



*Department of Engineering and Planning*

June 3, 2024

Board of Public Works and Safety  
10 S State Street  
Greenfield IN 46140

Re: Encroachment Agreement

Members,

Our department has received a request to encroach into Utility/drainage easements for the purpose of constructing a fence. The residential property owners have applied for an improvement location permit and an encroachment agreement into the existing easement. Upon review of the application, our staff has determined the encroachment will adversely affect the use of the easement. Therefore, it is my recommendation that the Board DENY the following encroachment agreements with stated conditions for approval:

- **David and Kelly Marchello      Lot 30 Sec 1 Whitcomb Village/107 Punkin Ct**

Respectfully submitted,

Joanie Fitzwater, Planning Director



## *Storm Water Utility*

**May 23, 2024**

### **Utility Easement Encroachment Recommendation**

107 Punkin Ct.

The owners' of 107 Punkin Ct are seeking a partial, 8-foot encroachment into the east (rear) easement and a nine (9) foot encroachment into the north (side) easement for the purposes of placing a fence.

#### Existing Conditions

107 Punkin Ct. is on the outside edges of the Whitcomb Village subdivision. There is a substantial drainage swale within east (rear) easement. This drainage swale is approximately 30 feet wide, almost the entire easement, and is approximately 2 feet deep. The swale drains approximately five (5) acres of area through this property.

The north (side) easement is 10 feet in width with a approximately 15-foot deep sanitary sewer. The sanitary sewer appears to be placed on the property line. This easement is one of the access points for a substantially deep sanitary sewer. Placing fences within this easement will also reduce maintenance crews ability to work as the easement is narrow and actually smaller than the radius of the equipment.

#### Recommendation

After reviewing shape and size of the easement and the storm water infrastructure within that easement, and the amount of drainage that utilizes the easement, I do not recommend any encroachment into the rear (east) easement. This drainage system will be fully utilized a the storm events for which this system is designed for transport and storage of storm water.

Because of the narrow easement on the north (side) easement, the depth of the sanitary sewer, and available access to the system, **I do not recommend any encroachment into this easement.**

In addition to the above, I recommend that the owner be required to remove the shed structure, of which no encroachment was provided, from the easement.

Existing ordinances do not allow for any structures of this nature within any easements.

Negative Recommendation

Thank You,

Daniel Miller

Zimbra

eknapp@greenfieldin.org

**RE: 107 Punkin Court - WAIVER OF LIABILITY CONCERNING EASEMENT ENCROACHMENT****From :** Caleb Osborne <cosborne@greenfieldin.org>

Thu, May 23, 2024 07:49 PM

**Subject :** RE: 107 Punkin Court - WAIVER OF LIABILITY CONCERNING EASEMENT ENCROACHMENT**To :** Erikk Knapp <eknapp@greenfieldin.org>, Joanie Fitzwater <jfitzwater@greenfieldin.org>, Scott Yost <syost@greenfieldin.org>, Charles Gill <cgill@greenfieldin.org>, Nicholas Dezelan <ndezelan@greenfieldin.org>, Daniel Miller <dmiller@greenfieldin.org>**Cc :** Donna Butler <dbutler@greenfieldin.org>, Evan Beaty <ebeaty@greenfieldin.org>, Steven Ostewig <stostewig@greenfieldin.org>, sevans <sevans@greenfieldin.org>

Erikk,

All water infrastructure is in the front of the property so we have no conflict.

**Caleb Osborne  
Greenfield Water Utility**Distribution Supervisor  
Office: 317-477-4350  
Mobile: 317-967-0025

----- Original message -----

From: Erikk Knapp &lt;eknapp@greenfieldin.org&gt;

Date: 5/23/24 8:44 AM (GMT-05:00)

To: Joanie Fitzwater &lt;jfitzwater@greenfieldin.org&gt;, Scott Yost &lt;syost@greenfieldin.org&gt;, Charles Gill &lt;cgill@greenfieldin.org&gt;, Nicholas Dezelan &lt;ndezelan@greenfieldin.org&gt;, Daniel Miller &lt;dmiller@greenfieldin.org&gt;

Cc: Donna Butler &lt;dbutler@greenfieldin.org&gt;, Evan Beaty &lt;ebeaty@greenfieldin.org&gt;, Steven Ostewig &lt;stostewig@greenfieldin.org&gt;, Caleb Osborne &lt;cosborne@greenfieldin.org&gt;, sevans &lt;sevans@greenfieldin.org&gt;

Subject: 107 Punkin Court - WAIVER OF LIABILITY CONCERNING EASEMENT ENCROACHMENT

23 May 2023

BOW review/approval process 06/11/2024, please verify process and agenda item

Please find attached .pdf copies of the original site plan sketch and scope of work, the local ILP application, site plan non-compliant vs compliant mark-up, local ILP plan review report dated 03/23/2024, and the homeowners WAIVER OF LIABILITY CONCERNING EASEMENT ENCROACHMENT application dated 05/21/2024 for your review and comment.

**Erikk Knapp**Building Commissioner  
City of Greenfield  
10 So. State Street  
Greenfield, Indiana 46140  
Phone: 317.477.4320  
Direct: 317.325.1323  
Mobile: 317.538.3841  
[eknapp@greenfieldin.org](mailto:eknapp@greenfieldin.org)

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**Re: 107 Punkin Court - WAIVER OF LIABILITY CONCERNING EASEMENT ENCROACHMENT**

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**From :** Scott Evans <sevans@greenfieldin.org>  
**Subject :** Re: 107 Punkin Court - WAIVER OF LIABILITY CONCERNING EASEMENT ENCROACHMENT

Thu, May 23, 2024 02:32 PM

 3 attachments

**To :** Erik Knapp <eknapp@greenfieldin.org>

**Cc :** Joan Fitzwater <jfitzwater@greenfieldin.org>, Scott Yost <syost@greenfieldin.org>, Charles Gill <cgill@greenfieldin.org>, Nicholas Dezelan <ndezelan@greenfieldin.org>, Daniel Miller <dmiller@greenfieldin.org>, Donna Butler <dbutler@greenfieldin.org>, Evan Beaty <ebeaty@greenfieldin.org>, Steven Ostewig <sostewig@greenfieldin.org>, Caleb Osborne <cosborne@greenfieldin.org>

Erkk,

I would not approve a easement encroachment in the Sanitary Easement. We need accessibility to the manholes for maintenance with equipment.

Thanks

**Scott Evans**

Sewer Collection System Foreman



**Greenfield Wastewater Utility**

809 South State Street  
Greenfield, IN 46140  
Phone: (317) 477-4360  
Cell: (317) 526-0013  
Fax: (317) 477-4361

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**From:** "Erik Knapp" <eknapp@greenfieldin.org>  
**To:** "Joan Fitzwater" <jfitzwater@greenfieldin.org>, "Scott Yost" <syost@greenfieldin.org>, "Charles Gill" <cgill@greenfieldin.org>, "Nicholas Dezelan" <ndezelan@greenfieldin.org>, "Daniel Miller" <dmiller@greenfieldin.org>  
**Cc:** "Donna Butler" <dbutler@greenfieldin.org>, "Evan Beaty" <ebeaty@greenfieldin.org>, "Steven Ostewig" <sostewig@greenfieldin.org>, "Caleb Osborne" <cosborne@greenfieldin.org>, "Scott Evans" <sevans@greenfieldin.org>  
**Sent:** Thursday, May 23, 2024 8:44:09 AM  
**Subject:** 107 Punkin Court - WAIVER OF LIABILITY CONCERNING EASEMENT ENCROACHMENT

23 May 2023

BOW review/approval process 06/11/2024, please verify process and agenda item

Zimbra

eknapp@greenfieldin.org

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**Re: 107 Punkin Court - WAIVER OF LIABILITY CONCERNING EASEMENT ENCROACHMENT**

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**From :** Scott Yost <syost@greenfieldin.org>

Thu, May 23, 2024 02:06 PM

**Subject :** Re: 107 Punkin Court - WAIVER OF LIABILITY CONCERNING EASEMENT ENCROACHMENT  
 2 attachments**To :** Erik Knapp <eknapp@greenfieldin.org>**Cc :** Joanie Fitzwater <jfitzwater@greenfieldin.org>, Charles Gill <cgill@greenfieldin.org>, Nicholas Dezelan <ndezelan@greenfieldin.org>, Daniel Miller <dmiller@greenfieldin.org>, Donna Butler <dbutler@greenfieldin.org>, Evan Beaty <ebeaty@greenfieldin.org>, Steven Ostewig <sostewig@greenfieldin.org>, Caleb Osborne <cosborne@greenfieldin.org>, Scott Evans <sevans@greenfieldin.org>

Erik,

The proposed encroachment would not affect GP&L. If you have any other questions, please don't hesitate to contact us.

Thank you!

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**From:** "Erik Knapp" <eknapp@greenfieldin.org>**To:** "Joanie Fitzwater" <jfitzwater@greenfieldin.org>, "Scott Yost" <syost@greenfieldin.org>, "Charles Gill" <cgill@greenfieldin.org>, "Nicholas Dezelan" <ndezelan@greenfieldin.org>, "Daniel Miller" <dmiller@greenfieldin.org>**Cc:** "Donna Butler" <dbutler@greenfieldin.org>, "Evan Beaty" <ebeaty@greenfieldin.org>, "Steven Ostewig" <sostewig@greenfieldin.org>, "Caleb Osborne" <cosborne@greenfieldin.org>, "Scott Evans" <sevans@greenfieldin.org>**Sent:** Thursday, May 23, 2024 8:44:09 AM**Subject:** 107 Punkin Court - WAIVER OF LIABILITY CONCERNING EASEMENT ENCROACHMENT

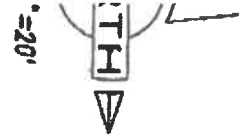
23 May 2023

BOW review/approval process 06/11/2024, please verify process and agenda item

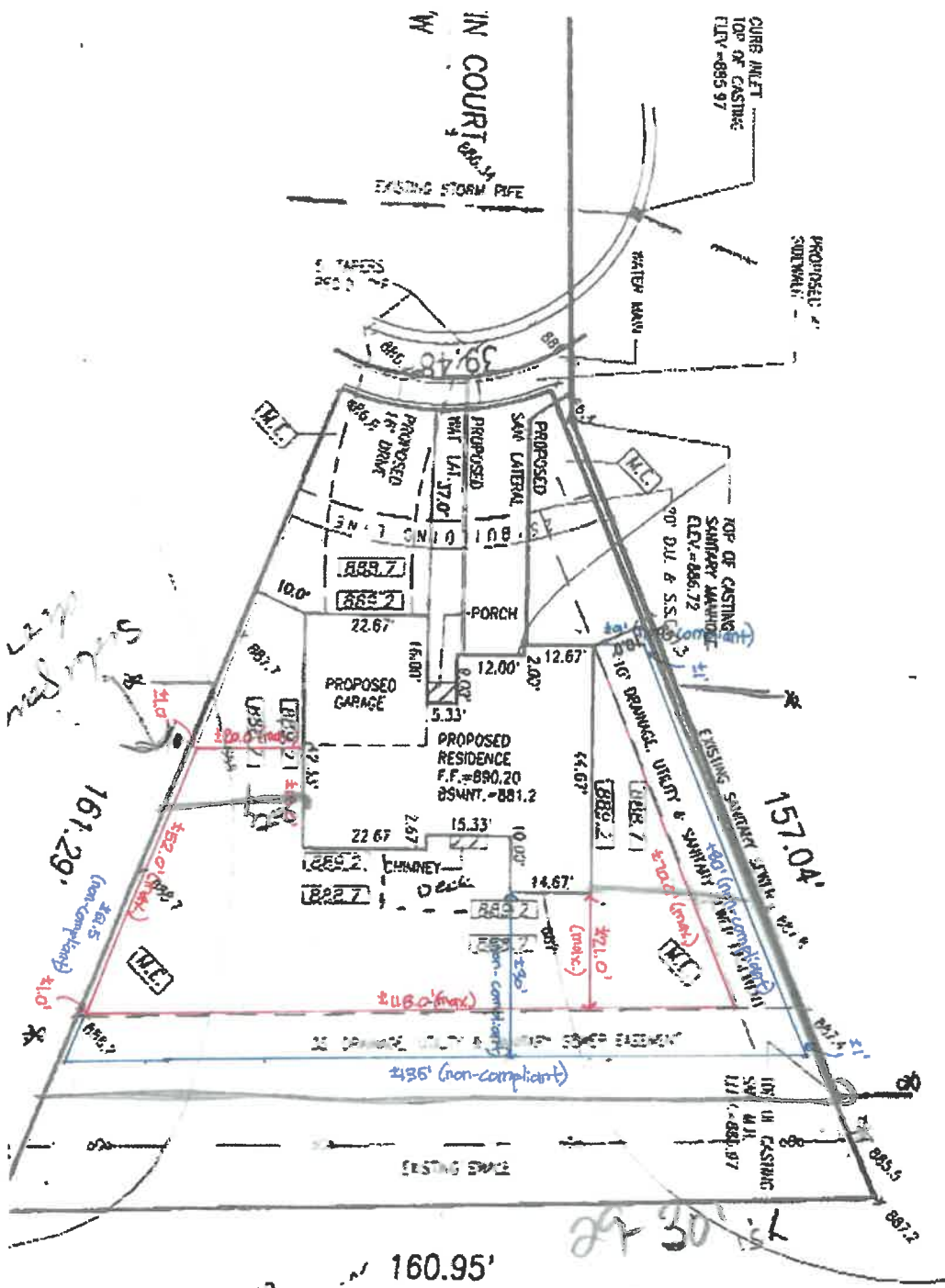
Please find attached .pdf copies of the original site plan sketch and scope of work, the local ILP application, site plan non-compliant vs compliant mark-up, local ILP plan review report dated 03/23/2024, and the homeowners WAIVER OF LIABILITY CONCERNING EASEMENT ENCROACHMENT application dated 05/21/2024 for your review and comment.

**Erik Knapp**

Building Commissioner  
City of Greenfield  
10 So. State Street  
Greenfield, Indiana 46140  
Phone: 317.477.4320  
Direct: 317.325.1323  
Mobile: 317.538.3841  
[eknapp@greenfieldin.org](mailto:eknapp@greenfieldin.org)



**SECTION ONE**  
**INSTR. #96-11816**  
**HANCOCK COUNTY,**  
**INDIANA**



*Handwritten notes:*  
 161.29'  
 157.04'  
 160.95'

*Handwritten notes:*  
 - max compliant 1ft fence placement  
 - non-compliant 1ft fence placement  
 - in easement along N & E project  
 site lines (fence scope written)



**HOLLY MOLEY SVCS.**  
**"DON'T**  
**DIG**  
**BLIND"**

1-800-382-5544  
 CALL THE FBI  
 1-800-428-5200  
 FOR CALLS OUTSIDE OF INDIANA

**WAIVER OF LIABILITY CONCERNING EASEMENT ENCROACHMENT**

Kelli Marchello + David Marchello, ("the Landowner(s)") on behalf of themselves, their heirs, assigns, and successors in title to the following described real estate acknowledge as follows:

The Landowner(s) are the owners of the following described real property, hereinafter referred to as the "the Real Estate":

107 Pumpkin Ct. Greenfield, 10. 46140

The Landowner(s) have applied to the City of Greenfield (hereinafter referred to as "the City") for a permit to construct a fence or other appurtenant structure upon the Real Estate.

The Landowner(s) agree the City does not represent or warrant that the location of the fence or appurtenant structure is within the boundaries of the Real Estate, or that the fence's or appurtenant structure's location will not encroach within any regulated easement that restricts the use of any part of the Real Estate.

To the extent that any part of the fence or appurtenant structure encroaches upon a regulated easement, the City or any utility or grantee benefited by such an easement may take any of the following actions:

- a. Remove the fence or appurtenant structure without notice in case of an emergency.
- b. Require the fence or appurtenant structure to be removed upon two days written notice.
- c. Stack the fence or appurtenant structure upon the lot of the Landowner(s), however, neither the City nor any utility or any grantee benefited by the subject easement, shall be required to reinstall the fence.

The Landowner(s) releases the City, the Department of Planning and Engineering, any utility or grantee benefited by any such easement, and their contractors, employees, agents, and assigns from any liability to the Landowner(s), his/her/their assigns, or successors in title for the removal, damage, or destruction of the fence or appurtenant structure, in addition to any personal injury or other property damage to a third-party that may occur as a result of said removal.



The Landowner(s) hereby releases the City from any liability for failing to inspect the location of the fence or appurtenant structure to determine that it is constructed within the boundaries of the Real Estate or within an easement.

Nothing herein shall be construed as relieving the applicant from requirements of the Hancock County Drainage Board in the event an easement is part of a regulated drain pursuant to Indiana Code 36-9-27.

ALL OF WHICH IS ACKNOWLEDGED by the undersigned Landowner(s) this 21 day of May, 2024

LANDOWNER(S)

By: Kelli J Marchello  
Printed: Kelli JO Marchello

By: David L Marchello  
Printed: David L Marchello

STATE OF INDIANA )  
 ) SS:  
COUNTY OF HANCOCK )



Subscribed and sworn to before me, a Notary Public, this 21<sup>st</sup> day of May, 2024, personally appeared the within named Kelli Marchello and David Marchello, as Landowner(s), and acknowledged the execution of the foregoing document.

WITNESS my hand and official seal this 21<sup>st</sup> day of May, 2024.

My Commission Expires:  
March 21, 2026

Carri Ann Flannery  
Printed: Carri Ann Flannery, Notary Public  
Residing in Rush County, IN

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.

## CROSS REFERENCE

In accordance with Indiana Code 32-5-2-2, this encroachment agreement is being created from real estate most recently transferred to Grantor in a deed recorded as Instrument Number \_\_\_\_\_, in the office of the Recorder of Hancock County, Indiana.

### Encroachment Agreement

This agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the City of Greenfield (hereinafter "Greenfield") and \_\_\_\_\_  
Kelli and David Marchello (hereinafter "Landowner").

In consideration of Greenfield granting Landowner the right to encroach upon a drainage or utility easement previously platted and granted to Greenfield, Landowner agrees as follows:

1. **Scope and purpose of encroachment** – Landowner is granted the right to encroach upon the drainage or utility easement located at 107 Punkin Ct.  
\_\_\_\_\_ and more specifically described as follows: Lot 30 Whitcomb Village Sec 1  
The purpose of the encroachment is specifically limited to the placement of a fence.

Landowner may not change the scope or purpose of the encroachment without the specific written consent of Greenfield, which such consent may be withheld at Greenfield's sole discretion.

2. **No waiver of rights** - Landowner acknowledges that Greenfield does not, in any way, waive or forfeit its full right to use and enjoyment of the drainage or utility easement. Upon request by Greenfield, Landowner shall remove the encroachment for the purpose of allowing Greenfield, or any public utility access to the easement. Should Landowner fail to remove the encroachment within a reasonable period of time, Greenfield or any public utility may, at its discretion, remove the encroachment and assess Landowner the cost of removing the encroachment.

3. **Limitation of liability** – Landowner agrees to indemnify and hold Greenfield harmless for any and all actions arising out of any claim for personal injury (including death), property damage, consequential damages, attorney fees and costs caused by Landowner's encroachment upon the drainage or utility easement. Under no circumstances will Greenfield or any public utility be liable for any claims by Landowner for any personal injury or damages caused by Greenfield or any public utility's removal of the encroachment.

4. **Recording of Agreement** – Landowner shall cause this Encroachment Agreement to be recorded in the Office of the Recorder of Hancock County and return a copy of this agreement with its recorded instrument number to Planning Director.

5. **Effective date** – This encroachment agreement shall be effective upon its recording in the office of the Recorder of Hancock County and shall remain in full force and effect until revoked by either party in writing. This agreement is binding on the heirs and successors-in-interest of Landowner. Any amendment to this agreement must be in writing, signed by the parties hereto.

**City of Greenfield**

**Landowner(s)**

\_\_\_\_\_  
Member, Board of Work

\_\_\_\_\_

Printed: \_\_\_\_\_

\_\_\_\_\_  
Member, Board of Works

\_\_\_\_\_

Printed: \_\_\_\_\_

\_\_\_\_\_  
Member, Board of Works

**Notarization:**  
State of Indiana        ))        SS:  
County of Hancock    )

\_\_\_\_\_  
Member, Board of Works

Subscribed and sworn to before me,  
a Notary Public, this \_\_\_\_\_ day of  
\_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Member, Board of Works

**ATTEST:**

\_\_\_\_\_  
Notary Public  
Printed: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
County of Residence: \_\_\_\_\_

\_\_\_\_\_  
Lori Elmore  
Clerk-Treasurer

This instrument was prepared by Gregg Morelock, Attorney, Greenfield Advisory Planning Commission, 10 South State Street, Greenfield, IN 46140