

STATE OF INDIANA)	
) SS:	IN THE MARION COUNTY CIRCUIT COURT
COUNTY OF MARION)	CAUSE NO. 49C01-1906-PL-023150
IN THE MATTER OF THE)	(FORMERLY CAUSE NO. 0000006448)
BEN DAVIS CONSERVANCY DISTRICT)	

**ORDER AUTHORIZING THE BEN DAVIS CONSERVANCY DISTRICT
TO CHANGE THE NATURE OF SEWER CHARGES TO AN
EQUIVALENT DWELLING UNIT (EDU) BASIS**

Comes now the Ben Davis Conservancy District (hereafter "Conservancy") by the Chairman of the Board of Directors for a public hearing on the Conservancy's Petition to Change the Nature of Sewer User Charges of the Ben Davis Conservancy District to an "EDU" System. And the Court, having heard all of the evidence and being duly advised in the premises, now FINDS as follows:

1. That the allegations of the Petition are true and that the prayer of the Petition should be granted in its entirety.
2. That the Indiana General Assembly in 1995 enacted IC 14-33-22-1, *et seq.* which authorizes Conservancy Districts in Marion County, Indiana, to charge users of the sewers rates and charges based upon a flat charge for each sewer connection, the amount of water used, the number and size of water pipes, the amount of strength and character of sewer discharge, the size of a sewer connection, and any combination of these factors. That the Conservancy is therefore authorized to charge users in accordance with IC 14-33-22-1.
3. That the proposed Ordinance No. 2019-1 uses a combination of these factors and that the proposed EDU (Equivalent Dwelling Unit) System is fair and has been widely utilized throughout the United States. Said EDU System assigns a multiple number of EDU's to properties other than single-family dwellings as to what water consumption they typically use in comparison to a single-family unit. Further, 327 IAC 3-6-11 fairly classifies most properties and in essence assigns an EDU to those properties.
4. That the proposed Ordinance 2019-1 contains a method of challenge and appeal to the EDU assigned to a particular property within the Conservancy whereby an aggrieved user may administratively challenge the EDU assigned and may appeal to this Court for judicial review and this provides an adequate remedy for an unchecked administrative determination and is consistent with due process of law.
5. That the present system of hiring appraisers to appraise "exceptional benefits" to high volume users of the sewers is antiquated, and the proposed EDU System is a more equitable system and will charge and collect user fees in the current year rather than waiting and charging for sewer fees a year in arrears.

6. That the existing contracts for properties outside of the Conservancy boundaries should be terminated because:

a. The Indianapolis Sanitary District which formerly operated a sanitary sewer district through the Indianapolis Department of Public Works has been sold to CWA Authority, Inc. and the contract for sewer treatment within the Ben Davis Conservancy District has been terminated.

b. New sewage treatment charges mandated by the Indiana Utility Regulatory Commission (I.U.R.C.) have been imposed upon the Conservancy.

c. New methods of determining inflow and infiltration need to be addressed which were not addressed in the old contracts many of which were over 40 years of age.

d. The contracts have no expiration date and, therefore, are terminable at will by either party under existing Indiana law. The Court approves the model contract contained in the Ordinance; however, said contract is subject to negotiation and modification as the parties may later agree.

7. That the Conservancy has served actual notice of this hearing by certified mail on all of the entities paying exceptional benefits charges and all entities located outside of the Conservancy who are now paying contract charges to the Conservancy. Further, the Conservancy has published notice to all freeholders in the Conservancy and all other persons interested in the proposed order, and proof of publication has been duly filed. Moreover, the Conservancy has added notice of this hearing to the August monthly statement of all entities receiving a monthly sewer bill. The Court finds that notice of this hearing has been widely and appropriately disseminated and the notice conforms with law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

1. That the proposed Ordinance No. 2019-1 is provisionally approved in its entirety subject to holding a public hearing wherein the opinions and concerns of the freeholders and others affected by said Ordinance should be considered by the Conservancy.

2. That all proposed actions and changes in the operation of the Conservancy contemplated by Ordinance No. 2019-1 are provisionally approved subject to the enactment of the Ordinance after a public hearing, including but not limited to, the following:

a. Changing the basis of sewer charges to an Equivalent Dwelling Unit or "EDU."

b. Implementing all other users to an assigned EDU based upon the classification of the property to 327 IAC 3-6-11 as the same may later be amended. If there is a property not classified, it would be assigned an EDU by the Conservancy.

c. Implementing a system which challenges an EDU determination contained in the Ordinance giving an aggrieved party notice and the opportunity to be heard which provides an avenue for judicial review of unchecked administrative action and provides due process of law to an aggrieved customer.

d. Abolishing the system of selecting appraisers to determine exceptional benefits charges for various heavy users of the sewers and implementing an EDU System for all properties.

e. Establishing the charge for an EDU for each year.

f. Terminating the contracts for users outside the boundaries of the Conservancy.

3. That this Order does not abolish the special benefits tax based on property values of each property in the Conservancy but allows for a two-tiered method of finance for the Conservancy.

All of which is ordered August 30, 2019

Recommended for Approval

Amber Collins-Gebreniwet

Commissioner

Magistrate, Amber Collins-Gebreniwet
Marion County Circuit Court

Approved and Ordered

Sheryl Lynch
AW

DISTRIBUTION:

John L. Hess
JohnLHessAttv@aol.com