

Resolution 2024-07

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE LAKELAND REGIONAL WASTE DISTRICT AMENDING AND RESTATING A POLICY AND PROCEDURE FOR EASEMENT EXCEPTIONS, ENCROACHMENTS AND VARIANCE REQUESTS

Whereas, the Lakeland Regional Sewer District (the "District") has, and obtains from time to time, easements from customers/owners (the "Owner(s)");

Whereas, the District hereby adopted a policy and procedure for Owners to request exceptions, encroachments and/or variances (collectively a "Easement Variance") from the enforcement of the strict terms of the easement agreements between the District as "Grantee" and Owner as "Grantor" as Resolution 2024-06;

Whereas, the District has determined it necessary to amend and restate Resolution 2024-06, in its entirety, to implement appropriate cost and penalties associated with Easement Variance requests;

Whereas, the District's sewer utility easements ("Easement(s)") over, under and through real estate owned by an Owner generally provides the District with a permanent sewer utility easement and right-of-way in which to construct, install, reconstruct, operate, remove, repair, maintain and inspect its' Sewage Disposal System ("Sewage Disposal System") consisting of, among other things, grinder pumps, lift stations, underground pipelines and sewer mains over the easement area;

Whereas, the Easements generally provide that an Owner shall have the right to use the surface area of the easement area for purposes not inconsistent with the District's full enjoyment of the rights granted to the District, but the Easement further states that an Owner shall not erect or construct any buildings, structures or improvements over any portion of the easement area or the Sewage Disposal System;

Whereas, the District requires unobstructed access to safely perform repairs, maintenance, replacements, as well as preventative, routine and/or emergency maintenance repairs to the Sewage Disposal System;

And Whereas, 327 IAC 3-6-6 provides that, "All easements for collection system rights-of-way must prohibit the construction of any permanent structure over the sanitary sewer and must also provide enough access for maintenance with mechanical equipment."

NOW THEREFORE, THE BOARD OF TRUSTEES OF THE LAKELAND REGIONAL SEWER DISTRICT RESOLVES AS FOLLOWS:

1. An Owner may apply to the District for an Easement Variance from the express terms of an Easement provided the Easement Variance is not in violation of 327 IAC 3-6-6 and would not place permanent structure over the Districts Sewage Disposal System.
2. The following items are required to be completed, paid or provided to properly review the Easement Variance request:
 - a. \$150 filing fee for each application;
 - b. All costs associated with any engineering review deemed necessary by the District, in its discretion;
 - c. A full set of architectural plans if the District determines, in its' reasonable discretion, that said plans are necessary for the application;
 - d. An accurately scaled site plan and boundary survey showing:

- i. Existing topographical features including existing and proposed potable water supply or well locations; the Sewage Disposal System upon Owner's property; and all improvements including but not limited to: landscaping, walls sidewalks, hard surfaced driveways, etc.;
 - ii. All existing easements;
 - iii. The size and location of all proposed construction including finished grades, structure floor grades and retaining walls; and
 - iv. The site address.
 - e. All on-site utilities shall be located at the time of submitting the Easement Variance request.
 - f. Each Easement Variance request shall be described and justified in a submittal letter containing the following:
 - i. The property owner will explain any unusual conditions or hardships that support the need for an exception to the Easement;
 - ii. Pictures of the construction site area if requested by District;
 - iii. The property owner will explain how the proposed exception does not interfere with the District's use of the sewer utility easement and how the safe operation and maintenance of the Sewage Disposal System components will not be impacted if the request is granted; and
 - iv. The property owner will present the detrimental impact of following the strict application of the Easement.
 - g. The Petitioner must be the owner (or future owner with permission from the current owner) of the property where the Easement Variance is requested.
 - h. The Owner (and purchaser if applicable) must be the person signing the Easement Variance request.
 - i. To receive approval, the items discussed above must be completed and submitted 10-days before the District's regular monthly meeting date to allow time for the Board of Trustees ("Board") to visit the site (or the request will be heard at the following meeting). The Easement Variance request must be submitted to the District's staff, by email, US mail or in person. Faxing is not acceptable since faxing can alter the scale of the site plan.
 - j. The Owner or authorized person must be present at the District's regular monthly meeting, where the request will be heard, located in the Board Room at 5002 E 100 N. Warsaw, IN 46582. The staff (and/or District's operations contractor) of the District will provide a report and recommendations that will be presented to the District's "Executive Committee" and to the Board by the District's superintendent.
 - k. The Board may waive any of the foregoing requirements if deemed not applicable or necessary.
3. The Board shall consider the following in approving or rejecting an Easement Variance request:
 - a. Are there practical difficulties or unnecessary hardships in carrying out the strict terms of the Easement? The Board may consider the following in its determination of the foregoing:
 - i. If the Owner complies with the provisions of the Easement, no reasonable use could be made of the property;
 - ii. The hardship of which the Owner complains results from unique circumstances related to the Owner's property;
 - iii. The hardship is not the result of the Owner's own action;
 - b. The Easement Variance, if granted, would be in harmony with the general purpose and intent of the Easement and the District's ordinances;
 - c. The granting of the Easement Variance assures the safety and welfare of the District's maintenance staff; and
 - d. Did the Owner attempt to comply with the Easement and the District's ordinances before altering or improving the property so as to encroach on the Easement or violate a District ordinance?
4. Any Easement Variance must be obtained from the District prior to the placement of the encroachment. If an application for an Easement Variance is sought after the encroachment is placed, the property owner may be subject to penalty of to \$2,500, as deemed appropriate by the District's Board of Trustees.
5. The Board may impose conditions on any approval or require the submission of additional information prior to considering or granting any approval.

6. Nothing contained herein shall be deemed to create a vested right in any Owner to obtain an Easement Variance. In addition, a petition for an Easement Variance does not take the place of a required plan review submittal before a permit is issued.
7. If an Easement Variance is approved, at the sole desertion of the Board, then the normal required documents for plan review shall be submitted for the final review. When the final review is completed, and approved, an additional document may be required to memorialize the Easement Variance. Once these items are completed approval will be issued by the District.


If the Easement Variance is not approved the Owner must revise the plans to meet the requirements of the Easement (and other District ordinances if applicable) and resubmit if he/she/it wishes to proceed with the proposed project.

Adopted this 19th day of June 2024 by a vote of 7 for, 0 against, and 0 abstained.

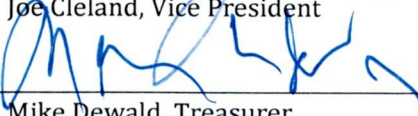
LAKELAND REGIONAL WASTE DISTRICT



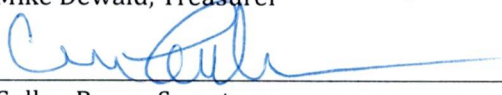
Jim Haney, President



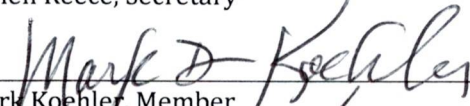
Joe Cleland, Vice President



Mike Dewald, Treasurer




Cullen Reece, Secretary



Mark Koehler, Member



Jack Bonewits, Member



Rosa Ritchie