



Right of Ways and Utilities

Can they co-exist?

IC T-A-C-S

- Title (36-Local Government)
- Article (9- Transportation and Public Works)
- Chapter (27- Drainage Law)
- Section (33- Right of Entry over private land)
- IC 36-9-27-33

Is a Legal Drain Right-of-way an Easement?

- Sec. 33 . (a) The county surveyor, the board, or an authorized representative of the surveyor or the board acting under this chapter has the right of entry over and upon land lying within seventy-five (75) feet of any regulated drain. The seventy-five (75) foot limit shall be measured at right angles to:
 - (1) the center line of any tiled drain; and
 - (2) the top edge of each bank of an open drain;
 - as determined by the surveyor.
- (b) Spoil bank spreading resulting from the construction, reconstruction, or maintenance of an open drain may extend beyond the seventy-five (75) foot right-of-way if:
 - (1) the county surveyor finds that the extension is necessary; and
 - (2) the extension has been provided for in the engineer's report on the construction, reconstruction, or maintenance.
- (c) All persons exercising the right given by this section shall, to the extent possible, use due care to avoid damage to crops, fences, buildings, and other structures outside of the right-of-way, and to crops and approved structures inside the right-of-way. The county surveyor shall give oral or written notice of the entry on the land to the property owner of record, and in the case of a municipality, to the executive of that municipality. The notice must state the purpose for the entry.
- (d) The owners of land over which the right-of-way runs may use the land in any manner consistent with this chapter and the proper operation of the drain. Permanent structures may not be placed on any right-of-way without the written consent of the board. Temporary structures may be placed upon or over the right-of-way without the written consent of the board, but shall be removed immediately by the owner when so ordered by the board or by the county surveyor. Crops grown on a right-of-way are at the risk of the owner, and, if necessary in the reconstruction or maintenance of the drain, may be damaged without liability on the part of the surveyor, the board, or their representatives. Trees, shrubs, and woody vegetation may not be planted in the right-of-way without the written consent of the board, and trees and shrubs may be removed by the surveyor if necessary to the proper operation or maintenance of the drain.

Are all Right-of-Way's the Same?

- A right-of-way is a type of easement that specifically allows the easement holder to pass over, under or through the servient tenement. A right-of-way is typically an easement appurtenant, meaning that the right is granted not to a specific person, but to another piece of land (the "dominant tenement"). Then, whenever the dominant tenement is transferred to the new owner, the right to use the servient tenement remains attached to the dominant tenement for use by the new owner.

IC 36-9-27-33 cont.

- (e) This subsection applies to new regulated drains established after September 1, 1984, and to urban drains. Except as provided in subsection (f), the board may reduce the seventy-five (75) foot right-of-way requirement of subsections (a) and (b) to any distance of not less than:
 - (1) twenty-five (25) feet from the top of each bank of an open ditch; and
 - (2) fifteen (15) feet from the center line of any tiled drain;
 - as measured at right angles.
- (f) This subsection applies only to a platted subdivision. Upon the recommendation of the county surveyor, the board may further reduce the right-of-way for any tiled drain, including a tiled urban drain that was reduced under subsection (e)(2). However, the board shall not make a reduction that results in a right-of-way that is:
 - (1) less than seven (7) feet from each side of the center line as measured at right angles; or
 - (2) less than the recommendation made by the county surveyor.
- (g) A reduction of a right-of-way under subsection (e) or (f) does not:
 - (1) affect a public utility's use of; or
 - (2) deprive a public utility of the use of;
- the right-of-way if, at the time the right-of-way is reduced, the public utility is occupying and using the right-of-way for the location of the public utility's structures, including pipelines, electric lines, or any related structures.
- (h) The surveyor, the board, or an authorized representative of the surveyor or the board acting under this chapter does not commit criminal trespass under IC 35-43-2-2.

A Few Examples:

County Highway Enlarging an Undersized Drainage Culvert

State Highway Doing Temporary Pump Around on a Bridge Project

City/Town Street Department Widening a Culvert

Electric Company Moving Poles for a Bridge Replacement

Internet Company Installing Fiber Optic

Landowner Installing Private Drainage Tile Across Neighbor

Regional Sewer District Running Sewer Lines

Kids Riding ATV's/Adults Driving Jeeps Along Filter Strips on Open Drains

CONSENT FOR UTILITY FOR CONSTRUCTION
PROJECT IN DRAINAGE EASEMENT

STATE OF INDIANA)
COUNTY OF WELLS) BEFORE THE WELLS
COUNTY DRAINAGE BOARD

Recording Stamp

At the request of (1) _____ ("the Utility"), the Wells County Drainage Board (hereinafter usually referred to as "the Board"), holder of the easement (s) for the (2) _____ Drain ("the Drain"), considered the request of the Utility for permission to use said drainage easement (s) for its purposes for the construction of (3) _____ ("the Project"). The Board, after consideration of the Utility's request, does by this agreement and for the consideration, and upon and subject to the terms and conditions hereinafter set forth in writing in this Agreement by the Utility hereby agrees and consents that the Utility may utilize said drainage easement(s) for the Project under the following conditions:

A. Neither the Board nor any contractor nor any workman operating under the authority of the Board will be held liable for any damages to the Utility or anyone served by the utility resulting from construction, reconstruction, or maintenance of the Drain.

B. The construction of the Project by the Utility will not result in obstruction or structure closer than (4) _____ feet of the Top of the Bank or Centerlines of a Tile of the Drain as per the plans submitted by the Utility with the Utility's request. ~~The plans must meet the minimum~~ standards by the Wells County Surveyor and the Wells County Drainage Board. The construction of the Project by the Utility must be completed within twenty-four months or the Utility must file a new application for the Board's consent for the Project in order to continue working on the Project in the Drain's right-of-way.

C. The granting of this consent by the Wells County Drainage Board to the Utility for the construction of the Project does not in any way relieve the Utility of the necessity of securing an easement or other property rights, permits and approvals from affected property owners and other local, state, and federal agencies.

D. The Utility hereby agrees to restore the land, drainage ditches and all other surfaces and/or structures within the ditch and regulated drain easement to a condition as good or better than they were prior to the commencement of the work.

The Utility shall and will indemnify and hold harmless any and all county entities, including but not limited to the County of Wells, the Board of Commissioners of the County of Wells, the Wells County Drainage Board, Wells County Surveyor, its elected officials, its appointed officials, its officers, its employees, its departments, its boards and/or agents harmless from and against any and all damages, injuries, losses, demands, or costs proximately caused by the fault, culpability, or negligence of the Utility in the performance of the permitted work over and across the drains or drainage rights-of-way under the jurisdiction of the Wells County Drainage Board.

The Utility further agrees to notify the Wells County Drainage Board or the Wells County Surveyor in writing at least five (5) days in advance of the commencement of the work described in this application, and will also give notice to the Wells County Drainage Board or the Wells County Surveyor the day preceding the commencement of the work.

~~The Utility shall have worker's compensation~~ insurance as required by state law.

The Utility shall carry public liability insurance meeting the maximum dollar limits as specified in IC 34-13-3-4, and shall list the County of Wells, the Board of Commissioners of the County of Wells, the Wells County Drainage Board, Wells County Surveyor, its elected officials, its appointed officials, its officers, its employees, its departments, its boards and agents as other insureds.

This permit does not obviate the need to obtain any other federal state and/or local agency authorization as required.

THIS AGREEMENT WILL BECOME EFFECTIVE UPON RECORDING

INSTRUCTIONS FOR FILING REQUESTS FOR CONSENT FOR UTILITY FOR
CONSTRUCTION PROJECT IN DRAINAGE EASEMENT

The following are instructions for the completion of the request for consent form for utilities. This application should be made when a utility wants to use an area of real estate which is subject to a Wells County Drainage easement with their facility.

A. The request and information form shall be submitted to the Wells County Surveyor's Office along with detailed plans for construction of the project ten (10) days prior to the Wells County Drainage Board bi-monthly meetings, which are usually on the 1st and 3rd Monday of each month at 8:30 a.m.

The Plans shall consist of showing where the facility is proposed to be located within the drainage easement and which side of road. Plans shall show at one road intersection. Plans shall show either how far the utility will be located from the top of bank of an open ditch or from the center of Drain tile. An As-Built drawing of all work in the easement shall be provided to the Wells County Surveyor's Office at the completion of the project.

B. Request shall be made on the standard form, supplied only by the Wells County Surveyor's Office.

C. The request and information form shall be completely filled out with the following information:

1. Typing in all Grey Shaded areas (if not applicable, insert N/A)
2. Name of the utility company.
3. Name of legal drain.
4. Type or description of utility being installed.
5. Number of feet from the drain as shown on the plans.
6. Shall be signed by an officer of the utility company, also print name of officer signing and officer's title within the company.
7. A permitting fee of \$150.00 per application shall be paid before recording.

D. Overhead utilities running parallel with a ditch must be a minimum of thirty (30) feet from top of bank and must be a minimum of twenty (20) feet above ground level (see diagram 1).

E. Overhead utilities running parallel to a tile must be a minimum of five (5) feet from centerline of tile, and a minimum of twenty (20) feet above ground level (see diagram 1).

F. Buried utilities running parallel with an open ditch must be a minimum of thirty (30) feet from top of bank, or between top of bank and a county or State road. Buried utilities running parallel with a tile must be fifty (50) feet minimum from center of tile, or between tile and roadside with a five (5) feet minimum clearance (all tiles must be physically located see diagram 2).

G. Locating of tiles are the responsibility of the utility (Wells County Surveyor will provide best available data to assist with locations).

- H. Any damage to a regulated drain must be reported within 48 hours to the Wells County Surveyor's office. Failure to report may result in a fine of Two Thousand Five Hundred Dollars (\$2,500.00) per day.
- I. Any damage to the said county drain found in any year shall be billed directly to the said utility or entity. The relocation of any utility or obstruction will be at the expense of the violator and will meet the standard of the Drainage Board/Surveyor/it's Representatives.
- J. Utility encroachment of projects affecting multiple drains shall require separate request forms for each drain affected. Utility encroachment for projects affecting a single drain but multiple times shall require a single request form.
- K. All abandoned utilities must be removed from the drainage easement within thirty (30) days of abandonment.
- L. Utility shall pay reasonable attorney's fees for any Civil Litigation in regards to this agreement.
- M. Utility shall, at the request of the County Surveyor, give depths to buried utilities within 48 hours of request. Failure to report may result in a fine of Two Thousand Five Hundred Dollars (\$2,500.00) per day.
- N. Any work performed before a signed agreement from the Wells County Drainage Board may result in a fine of Two Thousand Five Hundred Dollars (\$2,500.00) per day. In addition to the fines the Wells County Drainage Board may undertake the following actions in order to compel compliance with this agreement:
1. Issuance of a Stop-Work Order immediately suspending all construction and work on the site or project.
 2. The procurement of performance sureties from the applicant in the form of a bond, irrevocable letter of credit or cash deposit.
 3. Denial of further storm water permits and/or approvals for the subject site or project.
 4. Legal action, including a request for injunctive relief, to effect the implementation of the approved plan or restoration of the site.
- O. The Office of the Wells County Surveyor must be contacted two (2) business days before any construction begins on the approved encroachment. The construction of the Project by the Utility must be completed within twenty-four months or the Utility must file a new application for the Board's consent for the Project in order to continue working on the Project in the Drain's right-of-way.

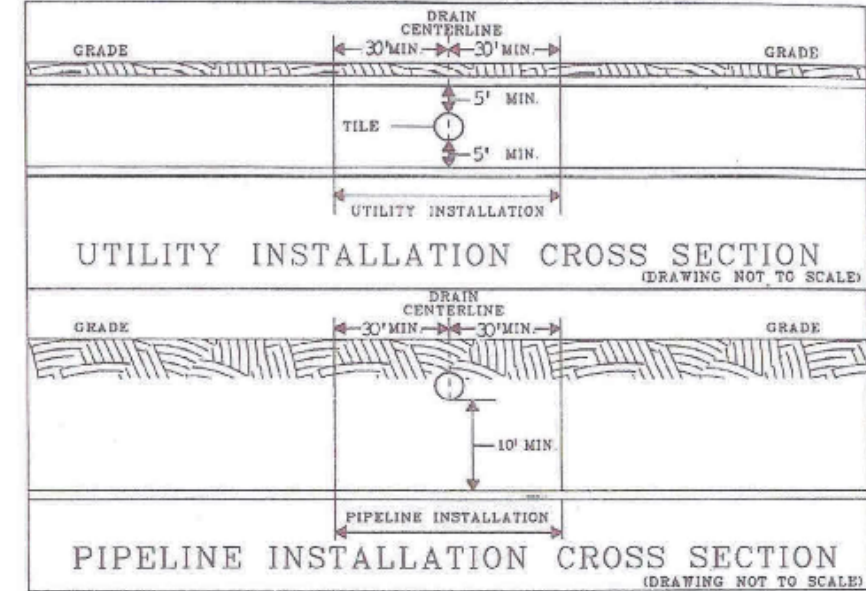
*Municipal Sewer Utility will be reviewed on case by case basis.

(DIAGRAM 1)

OFFICE OF THE WELLS COUNTY SURVEYOR

PIPELINE & UTILITY INSTALLATION CROSS SECTION-TILE DRAIN

PIPELINE & UTILITY INSTALLATION CROSS SECTION: TILE DRAIN



When installing a utility across a tile regulated drain, the utility contractor will adhere to the following procedure.

1. Utility to be installed a minimum of five (5') feet above or below existing tile.
2. If Utility is to be installed using directional boring methods. The utility installation shall be a Minimum of five (5') feet below tile drain.
3. All petroleum pipelines and/or high pressure transmission line are to be installed a minimum of ten (10') feet below existing invert of tile drains.
4. Utility contractor shall adhere to open drain crossing standard during construction process.
5. Notify Surveyor's Office at (260)824-6414 two working days prior to installation and backfilling.

WELLS COUNTY SURVEYOR'S OFFICE

JARROD HAHN, WELLS COUNTY SURVEYOR

DATE

REVISED: _____

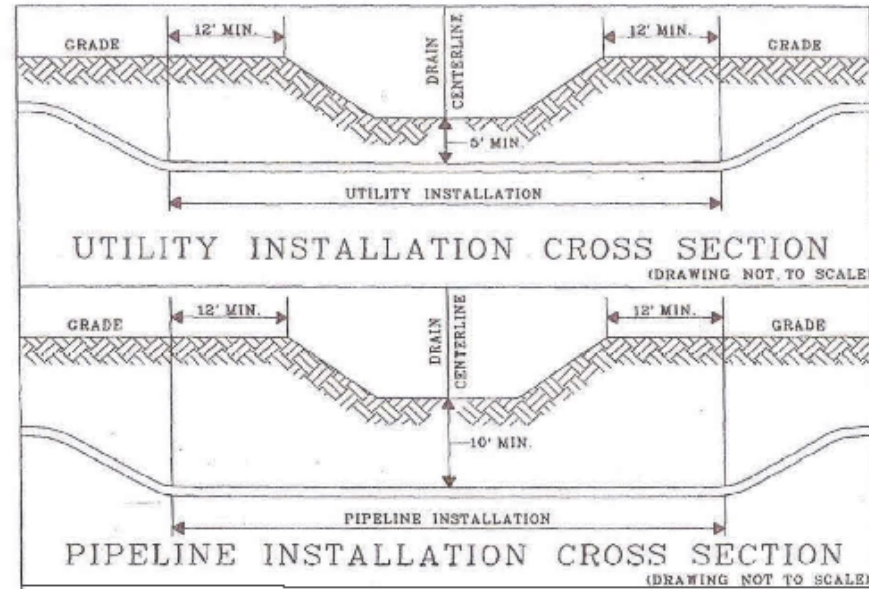
STANDARD PLAN

(DIAGRAM 2)

OFFICE OF THE WELLS COUNTY SURVEYOR

PIPELINE & UTILITY INSTALLATION CROSS SECTION-OPEN DRAIN

PIPELINE & UTILITY INSTALLATION
CROSS SECTION-OPEN



When installing a utility in, through or across an open regulated drain, the utility contractor will adhere to the following procedure.

1. Utility to be installed a minimum of five (5') feet below existing flow line of drain. All petroleum pipelines and/or high pressure transmission lines are to be installed a minimum of ten (10') feet below existing flow line of drain.
2. If sanitary sewer is installed under drain, sewer shall be encased with concrete. Minimal distance shall be measured from top of concrete encasement.
3. Utility contractor shall adhere to open drain crossing standard during construction process
4. Notify Surveyor's Office at (260)824-6414 two working days prior to installation and backfilling.

WELLS COUNTY SURVEYOR'S

JARROD HAHN, WELLS COUNTY SURVEYOR

DATE

REVISED

STANDARD PLAN