicant's expense, give notice not less than ten days before the date set for hearing, to:

1. Any landowner of property, including railroad right-of-ways, which would be directly affected by the water to be drained.
2. The state highway department, county highway department, board of township supervisors, or any other agency or department that might be affected by the drainage.
3. All utilities including gas, oil, electricity, water or communications transmission systems affected by the drainage.
4. Any person who has notified the Board of the person's objection to the drainage project proposed, and who has requested notification of such hearing on the drainage project proposed.

SECTION 107. CONTENT OF NOTICE HEARING. The notice shall give all essential facts concerning the proposed drainage, including, but not limited to: name and address of applicant; legal description or location of the area to be drained and right-of-way into which the water will be drained; purpose of drainage; estimated dates drainage construction will commence; the time, date, and location of the hearing; and such other pertinent information as deemed necessary.

SECTION 108. TIME FOR DETERMINATION BY BOARD. Within thirty days after a hearing required pursuant to this article, or at the earliest opportunity in emergency situations, the Board shall make a determination on the application. For complex or unique applications this time limit may be extended by the Board.

SECTION 109. CONSIDERATION OF PERMIT APPLICATION. In evaluating a drainage permit application, the Board shall consider the following criteria:

1. Whether the flow or quantity of water to be drained will overburden the drainage ditch capacity into which the water will be drained.
2. Whether the drainage will flood or adversely affect the lands of lower properties.
3. Whether water will be drained in the limits of or across any highway right-of-way or rail line and whether such drainage will have an adverse impact on any structures or road surface.
4. Whether the drainage will adversely affect any above or below ground utility, electrical, gas, oil, fuel, water, or communication wires, or pipeline delivery systems.
5. Any other factors deemed important by the Board.

SECTION 110. CRITERIA TO DETERMINE WHETHER DRAINAGE WILL ADVERSELY AFFECT PUBLIC RIGHT-OF-WAY OR UTILITIES. The Board shall be guided by the following criteria in determining proposed drainage impacts:

1. Uncontrolled drainage within the limits of any highway right-of-ways which do not have sufficient capacity to handle the additional flow and quantity shall be considered to have an adverse effect.
2. Whether the uncontrolled drainage will expose, weaken, or endanger existing electrical, gas, oil, fuel, water, or communication transmission lines, pipelines, distribution lines or road structures or surfacing.
3. Whether drainage is accomplished by reasonably improving and aiding the normal and natural system of drainage according to its reasonable carrying capacity, or in the absence of a practical natural drain, a reasonable artificial drain system is adopted.

4. The amount or flow of water proposed to be drained, the design and other physical aspects of the drain, and the impact of sustained flows.

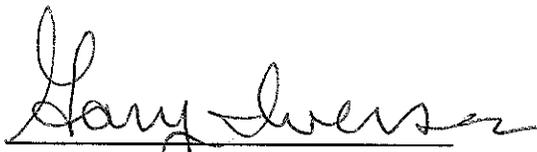
SECTION 111. APPROVAL OR DENIAL OF DRAINAGE PERMIT APPLICATION. The Board's granting or denial of approval of the application shall be noted on the records of the Board and an approval shall be a permit to drain. The permit shall be forwarded to the applicant. A denied application shall be returned to the applicant along with a copy of the Board's reasons for denial.

SECTION 112. CONDITIONS TO PERMIT. The Board may require as a condition to the approval of any drainage permit application, a post-construction inspection of the permitted drain. Upon approval of such inspection the Board shall designate such drain as a legal drain. The Board may attach any other conditions to an approved permit deemed necessary by the Board according to the circumstances of each application. No person shall be authorized to use a drain which has been improperly constructed in accordance with permit requirements or conditions.

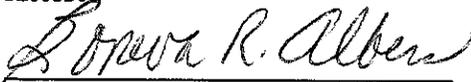
SECTION 113. PENALTY FOR FAILURE TO SECURE PERMIT FOR DRAINAGE WORK. Any person draining water into a highway right-of-way without a permit as required under the provisions of this regulation, may be subject to a penalty of up to \$1,000 per day of violation.

SECTION 113A. PENALTY FOR FAILURE TO PROVIDE NOTICE AND ALLOW FOR INSPECTION. Any person cleaning or removing debris from a drainage or drainage ditch without issuing timely notice as required by Section 103A may be subject to a penalty of up to \$1,000 per violation.

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| First Reading | September 13, 1994 |
| Second Reading and Adoption | September 20, 1994 |
| Publication | September 23, 1994 |
| Effective Date | October 13, 1994 |


Chairperson, Clay County Commission

Attest:


Clay County Auditor

NOTICE OF ADOPTION

Notice is hereby given that Clay County Ordinance #94-5, amending the Drainage Permit Ordinance was duly adopted by the County Board of Commissioners on the 20th day of September, 1994 and will become effective on October 13, 1994.



Boneva R. Albers, County Auditor
Clay County, South Dakota

Publish: September 30th &
October 7th, 1994