MEMORANDUM

TO: West Lafayette Board of Public Works and Safety

FROM: David M. Buck, P.E.

Date: September 8, 2015

SUBJECT: Connection Point Church
Stormwater Billing Dispute

At the request of Patricia Truitt Attorney representing Connection Point Church requests a hearing before the Board regarding a billing dispute. Attached are the following documents for your reference regarding this dispute.

1) Letter from Pastor Brust of Connection Point Church to City Engineer dated and received on April 28, 2015.
2) My response letter to Pastor Brust of Connection Point Church dated and mailed on June 23, 2015.
3) Letter from Patricia P. Truitt dated August 7, 2015 which was received by my office on August 10, 2015.
4) My response letter to Patricia P. Truitt and Pastor Brust dated and mailed on September 2, 2015.
5) Article IX. Stormwater Service Charge
6) City of West Lafayette – Overall Jurisdiction Map
7) City of West Lafayette – Detailed Jurisdiction Map near Church

connection point CHURCH

April 28, 2015

City of West Lafayette Storm Water Service Charge Dispute Form

Connection Point Church (formerly Bethel Christian Life Center) was granted their Certificate Of occupancy on October 13, 2011 by Ronald Highland, Building Commissioner for Tippecanoe County for the newly constructed commercial building located at 2541 McCormick Rd, West Lafayette, IN 47906 (see attachment #1). This location was annexed into West Lafayette in early 2014. However, it is our understanding that the annexation did not include our utilities that are independently owned and operated.

Before the occupancy of the building was granted, numerous events took place in regards to our water, sewer and storm water run-offs between S. Rider Construction (Contractor for Connection Point Church), American Suburban Utilities and Indiana American Water. These are detailed in attachment #2, American Suburban Utilities, Inc. Special Service Agreement with Bethel Christian Life Center that was authorized on September 14, 2011 and attachment #3 Utility Easement with Indiana American Water recorded with the Tippecanoe County Recorder on October 19, 2011.

In the agreement with CPC (Developer) American Suburban Utilities (Utility), paragraph 2 states that "...the Utility owns and operates the sewer utility system serving the unincorporated area near West Lafayette, Indiana" and further states in paragraph 5 that "....the Utility and Developer agree the Developer at its sole cost and expense shall furnish the necessary engineering service, labor, materials and equipment to install the Extension completely and obtain all necessary easements, permits, right-of-way grants or other authority which are required to provide sewer service to the Developer's property". These two paragraphs (again state to our understanding) that CPC within our Special Service Agreement own and operate jointly with American Suburban Utilities all the sewer utility system on our property.

In attachment #3 the Utility Easement between CPC (Grantor) and Indiana American Water Company (Grantee) it states in paragraph 2, "...the receipt of which is hereby acknowledged, does hereby give, grant and convey unto the Grantee, its successors and assigns, forever, an easement in, under, across and over the real estate of the Grantor". Again in attachment #4, Transfer of Ownership of Developer Installed Mains, it states in the first sentence, "By virtue of this document, the undersigned does sell, convey, covenant and assign all rights, interest and ownership of water mains and appurtenances installed at Bethel Christian Life Center, 2541 McCormick Rd, West Lafayette, IN 47906....to Indiana American Water..". Both of these paragraphs (again state to our understanding) that CPC did own and operate and then sold these rights to Indiana American Water Company all the water mains and appurtenances on our property.

2541 Cumberland Avenue, West Lafayette, IN 47906 OFFICE 765 463 0956 connectionpointchurch.org

connection point CHURCH

All construction costs that Connection Point Church incurred for the aforementioned sewer and water utilities are outlined in attachment #5 from S. Rider Construction.

Since CPC is not a part of the City of West Lafayette's sewer system or water main systems, it is our understanding that we are also not a part of the Ordinance No. 43-88-CM or "City of West Lafayette Drainage Code" that states that its purpose is to "...governs the control of run-off of storm water and to protect, conserve and promote the orderly development of the land in the City of West Lafayette" As outlined in the Storm water Programs Service Charge Policies and Procedures guide page 1 paragraph 2 (see attachment #6). Again, in this pamphlet it further defines the Storm water Service Charge in #3 on page 2 as, "Per Ordinance No. 34-12 the Storm water Service Charge is imposed on each and every lot and parcel of land within the City of West Lafayette that directly or indirectly contributes to the City's storm water drainage system". CPC does not directly or indirectly contribute to the City's storm water drainage system as outlined in the aforementioned attachments. So again we do not feel we should be subjected to the storm water drainage system fees.

Since we received our first bill for the storm water drainage system in March 2015 we have tried numerous times to contact the proper authorities via phone, email and a written letter. Finally on April 23rd , one of our emails was answered by West Lafayette City Council women Vicki Burch (see attachment #7) and she directed us to you.

It is our sincere hope to clarify this dispute and remain in good standing with the City of West Lafayette who we are committed community partner. We do expect a response from the Engineering Department and Board as explained in the Storm water Service Charge Policies and Procedures page 10, #4. You may reach me or Leon Troyer, Treasurer of Connection Point Church, at the address below.

In His service,

Ted Brust

Pastor Ted Brust
Lead Pastor/CEO

2541 Cumberland Avenue, West Lafayette, IN 47906 OFFICE 765 463 / 0956

CITY OF
WEST LAFAYETTE

Office of the City Engineer
609 West Navajo Street
West Lafayette, Indiana 47906
Phone: 765.775.5130
Fax: 765.775.5249

June 23, 2015

Pastor Ted Brust
Connection Point Church
2541 Cumberland Avenue
West Lafayette, IN 47906

RE: Storm Water Service Dispute
Property Address: 2541 Cumberland Ave. (formerly 2541 McCormick Rd.)

Dear Pastor Brust,

We received your completed West Lafayette Storm Water Service Charge Dispute Form and supporting documents on April 28, 2015. Our department has spent some time reviewing your dispute and would like to offer the following response.

1. We are in agreement that American Suburban Utilities provides sanitary sewer service to the property and Indiana American Water Company provides water service to the property.
2. We are in agreement that existing improvements on the property were constructed while the property was in the County's jurisdiction, and in 2014 the property was annexed into the City limits.
3. There is no association between the sanitary sewer service and water service for the property, nor is there any impact to the corresponding agreements between the Church and American Suburban Utilities and Indiana American Water with regard to the applicability of a stormwater service fee.
4. In 1988, Ordinance No. 43-88 established the "The City of West Lafayette Drainage Code", which governs runoff of stormwater and serves to protect conserve and promote the orderly development of land. This ordinance applies to any property within the West Lafayette City Limits.
5. In 2003, Phase II of the National Pollutant Discharge Elimination System (NPDES) permit went into effect which requires the City to comply with additional federal regulations. These regulations apply to any property within the West Lafayette Municipal Separate Storm Sewer System (MS4) boundary. [This boundary is the same as the city limits.] In 2004 and 2011, Ordinance 27-11 was adopted to

amend and update the West Lafayette Drainage Code to include these new provisions.

6. In 2012, Ordinance 34-12 was adopted to establish a Stormwater User Fee as a reasonable and minimum way to pay for the repair, replacement, planning, improvement, operation, regulation and maintenance of the existing and future stormwater system as well as compliance with NPDES permit requirements.
7. Upon completing a review of your request, we find the following:
    a. The property in question 2541 Cumberland Ave. (formerly 2541 McCormick Rd.) is located within the City Limits of the City of West Lafayette.
    b. The measured impervious area on the property has been reviewed and the correct number of ERU's is 50, which matches the billed amount.
    c. The property directly or indirectly contributes to the stormwater system of the City of West Lafayette as it is located in the city limits, and as a minimum, benefits from the City's management, operation and regulation of the NPDES permit responsibilities.
    d. The property is correctly classified as "Non-Residential".
    e. Property does not qualify for an exemption with regard to Section 116.908 Exemptions, which are listed as (a) Roadways, (b) Railway, and (c) open water.
8. Based on the above, the owner of the property is obligated under Section 116.901 of West Lafayette City Code, Article IX - Stormwater Service Charge.

Thank you for your inquiry on this matter. Please feel free to contact our office with questions you may have at (765) 775-5130.

Sincerely,

David M. Buck, P.E.
Public Works Director

Cc: Judy Rhodes, Clerk-Treasurer
Eric Burns, City Attorney
Michael Susong, PE, Asst. City Engineer

TRUITT, RAY, SHARVELLE & EBERHARDT LLP

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Fax: (765) 429-5591

Patricia Peyton Truitt,
Of Counsel

August 7, 2015

Mr. David M. Buck
West Lafayette City Engineer
222 N. Chauncey Ave.
West Lafayette, IN 47906

Dear Mr. Buck,

We have been contacted by Connection Point Church (the "Church") regarding a Storm Water Service Dispute. They disagree with the decision made by your office that they are obligated to pay the Storm Water Service Charge for the primary reason that they do not directly or indirectly contribute to the storm water system of the city of West Lafayette. Nor do they believe that they benefit from the City's management, operation, and regulation of the NPDES permit responsibilities. The Church hereby respectfully requests a hearing before the Board solely for the purpose of considering this issue.

Their land and all impervious surface areas thereon drain solely onto County property through a network of ditches and ultimately into a drainage pond owned by the State of Indiana. You have already received a copy of the Church's drainage plan established and implemented before their land was annexed into the City. If you have any evidence to show otherwise, we respectfully request that you forward this evidence to our office at your earliest convenience.

I have advised the Church to pay the Service Charge and hereby request the Board to see that it is rebated to the Church if a final decision is made in their favor. Please advise us as to the place and time of the hearing on this appeal. Thank you for your kind attention to this matter.

Sincerely,

Patricia P. Truitt

Copies by regular mail:
Eric Burns, Esq.
Leon Troyer
Pastor Ted Brust

CITY OF
WEST LAFAYETTE

Office of the City Engineer
609 West Navajo Street
West Lafayette, Indiana 47906
Phone: 765.775.5130
Fax: 765.775.5249

September 2, 2015

Pastor Ted Brust
Connection Point Church
2541 Cumberland Avenue
West Lafayette, IN 47906

Patricia Truitt
Truitt, Ray, Sharvelle & Eberhardt LLP
324 Main Street – Suite C
Lafayette, IN 47902-0711

RE: Storm Water Service Dispute

Dear Pastor Brust and Ms. Truitt,

We have received your request for a hearing at the West Lafayette Board of Works on Monday, August 10, 2015. Per Ms. Truitt's letter – "The Church hereby requests a hearing before the Board solely for the purpose of considering this issue".

We have placed this matter on the agenda of the Board of Works meeting on Tuesday, September 8 at 8:30 AM. The meeting will be held at the Morton Center – Multi-Purpose Room located at 222 North Chauncey Avenue in West Lafayette.

Please feel free to contact me with questions at (765) 775-5130.

Sincerely,

David M. Buck, P.E.
Public Works Director

As a condition of approval of the final drainage plans by the City of West Lafayette, applicant shall pay to the City of West Lafayette Clerk-Treasurer the sum set forth in the statement. The City of West Lafayette may issue such a billing statement before the project advances to the final approval stage, and such payment is due by applicant upon receipt of the billing statement regardless of whether the project has advanced to the final approval stage.

The City of West Lafayette has the right to not accept the drainage improvements or to not approve the advancement of any project for which the Additional Fees have not been paid.

Article IX. Stormwater Service Charge
(Ord. No. 34-12)

Section 116.901 Stormwater Service Charge and Sunset Provision

(a) A Stormwater Service Charge shall be imposed on each and every lot and parcel of land within the City of West Lafayette which directly or indirectly contributes to the stormwater system of the City of West Lafayette, which charge shall be assessed against the owner, who shall be considered the user and ultimately responsible for the service charge for the purposes of this Article.

(b) This charge is deemed reasonable and is the minimum necessary to pay for the repair, replacement, planning, improvement, operation, regulation and maintenance of the existing and future City of West Lafayette stormwater system and for compliance with the City of West Lafayette NPDES stormwater discharge permit.

(c) The Stormwater Service Charge shall, unless extended by Common Council action, expire and cease to be collected twenty (20) years from the first collection of the stormwater service charge under this ordinance.

Section 116.902 Stormwater Rate and Fee Establishment Procedures

(a) Each parcel of property within the City of West Lafayette shall be individually subject to a Stormwater Service Charge.

(b) For each parcel that directly or indirectly contributes to the stormwater system of the City of West Lafayette, the Stormwater Service Charge shall be based on the presence of and/or measure of impervious surface area on the parcel or property.

(c) Each parcel of property shall be classified as Residential or Non-residential. The Board is authorized to establish the classification of an individual parcel or property based upon its primary use.

(d) This stormwater rate is designed to recover the cost of rendering stormwater service to the users of the stormwater system and shall be the basis for assessment of the City of West Lafayette's Stormwater Service Charge. This rate is further designed to maintain adequate reserves to provide for reasonably expected variations in the cost of providing services, as well as variations in the demand for services.

(e) This rate shall be evaluated annually as to its sufficiency and an evaluation report shall be provided to the Board no later than April 30 of each year.

Section 116.903 Rate Structure and Calculations

(a) For the purposes stated in Section 116.901, there is hereby assessed a Stormwater Service Charge to each user in the City of West Lafayette who contributes directly or indirectly to the stormwater system of the City of West Lafayette, in an amount defined below.

(b) It is hereby established that an Equivalent Residential Unit ("ERU") shall be based upon 3,200 square feet of impervious surface area.

(c) All properties having impervious surface area within the City of West Lafayette shall be assigned an ERU, or multiple thereof, with all properties having impervious area assigned at least one (1) ERU.

(d) The Stormwater Service Charge for one (1) ERU is hereby established at the rate of $8.00 per month. The total service charge for a particular property shall be determined by taking the number of ERUs assigned to a particular property and multiplying it by the established rate.

(e) *Residential Properties.* Residential properties shall be assessed a monthly service charge for stormwater service of one (1) ERU. This flat fee shall apply to all residential properties as defined herein.

(1) Contiguous residential properties having common ownership and sharing a single structure containing two (2) or less dwelling units shall be assigned one (1) ERU.

(2) However, there shall be a fifty percent (50%) reduction in the monthly service charge for owners of residential property who verify they:

(A) are head of household; and

(B) are either over the age of 65 years or permanently and totally disabled as determined by the Social Security Administration; and

(C) have a total annual household income which is at or below 150% of the poverty level as determined by the United States

Health and Human Services Guidelines.

(f) *Non-Residential Properties.* The total impervious surface area of each Non-Residential property shall be individually calculated. Non-Residential properties shall be assessed a monthly service charge for stormwater service based upon the total number of ERUs that encompasses the measured impervious surface area on the individual property. The calculation to determine the total number of ERUs for a Non-Residential property shall be completed by dividing the total square footage of measured impervious surface area for a property by 3,200 square feet. The division shall be calculated to the first decimal place. Total ERUs shall not be less than one (1) for any Non-Residential property containing measurable surface area.

(g) Only whole ERUs shall be used in determining the assignment of gross ERUs to a property. All rounding necessary to reach the appropriate whole ERU shall be done according to mathematical convention (0 – 0.4 rounded down to the nearest whole ERU; 0.5 -0.9 rounded up to the nearest whole ERU).

Section 116.904 Omitted

Section 116.905 Billing; Collection

(a) Stormwater Service Charge levied pursuant to this chapter shall be in effect from January 1, 2014, and shall be due and payable on or before the due dates shown on the billing statement.

(b) Any Stormwater Service Charge not paid by the due date shall be considered delinquent. The delinquent charge shall be ten (10%) percent of the billed amount and shall be added to the next statement rendered.

(c) Delinquent Stormwater Service Charges constitute a lien against a property and may be collected along with applied penalties, recording fees and service charges, in accordance with the provisions of IC 36-9-23-32 and -33, as amended from time to time. Delinquent Stormwater Service Charges together with delinquent penalties, cost of collection, legal fees and other expenses of collection may be collected by any lawful remedy.

Section 116.906 Appeals

A user liable for payment of a Stormwater Service Charge may appeal any billing dispute to the West Lafayette City Engineer's office. Such appeal shall be filed in writing on forms prescribed by the Board together with supporting evidence no later than 30 days after the action or decision being appealed from. The City of West Lafayette Engineer's office shall consider the appeal and make a decision within 60 days from the date the appeal was filed. If a decision is not rendered within the 60 day period, or if the user disagrees with the decision rendered, the user may make a written request for a hearing before the Board no later than 90 days from the date the appeal was filed. The Board will render a final decision within 30 days thereafter. During the appeal period, the user will continue to pay the Stormwater Service Charge and any other charges hereunder, which charges will be subject to rebate if required by the final decision of the Board.

Section 116.907 Stormwater Revenue Fund

All revenues earned and Stormwater Service Charges collected for stormwater service, including but not limited to drainage service charges, permit and inspection fees, direct charges and interest earnings on any unused funds shall be deposited in an account entitled "City of West Lafayette Stormwater Revenue Fund" and shall be subject to the provisions of IC 36-9-23, as amended from time to time. Disbursements from the Stormwater Revenue Fund shall be authorized by the Board and, as required by law, by the Common Council. Such disbursements shall be used exclusively for the operation, maintenance and improvement of the City of West Lafayette's stormwater system. Funds from this account shall not revert to any other city utilities or the general fund of the City and may not be transferred for any other purpose. To the extent that there are outstanding revenue bonds of the City issued pursuant to the provisions of IC 36-9-23, as amended from time to time, revenues deposited in the Stormwater Revenue Fund shall be subject to the covenants contained in the ordinance or ordinances authorizing such outstanding bonds.

Section 116.908 Exemptions

The following areas shall not be considered impervious surface area for the purpose of calculating the stormwater service charge.

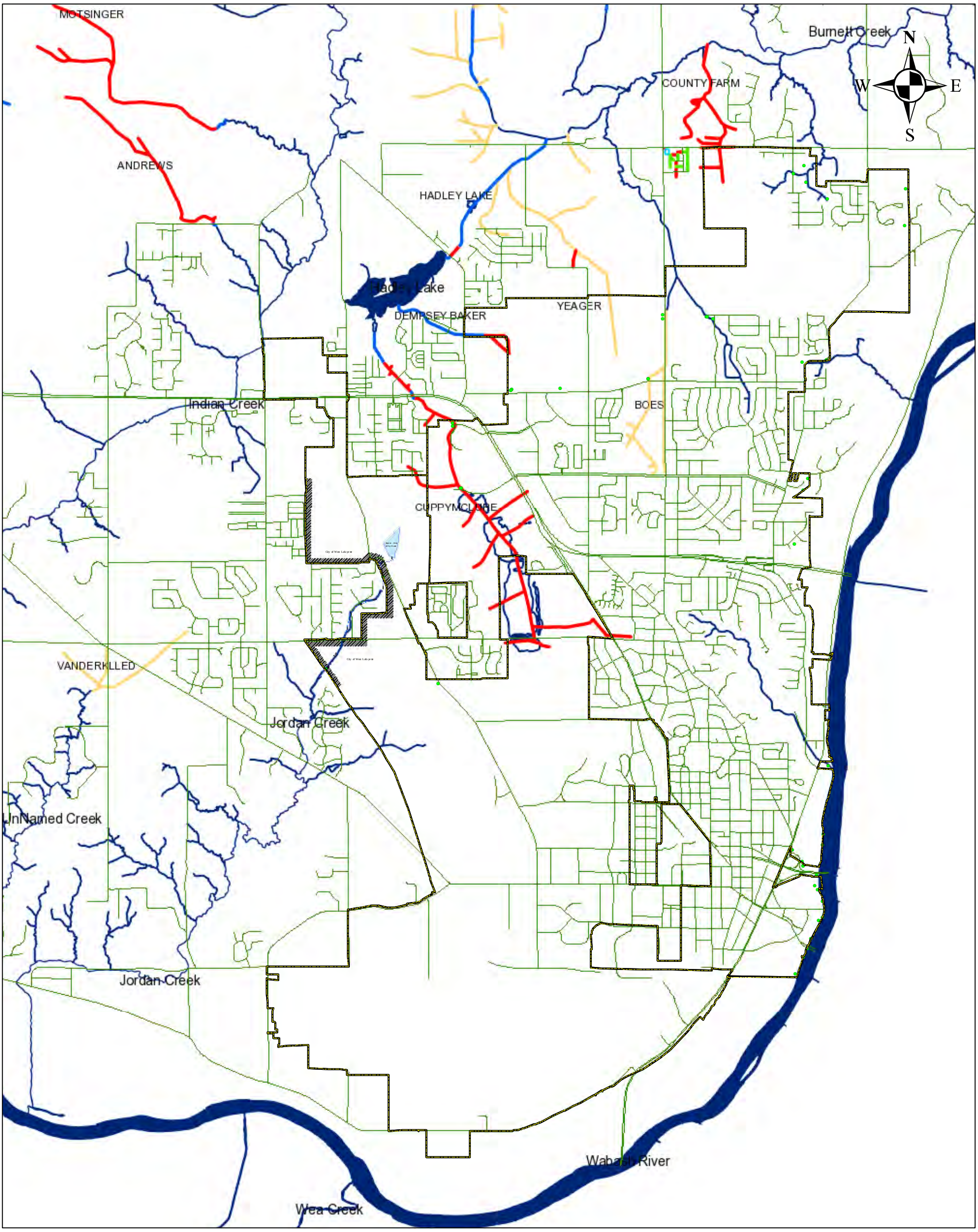
(a) Roadways including Federal, State, County, City and those serving only Residential Property;

(b) Railway beds, ties and rails; and,

(c) Open water.

Section 116.909 Stormwater Service Charge Credit Program

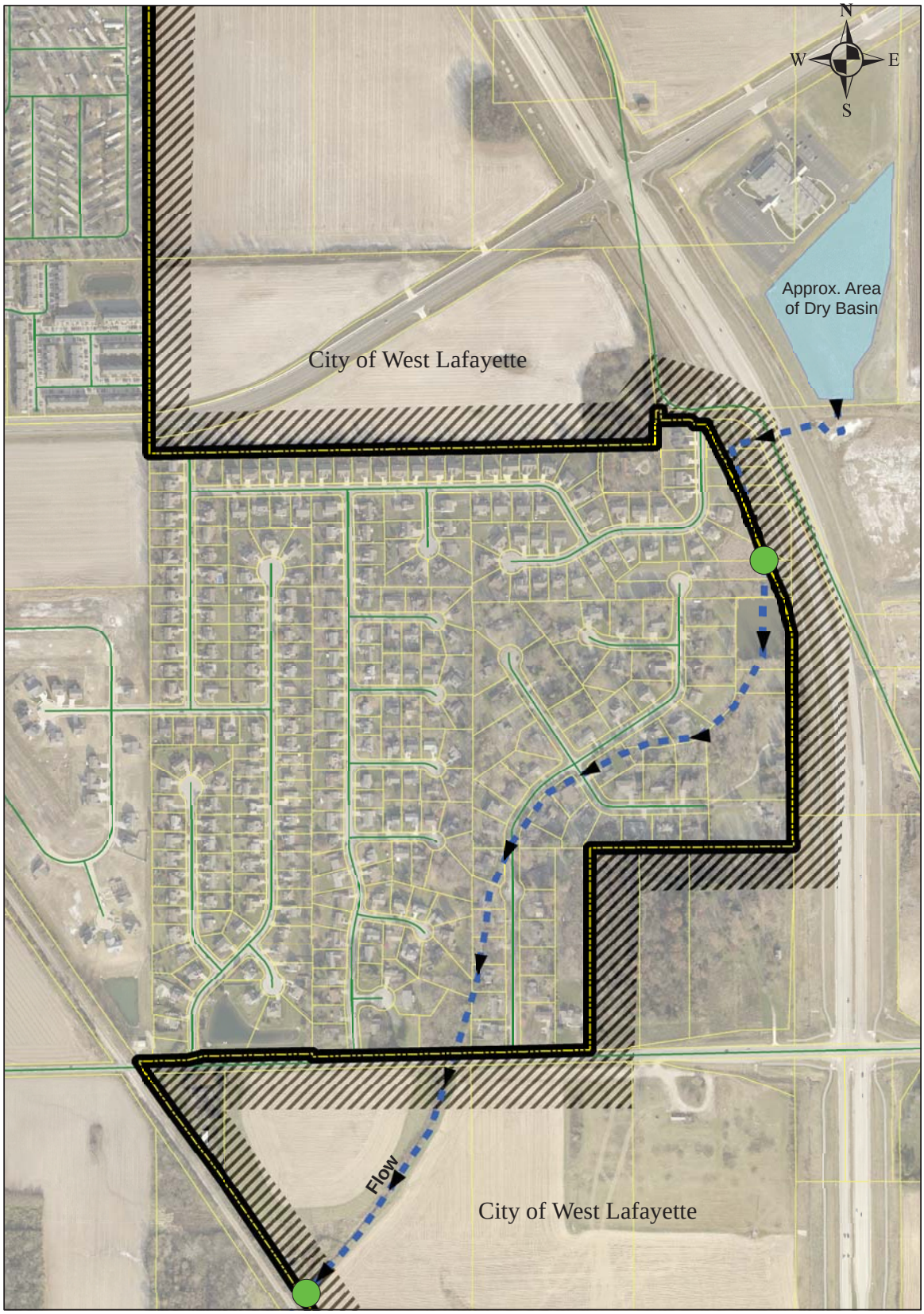
The City Engineer shall develop for approval by the Board a Stormwater Service Charge Credit Program to be implemented following the effective billing date of the Stormwater Service Charge. The credit program shall include alternatives which provide direct benefit to the City's stormwater regulatory non-structural compliance effort and conveyance and/or water quality treatment facilities.



City of West Lafayette
City Jurisdiction & MS4 Boundry Map
Date: August 2015

Legend

- Named Waterways
- Drain_Name
- Retention Pond
- Detention Pond
- Maintained Main Tile
- Maintained Branch Tile
- Maintained Open Ditch
- Maintained Concrete Swale
- Maintained Grass Swale
- Regulated:Not Maintained Tile
- Regulated:Not Maintained Open Ditch
- Unnamed Waterways
- City & MS4 Boundry
- Outfall
- Dry Basin
- Waterway



City of West Lafayette
City Jurisdiction & MS4 Boundry Map
Date: August 2015

Legend

- Outfall
- Dry Basin
- City & MS4 Boundry
- Waterway
- Parcels - CPC Property